NATIONAL JUDICIAL ACADEMY

SEMINAR ON EMPLOYMENT LAW AND JUDICIAL PRACTICES (LABOUR COURTS)

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READING MATERIAL

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SEMINAR ON EMPLOYMENT LAW AND JUDICIAL PRACTICES

(LABOUR COURTS) (P-951)

28th – 31st October, 2015

SESSION I

CONTRACT LABOUR: ISSUES AND CHALLENGES RELATING TO REGULARIZATION

SESSION II

PROBLEMS OF OUTSOURCED LABOUR

Contract labour is one of the significant and growing forms of employment in India. It exists in almost every sphere of employment i.e. industries, allied operations and also in the service sector. Contract labour refers to workers engaged by a contractor for other organization. Contract labourers are often being exploited as they have little bargaining power, social security and often engaged in the hazardous industries with lesser facilities and security. To regulate the practice of Contract labour the *Contract Labour (Regulation & Prohibition) Act, 1970* was enacted. Basic policy underlying this Act, is to prohibit the employment of contract labour and wherever this is not possible, to improve the conditions of work of contract labour i.e., the regulation of service conditions for contract labour. The Act came in force in1971.

The Act applies to all establishments and every contractor who employs or have employed more than twenty contract labours and such establishment and industries must register before the concerned authority i.e. Asst. Commissioner of Labour or Labour Officer in a fixed period. The act determines the rights of the contract labour to secure them from any sort of exploitation. These rights aim to provide equal status to them as of the workmen and the violation of which is enforceable in court of law. The interests of contract labour are protected in terms of wages, hours of work, welfare, health and social security. Any agreement made between the parties, which is inconsistent with the benefits provided under the Act and are not favorable for the labourers will be treated as invalid.

The Act provides for certain entitlements such as wages including overtime wages and allowances as stipulated for their work at the establishment and these wages must be in

accordance with the Minimum Wages act. They are also ensured with safety measures at the establishment and immediate health service in case of any injury to the labour and are entitled to facilities like rest rooms, canteens, washing first aid facilities etc. It is the primary responsibility of the contractors to provide all facilities to the workers as delineated in the Act. If the contractor fails to pay wages or provide other facilities, the responsibility falls on the principal employer. Field officers of labour department are supposed to conduct regular inspections to detect violations of the provisions of the Act.

Apart from the regulatory measures provided under the Act for the benefit of the contract labour, a government can prohibit employment of contract labour in any establishment in any process operation or other work. Such restrictions are often decided on the basis of whether the work is perennial in nature or the work is incidental for an establishment.

S.10 of the Act provides that it is only the appropriate Government which has the authority to abolish genuine labour contract in accordance with the provisions of the said section. No Court including the industrial adjudicator has jurisdiction to do so. If the contract is sham or not genuine, the workman of the so-called contractor can raise an industrial dispute.

Though the Act lays rules as to how the contractual employment should be maintained and there are officials for inspection to detect violations of the norms, but due to the presence of two separate management systems, viz., the contractor and the principal employer, employer-employee relationship often becomes blurred. Consequently, contract labour does not get its due and this has given rise to a number of litigations such as issues relating to equal wages. Further, there are litigation pertaining to regularization claims i.e. the contractor's workers claiming regularization with the principal employer.

Outsourced Labour:

Corporates/factories/establishments across industries are following certain procedures to ensure compliance with labour laws in India concerning Outsourced Labour. The following text is a summation of such practices and may be adopted, based on specific circumstances and requirements.

The system of employing Outsourced labour is prevalent in most industries in different occupations including skilled and semi skilled jobs. A workman is deemed to be employed as Outsourced Labour when he is hired in connection with the work of an establishment by or through a Service Provider. Outsourced workmen are indirect employees; persons who are hired, supervised and remunerated by a Service Provider who, in turn, is compensated by the establishment. The system of Outsourced labour offers tremendous opportunities for employment and allows the employers flexibility to choose what is best for them. This helps improve productivity and service competitiveness. While economic factors like cost effectiveness may justify system of Outsourced labour, considerations of social justice have called for its abolition or regulation. Contract Labour [Regulation & Abolition] Act, 1970 is the primary labour law in India dealing with employment of Outsourced Labour in industries.

Relevant cases on the topic are as follows:

ONGC Ltd.

v.

Petroleum Coal Labour Union and Ors.

MANU/SC/0475/2015

Hon'ble Judge(s): V. Gopala Gowda and C. Nagappan, JJ.

Case Note: Labour and Industrial – Regularisation

Facts: ONGC (appellant) has a project in the Cauvery Basin, in the Union Territory of Puducherry, where about 1,050 workers have been regularly employed by the company for its project. For the security of the project, Due to developmental activities, the said project required security arrangements. Such arrangements were made through contractors. The Government of India issued a notification on in 1976 prohibiting the employment of workers on contract basis as watch and ward and for cleaning the buildings in ONGC.

In view of the same, the contract labourers who were earlier engaged by the contractors providing security arrangements for Cauveri project started demanding that they should be treated as regular employees of ONGC. The same was not acknowledged immediately. Subsequently, a settlement was arrived at between the trade union and the management under Section 18(1) of the Industrial Disputes Act, 1947 under which, a co-operative society was formed for the welfare of such contract labourers. In 1987 ONGC passed an order to induct Central Industrial Security Force (CISF) for the purpose of providing security to the ONGC projects. Immediately, thereafter, the trade union filed Writ Petition challenging the decision of the ONGC to induct CISF and for a further direction to ONGC to absorb the said workmen as regular employees. Another writ petition (W.P.No.11969 of 1987) was filed by the trade union seeking a *mandamus* to direct the ONGC to absorb the workers engaged through the third respondent co-operative society viz., Priyadarshini Indra Co.opearative Society. The said writ petition was dismissed by order dated 05.01.1988.

Thus, from 13.01.1988 onwards, such employees who were originally engaged by the contractors and who were also members of the Priyadarshini Indra Co.opearative Society became the employees of ONGC but on contract. On 10.09.1990, the trade union raised demands for regularisation of the above workers who were appointed on term basis. Thereafter, the concerned workmen raised an industrial dispute claiming regularisation of their services in the Corporation in 1991. The Central Government referred the same to the Industrial Tribunal, Chennai. Tribunal passed the judgement in favour of the workers directing the corporation to regularize the service of concerned workman. Thereafter ONGC aggrieved by the decision filed a writ to the high court challenging the decision of the tribunal and the court dismissed the petition, again the matter was challenged by the corporation to the division bench of High Court which was further dismissed and thus this appeal by the corporation is filed to the Supreme Court for consideration.

Issue: "Whether the management of ONGC is justified in not regularising the workmen in the instant dispute, and, if not, to what relief the workmen are entitled to?

Held: Supreme Court dismissed the appeal by the corporation stating that, the industrial dispute between the parties has been litigated for the last 25 years, it would be just and proper for this Court to give directions as hereunder:

SC directed the corporation to comply with the terms and conditions of the award passed by the Tribunal and regularise the services of the concerned workmen in their posts and compute the back-wages, monetary benefits and other consequential monetary benefits including terminal benefits payable to the concerned workmen on the basis of the periodical revision of pay scales applicable from the date of their entitlement, namely, by regularizing them in their services after their completion of 240 days of service in a calendar year in the Corporation within eight weeks.

Further stating, if the Corporation fails to comply with the above given directions, the back-wages shall be paid to the concerned workmen with an interest at the rate of 9% per annum. The Corporation is further directed to submit the compliance report for perusal of this Court after the expiry of the said eight weeks.

***Oshiar Prasad and* Ors**

v.

***The Employ*ers In Relation To Management of *Sudamdih Coal Washery of B*harat Coking Coal ltd.**

2015(2) SCALE153

Hon'ble Judge(s): Fakkir Mohamed Ibrahim Kalifulla and Abhay Manohar Sapre, JJ.

Facts: The Respondent-M/s. Bharat Coking Coal Ltd. ("the BCCL") a Government of India undertaking and has a colliery at Dhanbad, Jharkhand known as "Sudamdih Coal Washery". BCCL executed an agreement with M/s. MC Nelly, Bharat Engineering Company Ltd. ("the Contractor") for construction of Washery on Turnkey basis i.e. the Contractor was required to do everything to make the Washery operational. After completion of the work, the Contractor terminated the employment of all the workers and offered them retrenchment compensation as per the provisions of Section 25 of the Industrial Disputes Act, 1947 ("the Act") except 39 skilled workers, who were retained to look after the maintenance work of

Washery after it was made operationalised. After retaining their services for about one year, the Management terminated the services of these employees so the employees raised a dispute demanding their absorption and continuation in service with the BCCL. Since their demands were not accepted, a reference was made to the Industrial Tribunal (Dhanbad) which gave an award in favour of workmen for regularisation of their services; and this award was accepted by BCCL and these workmen were absorbed and regularised.

Five workers (including appellants herein) who claimed to be working in the same project, filed a suit for continuation of their services and regularization at BCCL before the Trial Court (Court of Munsif Dhanbad) and the Trial Court held no temporary injunction can be granted to the workers however entitled them to continue in service. BCCL aggrieved by this order then filed an appeal, whereby the decree of the Trial Court was confirmed. BCCL then filed a second appeal to the High Court (HC of Jharkhand) wherein the HC allowed the appeal and the decree of the lower courts was set aside on the ground that suit was not maintainable in light of provisions of Labour laws. Against this order workers filed Special Leave Petition which was dismissed but the workers were given liberty to approach the Industrial Tribunal.

Thereafter, five workers including the Plaintiff approached the Central Government for making an industrial reference to the Industrial Tribunal on behalf of 150 workers espousing their cause in the representative capacity for absorption and regularisation, but the award of the Tribunal was against the workers. Then the workers filed a Writ Petition before the High Court of Jharkhand which was also dismissed. Thereafter, the Division Bench of HC in Letters Patent Appeal also dismissed the appeal of the workers. Thereafter workers filed Special Leave Petition before the Supreme Court.

Issue: Whether the management of Sudamdih Coal Washery is justified in not absorbing the appellant- workmen as their regular employees, otherwise what reliefs are the said workmen entitled for?

Held: The appropriate Government is empowered to make a reference Under Section 10 of the Act only when "Industrial dispute exists" or "is apprehended between the parties". Similarly, the Tribunal while answering the reference has to confine its inquiry to the

question(s) referred and has no jurisdiction to travel beyond the question(s) or/and the terms of the reference while answering the reference. A fortiori, no inquiry can be made on those questions, which are not specifically referred to the Tribunal while answering the reference. The services of the Appellants were terminated long back prior to making of the reference, so these workers were not in the services of either Contractor or/and BCCL on the date of making the reference in question. Therefore, there was no industrial dispute that "existed" or "apprehended" in relation to Appellants' absorption in the services of the BCCL on the date of making the reference.

It is a settled principle of law that absorption and regularization in the service can be claimed or/and granted only when the contract of employment subsists and is in force inter se employee and employer. Once it comes to an end either by efflux of time or as per the terms of the Contract of employment or by its termination by the employer, then in such event, the relationship of employee and employer comes to an end and no longer subsists except for the limited purpose to examine the legality and correctness of its termination. The issue of absorption of 39 workers was decided in their favour as their issue came for adjudication when their services were still persisting. Merely because the workers in both the references were working in one project by itself was not enough to give them any right to claim parity with the claim of others. So long as the parity was not proved on all the relevant issues arising in the case, no worker, whether individual or collectively was entitled to claim the relief only on the basis of similarity in the *status qua* employer. Also, the reference made to examine the issue of Appellants' absorption *qua* the BCCL was incapable of being referred to on the said question and the factual findings recorded by the three Courts are binding on the Court.

The Industrial Tribunal was directed to verify the case of the Appellants (150 or so) for deciding each worker's claim for payment of retrenchment compensation and to pay him such amount accordingly.

Employers in Relation to the Management of Baliahri Colliery under Putkee Balihari Area of Bharat Coking Coal Ltd.

v.

Their Workmen being represented by the Branch Secretary

MANU/JH/1078/2011

Hon'ble Judge(s): P.C. Tatia, A.C.J. and Harish Chandra Mishra, J.

Facts: The workmen were employed directly for the job of drivage in stone, stone cutting, drivage through fault in stone coal cutting, dressing in coal and stone, reef supporting, line packing, fall cleaning and other tyndal jobs as contended by them. The jobs performed by the concerned workmen were permanent and perennial nature and prohibited category of jobs under the provisions of Contract Labour (Regulation & Abolition) Act;

The Appellant (employers herein) contended before the labour court that they were not the employees of Appellant but were employed by a Society, namely, Pragatisil Sharmik Sahayog Samiti and, therefore, in want of relationship of employer and employee, no regularization could have been claimed by the workmen. The labour court vide award dated 30th September, 2008 rejected the Appellant's Contention and held that the workers were doing the job of permanent and perennial nature since 1989. Other persons have been regularized by the Management but the present workmen have not been regularized. However, the appellant failed to provide on record the contract under which the work which may have been given to samiti. Therefore, the workmen were under a contract by the appellant itself.

Issue: Whether the action of the management of Balihari Colliery of M/s BCCL in not departmentalizing/regularizing Shri Ram Bilash Ram and 24 others (as per list enclosed) is justified? If not, to what relief the workmen are entitled to?

*Held:T*he Court directed the respondents to regularize the said workmen in service within a period of one month from the date judgement passed.

Jurisdiction of Industrial tribunal in matter of contract employee

Asish Dey Chowdhury and Ors.

v.

The State of West Bengal and Ors.

2014LLR492

Hon'ble Judge: Soumen Sen, J.

Facts: Petitioners were deep tube well pump operators working continuously without break of service on and from different dates since 1980 at several sites; operating the deep tubewells used by the inhabitants under different contractors engaged by the West Bengal State Electricity Board and now by the West Bengal Power Development Corporation Limited (the third respondent herein). The third respondent has always been engaging different contractors for creating an artificial intermediary i.e. 'contractor' to deny the workmen direct employment in the establishment of the third respondent though the services rendered by petitioners are regular and perennial in nature thereby rendering less benefits to petitioners than those directly in their pay roll as they have been working under the contractor appointed by the third respondent from time to time. The petitioners made several representations to the third respondent for absorption.

The petitioners had approached West Bengal High Court with their grievance in the past. In such proceeding an order was passed by the Hon'ble Supreme Court on 21st April, 2010 by which the order of the Single Bench and the Division Bench were set aside. But, the petitioners were given liberty to approach the concerned authority for redressal of their grievance. The Assistant Labour Commissioner disposed off the representation of the petitioner by directing the petitioners to approach the concerned authority i.e. State Advisory Contract Labour Board under the Contract Labour (Regulation & Abolition) Act, 1970 (“CLRA Act”).

Issue: Whether the dispute of the contract employees should be referred to an industrial tribunal under the Industrial Disputes Act, 1947 ("ID Act") or Advisory Contract Labour Board under the "CLRA Act"?

Held: Where there is no abolition of contract labour under Section 10 of the CLRA Act, the remedy with the aggrieved contract employees lies purely under the ID Act to decide on the fact whether the contract between the principal employer and the contractor is sham and nominal. The Industrial Tribunal will have the jurisdiction to decide on the issue as to whether a contract between the principal employer and the contractor is genuine or camouflage and since there is no machinery to adjudicate such issues under the CLRA Act, it is the industrial tribunal alone which can on a proper investigation and appreciation of evidence decide the on the matter of absorption of such employees.

Section 10 of Contract Labour (Regulation and Abolition) Act, 1970, Appropriate Government

N.T.P.C. and Ors

v.

Badri Singh Thakur and Ors.

MANU/SC/7938/2008

Hon'ble Judge(s): Dr. Arijit Pasayat and P. Sathasivam, JJ.

Facts: Present appeal was filed by respondents (i.e. employees) on the ground that they have been employed as Electricians since 1987 as workmen under Appellant No.1 i.e. National Thermal Power Corporation (in short the `Corporation') for maintenance of Korba Super Thermal Power Project colonies. Though the writ petitioners were not directly employed by the Corporation, but were employed through contractor. Prior to such engagement they were employed through other contractors. It was the stand in the writ petition that their work was supervised by competent officers of the Corporation and the materials for their job were supplied by the Corporation and they worked for the colonies owned and controlled by the Corporation and series of contracts have been entered into by the Corporation with the contractor. It was therefore their stand that they have to be treated as employees of the Corporation. It was stated that the Corporation wanted to avoid absorption of contract labour despite their perennial nature of work. With a view to frustrate mandate of this Court, they

engaged them on job work basis and the whole endeavour was to defeat the absorption of the contract labours. It was claimed before the learned Single Judge of M.P. High Court that the M.P. Industrial Relation Act, 1960 governs the conditions of the employment between the Corporation and the contract labour and they were entitled to the same wages as the workmen of the Corporation and there can be abolition of the contract labour on regular basis.

Learned Single Judge of MP High Court held that there was no Notification issued by the appropriate government abolishing the contract labour under Section 1 of the Act. There was no scope for granting any relief. Further the High Court of M.P division bench rejected the view of the single bench stating it not correct.

Issue: Whether the petitioners can be absorbed as the workmen of the corporation on abolition of genuine contract?

Held: Hon'ble Supreme Court held, no court or adjudicator has jurisdiction and only appropriate government has authority to abolish genuine contract labour under Section 10, CLRA. The Judgement of Single Judge that no notification issued by the appropriate government abolishing the contract labour under Section 1 of the Act, was upheld. Therefore, there is no scope for granting any relief and further stated that the Division Bench was not justified in its conclusions.

Bhilwara Dugdh Utpadak Sahakari S. Ltd.

v.

Vinod Kumar Sharma Dead By L.Rs. And Ors.

AIR2011SC3546

*Hon'ble Judge(s): Markandey Katju and C.K. Prasad, JJ***.**

Case Note: Equal wages, status of contract labours

Facts: Present case lies in appeal against the judgements dated passed by the High Court of Judicature at Rajasthan. Subterfuge was resorted to by the Appellant to show that the

workmen concerned were only workmen of a contractor. The Labour Court has held that the workmen were the employees of the Appellant and not employees of the contractor and the concerned workmen were working under the orders of the officers of the Appellant, and were being paid Rs 70/- per day, while the workmen/employees of the contractor were paid Rs. 56/- per day.

Issue: Whether the workmen were employees of the appellant or of the contractors?

Held: The Court upheld the order of the High Court and held that the High Court has rightly refused to interfere with this finding of fact recorded by the Labour court since the Respondents were not the contractor's employees but were the employees of the Appellant.

Automatic absorption, appropriate government, Sec 10 of CLRA

Steel Authority of India Ltd. & Anr.

v.

Union of Waterfront Workers and Others

(2001) 7 SCC (L&S) 1344

Hon'ble Judge(s): B.N. Kirpal, Syed Shah Quadri, M.B. Shah, Ruma Pal, K. G. Balakrishnan

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Facts: The appellants (Steel Authority of India & Anr. herein) a Central Government Company and its branch manager, are engaged in the manufacture and sale of various types of iron and steel materials in its plants located in various States of India. The business of the appellants includes import and export of several products and bye-products through Central Marketing Organisation, a marketing unit of the appellant, having network of branches in different parts of India. The work of handling the goods in the stockyards of the appellants was being entrusted to contractors after calling for tenders in that behalf. . The Government of West Bengal issued notification dated July 15, 1989 under Section 10(1) of the CLRA Act (referred to in this judgement as the prohibition notification) prohibiting the employment of contract labour in four specified stockyards of the appellants at Calcutta. The court have been postponing dates for quite a long a time until the first respondent-

Union representing the cause of 353 contract labourers filed Writ Petition in the Calcutta High Court seeking a direction to the appellants to absorb the contract labourers in their regular establishment in view of the prohibition notification of the State Government. A learned Single Judge of the High Court allowed the writ petition, set aside the notification dated August 28, 1989 and all subsequent notifications extending the period and directed that the contract labourers be absorbed and regularised from the date of prohibition. The appellants filed writ in the Calcutta High Court challenging the prohibition notification of July 15, 1989.

Procedural history: While these cases were pending before the High Court of calcutta, the Supreme Court delivered judgement in *Air India Statutory Corporation & Ors. v. United Labour Union & Ors*[1], on abolition of contract labour system, by necessary implication, the principal employer is under statutory obligation to absorb the contract labour. The linkage between the contractor and the employee stood snapped and direct relationship stood restored between principal employer and the contract labour as its employees.

Issue: Whether contract labour should be abolished or not, same being exclusive domain of appropriate Government and whether there should be automatic absorption of contract labour on issue of notification?

Held: The Hon'ble Supreme Court, over-ruled the judgement on Air India Statutory Corporation and held that neither Section 10 of the Act nor any other provision in the Act expressly or by necessary implication provides for automatic absorption of contract labour on issuing a Notification by the appropriate Government under sub-section (1) 13 of Section 10 prohibiting employment of contract labour in any process or operation or other work in any establishment. The Principal employer cannot be required to order absorption of the contract labour working in the concerned establishment.

[1] AIR 1997 SC 648

Balwant Rai Saluja

v.

Air India Ltd.

AIR2015SC375

Hon'ble Judge(s): H.L. Dattu, R.K. Agrawal and Arun Mishra, JJ.

Case Note: Liability of principal employer

Facts: The present case is a set of appeals which came before a two-Judge Bench of the Supreme Court against a judgement of a Division Bench of the High Court of Delhi. Air India Ltd. (Air India)-Respondent No. 1 is a company incorporated under the Companies Act, 1956 and is owned by the Government of India. The primary object of the said Respondent is to provide international air transport/travel services. It has Ground Services Department at Indira Gandhi International Airport, Delhi. The Labour Department vide its notification dated 20.01.1991 Under Sub-rule (1) of Rule 65 of the Rules, 1950, has enlisted the said M/s. Air India Ground Services Department, thereby making Rules 65 to 70, of the Rules, 1950 applicable to the same.

Corporations of India Ltd. (HCI)-Respondent No. 2 is also a company incorporated under the Companies Act, 1956 and is a separate legal entity from the Air India. As per the Memorandum of Association of Respondent No. 2, the same is a wholly-owned subsidiary of the Air India. The main objects of the said Respondent, inter alia, are to establish refreshment rooms, canteens, etc. for the sale of food, beverages, etc.

Respondent No. 2 has various units and Respondent No. 3, being Chefair Flight Catering (Chefair), provides flight catering services to various airlines, including Air India. It is this Chefair unit of HCI that operates and runs the canteen. The Appellants-workmen are engaged on a casual or temporary basis by the Respondent Nos. 2 and 3 to render canteen services on the premises of Respondent No. 1-Air India.

The present dispute finds origin in an industrial dispute which arose between the Appellants-workmen herein of the statutory canteen and Respondent No. 1. The said

industrial dispute was referred by the Central Government to the Central Government Industrial Tribunal cum Labour Court (CGIT).

Prior History: The CGIT held that the workmen were employees of the Respondent No. 1-Air India and therefore their claim was justified. Furthermore, the termination of services of the workmen during the pendency of the dispute was held to be illegal.

Later, the learned Single Judge of the High Court of Delhi set aside the CGIT's award and held that the said workmen would not be entitled to be treated as or deemed to be the employees of the Air India. The Division Bench of the High Court of Delhi upheld the order passed by the learned Single Judge of the High Court. The appeal was dismissed by the Division Bench confirming the order of the learned Single Judge who observed that the responsibility to run the canteen was absolutely with the HCI and that the Air India and the HCI shared an entirely contractual relationship. Therefore, the claim of the Appellants to be treated as employees of the Air India and to be regularized was rejected by the learned Single Judge.

Issue: Whether workers, engaged on a casual or temporary basis by a contractor (HCI) to operate and run a statutory canteen, under the provisions of the Act, 1948, on the premises of a factory -Air India, can be said to be the workmen of the said factory or corporation?

Held: In relation to the employer-employee relationship the Court opined that

"the relevant factors to be taken into consideration to establish an employer-employee relationship would include, inter alia, (i) who appoints the workers; (ii) who pays the salary/remuneration; (iii) who has the authority to dismiss; (iv) who can take disciplinary action; (v) whether there is continuity of service; and (vi) extent of control and supervision, i.e. whether there exists complete control and supervision."

The Hon'ble Court dismissed the appeal and held that mere fact that Respondent had certain degree of control over company did not mean that employees working in canteen were Respondent's employees and hence, the Appellants could not be said to be under effective and absolute control of alleged Respondent. Respondent merely had control of supervision over working of given statutory canteen and there was no parity in nature of work and mode

of appointment between regular employees and workers of given canteen; so, the Appellants could not be placed at same footing as regular employees.

The Court opined in relation to the Factories Act that

"It has been noticed above that workmen hired by a contractor to work in a statutory canteen established under the provisions of the Act, 1948 would be the said workmen of the given factory or corporation, but for the purpose of the Act, 1948 only and not for all other purposes. Therefore, the Appellants-workmen, in the present case, in light of the settled principle of law, would be workmen of the Air India, but only for the purposes of the Act, 1948. Solely by virtue of this deemed status under the Act, 1948, the said workers would not be able to claim regularization in their employment from the Air India."

Food Corporation of India

v.

Pala Ram

2008 III LLN 723 (SC)

Hon'ble Judge(s): S.B. Sinha, V.S. Sirpurkar JJ.

Facts: Appellant-(FCI) had been constituted under the Food Corporation of India Act, 1964 for the purpose of carrying out their activities, it maintains a large number of godowns in different parts of the country including the States of Punjab and Haryana. As the law stood then, the respective State Governments were considered to be the appropriate Government in respect of the appellant. Various State Governments issued Notification prohibiting employment of contract labour in some processes in its establishments purported to be in exercise of its power under Section 10(1) of the Contract Labour (Regulation and Abolition) Act, 1970 (for short, "the Act"). The Central Government too by Notification dated 9th December, 1976 prohibited contract labour in certain activities in buildings of establishments, of which it was appropriate Government.

Issue: Whether on abolition of contract labour, the contract labourers working under the contractors became direct employees of the management?

Held: In a challenge to the Notifications, the Supreme Court while allowing the appeal, held that core question is interpretation of Steel Authority of India's case judgement, for which it is necessary to see action taken on 9th December 1976 notification. That notification has not been given effect to and meanwhile by notification dated 28th May 1992, there was no prohibition to engaging contract labour in FCI establishments. The effect of the 1992 notification issued u/s. 10(1) of the Act, could not be taken away by circulars of Central Government or of appellant to engage contract labour in the light of the earlier notification dated 9th December 1976. The right of the workmen for obtaining a writ of mandamus must be based on a legal right. The Court in Steel Authority of India case recognised an existing right and not a future one. Writ petitions of workmen do not disclose names of contractors; whether they are registered, terms and conditions of employment, from which date each workman were employed and by which contractor. No authority or forum has scrutinized records.

Rourkela Shramik Sangh

v.

Steel Authority of India

2003 4 SCC 317

Hon'ble Judge(s): CJ, S.B. Sinha, A.R. Lakshmanan J.

Facts: The workers of the Rourkela Steel Plant filed a writ petition before this Court, inter alia, for a direction that they be held to be entitled to be paid the same pay as is paid to the regular employees and be treated as such on the premise that they had been employed by various contractors and were doing jobs which are perennial in nature and identical to what were being done by regular employees of the Plant. This Court having regard to the various interim orders passed from time to time did not relegate the workmen to avail the remedies under the Industrial Disputes Act, 1947.

Held: The Hon'ble Supreme Court held, the contract labourers who were less than 58 years old and medically fit should be absorbed by the Principal Employer. Here the Court reverted back to the decision which it gave initially. Its decision showed that it has again approached

the problem of contract labour from a very realistic point of view and not merely on the basis of what has been written in the statute. The Court also took into consideration that it would be unjust to leave the labourers unemployed after the abolishment of contract labour.

Larsen and Toubro Ltd

v.

State Of C.G. and Ors

2014 (1) CG.L.R.W. 219

Hon'ble Judge(s): Manindra Mohan Shrivastava, J.

Case note: Appropriate Government

Facts: The petitioner (L&T Ltd.) is a Company having a cement project called Hirmi and is an establishment of cement industry engaged in manufacture and sale of cement; for the purposes of execution of work of the project, the contractors have been engaged for various works of construction, fabrication and execution of plant and colony. The petitioner posed a contention that being a Cement Industry, the appropriate Government in relation to the petitioner industry in the matter of application and enforcement of the Contract Labour (Regulation and Abolition) Act, 1970 (C.L.R.A. Act) is the Central Government and not the State Government. The petitioner has got itself registered with the Competent Authority of the Central Government namely Assistant Labour Commissioner (ALC) (Central), Raipur, who has issued necessary registration certificate. Similarly, the contractor, who has been allotted the work, has also got registered under the provisions of C.L.R.A. Act with the A.L.C. (Central) and the registration certificate has been issued in favour of the contractor.

Respondent Nos. 1 and 2 submitted that when inspection was carried out in the establishment, it was found that the petitioner has not obtained requisite registration certificate from the State Authorities as required under Section 7 of the C.L.R.A. Act from the appropriate Government, which is punishable under Section 24 of the said Act and accordingly, the concerned Inspector launched prosecution before the Labour Court at Raipur for violation of Section 7 of the C.L.R.A. Act against the petitioner.

Issue: Whether in relation to cement industry, State Government was appropriate Government as defined under Section 2(1)(a) of Act?

Held: Prosecution of Petitioner at instance of Respondent for non-registration with State Authorities was held illegal and quashed as according to notification issued by Central Government, in respect of cement industry, Central Government became appropriate Government in-relation to any industrial dispute concerning cement industry. Therefore, in relation to cement industry for purposes of Industrial Disputes Act, Central Government become appropriate Government as defined under Section 2(1)(a) of Act. And hence the petitioner would be governed under Central Government and opined that

> *"Merely because the applicability of the provisions of the Industrial Disputes Act has been restricted in relation to certain industry to which C.G.I.R. Act, 1960 has been made applicable, does not mean that in relation to cement industry, provisions of Industrial Disputes Act have no application at all. As a matter of fact, the Central Government has issued notification in exercise of powers under sub-clause (i) of clause (a) of Section 2 of the Industrial Disputes Act, 1947 specifying the controlled industry engaged in the manufacture or production of cement, which has been declared as a controlled industry under Section 2 of the Industries (Development and Regulation) Act, 1951."*

B.H.E.L. Workers Association Haridwar & Ors.

v.

Union of India & Ors.

1985 (50) FLR 205 (SC)

Hon'ble Judge: Reddy O. Chinnappa J.

Case Note: Equal Wages

Facts: The petitioner-(union) contended in the writ petitions that out of the sixteen thousand odd workers working within the premises of the respondent undertaking, as many as one thousand workers were put in the category of 'contract labour' and were put at the mercy of

contractors. Besides, although they did the same work as the regular workers directly employed by the undertaking under the same conditions of service, their wages bore no comparison with those paid to the regular workers. It was further alleged that the management paid to the contractors and in turn the contractors paid the labourers their salary after deducting a large commission out of it.

Issue: Whether the contract labour entitled to equal wages as that of regular worker in similar nature of work?

Held: The Hon'ble Court ruled that no particular distinction should be made only on the basis of contract labour. Contract labourers are entitled to the same wages, holidays, hours of work, and conditions of service as are applicable to workmen directly employed by the Principal Employer of the establishment on the same or similar conditions of work. They are entitled to recover their wages and their conditions of service in manner akin to the workers employed by the Principal Employer under the appropriate Industrial and Labour Laws.

Haldia Refinery Canteen Employees Union and Ors.

v.

Indian Oil Corporation Ltd. and Ors.

(2005) 5 SCC 51

Hon'ble Judge(s): Ashok Bhan and A.K. Mathur, JJ.

Facts: Two sets of writ applications were filed in the High Court of Calcutta involving common question of law and fact, both of them were taken up together by the Single Judge and disposed of by the common judgement. Admittedly, the appellants-(employees) were working in the statutory canteen run by the respondent through contractor in its factory at Haldia, District Midnapore, West Bengal. Respondent management was treating the appellants as the employees of the contractor. Aggrieved against this, the appellants filed the writ applications in the High Court of Calcutta contending therein that the factory of the respondent where the workmen are employed is governed by the provisions of Indian Factories Act, 1948 (for short "the Factories Act") and the canteen where the said workman are employed is a statutory canteen established by the respondent as required under the

provisions of the Act. It is averred in the petition that the canteen is maintained for the benefit of the workmen employed in the factory and the respondent management has direct control over them. Contractor though shown as a contractor has no control over the management, administration and functioning of the canteen. That the canteen is a part of the establishment of the management and the workers in the canteen are the employees of the management. That the work carried on is perennial in nature and the canteen is incidental to and is connected with the establishment of the management. It was contended that the appellants were the regular employees of the respondent. The management had refused to grant the status of regular employees to the appellants and treated them as employees of the canteen contractor contrary to the statutory provisions and judicial pronouncements of this Court. Writ applications were filed seeking issuance of mandamus to the respondent to absorb the appellants in its service and to regularise them as such.

Held: The Court opined:

> *"15. No doubt, the Respondent management does exercise effective control over the contractor on certain matters in regard to the running of the canteen but such control is being exercised to ensure that the canteen is run in an efficient manner and to provide wholesome and healthy food to the workmen of the establishment. This, however, does not mean that the employees working in the canteen have become the employees of the management.*
>
> *15. A free hand has been given to the contractor with regard to the engagement of the employees working in the canteen. …The contractor has also been made responsible for the proper maintenance of registers, records and accounts so far as compliance with any statutory provisions/obligations is concerned. A duty has been cast on the contractor to keep proper records pertaining to payment of wages, etc. and also for depositing the provident fund contributions with the authorities concerned. The contractor has been made liable to defend, indemnify and hold harmless the employer from any liability or penalty which may be imposed by the Central, State or local authorities by reason of any violation by the contractor of such laws, Regulations and also from all claims, suits or proceedings that may be brought against the management arising under or incidental to*

or by reason of the work provided/assigned under the contract brought by the employees of the contractor, third party or by the Central or State Government authorities.

16. The management has kept with it the right to test, interview or otherwise assess or determine the quality of the employees/workers with regard to their level of skills, knowledge, proficiency, capability, etc. so as to ensure that the employees/workers are competent and qualified and suitable for efficient performance of the work covered under the contract. This control has been kept by the management to keep a check over the quality of service provided to its employees. It has nothing to do with either the appointment or taking disciplinary action or dismissal or removal from service of the workmen working in the canteen. Only because the management exercises such control does not mean that the employees working in the canteen are the employees of the management. Such supervisory control is being exercised by the management to ensure that the workers employed are well qualified and capable of rendering proper service to the employees of the management.

SESSION III

DISMISSAL AND DISCHARGE OF EMPLOYEES: RELIEF UNDER ID ACT 1947

Dismissal refers to termination of the services of the workman due to some misconduct or absence from duty. Section 2A of the Industrial Disputes Act provides that "*where any employer discharges, dismisses, retrenches, or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.*

"11A: Power of Labour Courts, Tribunals and National Tribunals to give Appropriate Relief in case of Discharge or Dismissal of Workmen." Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and. In the course of the adjudication proceedings the Labour Court Tribunal or National Tribunal as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award 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 relief to the Workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require: Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on' record and shall not take any fresh evidence in relation to the matter.

It is evident that the objective of introducing Section 11A in the Industrial Disputes Act, 1947 by virtue of its amendment in 1971 is to ensure that, the punishment imposed on the delinquent workman is appropriate and justified. The action of the employer is bonafide, the employer has not victimized the delinquent workman by using the shelter of disciplinary proceeding and the employer has not adopted any unfair labour practice.

Thus enactment of Section 11 A – ensures protection to the workman who suffers from the punishment of discharge or dismissal which is not proportionate to the misconduct, offers an opportunity for the employer to adduce evidence before the tribunal justifying his action, is a check measure enabling the tribunal to interfere only in the event the punishment imposed by the employer is shockingly disproportionate.

To invoke Sec.11 A, it is necessary that an industrial dispute of the type mentioned therein should have been referred to an Industrial Tribunal for adjudication the tribunal has to be satisfied that the order of discharge or dismissal was not justified.

Davalsab Husainsab Mulla

v.

North West Karnataka Road

(2013) 10 SCC 185

Hon'ble Judge(s): T.S. Thakur and Fakkir Mohamed Ibrahim Kalifulla, JJ

Facts: Appellant was a driver in Respondent Corporation and on 30.11.1995 he was caught by checking squad while travelling without ticket in the bus and was imposed with usual penalty. It was stated that enraged by the action of the checking squad, the Appellant abused the Checking Inspector by using filthy language and also threatened to do away with his life and attempted to assault the Checking Inspector. Subsequently, he is stated to have approached the coordinator in the Divisional Office Belgaum and behaved in an arrogant manner with the said officer. Again on the next day he was stated to have threatened the Checking Inspector by stating that he would burn him in the presence of other officials and the employees. A joint report was submitted by those employees based on which a charge sheet was issued to the Appellant calling for his explanation. The Appellant while denying the charges replied that penalty was collected from him by Checking Inspector and that he went to the office of the coordinator only to report about what had happened when the checking squad intercepted him when he was travelling in the bus.

The disciplinary authority ordered for an enquiry to be held by appointing an enquiry officer who recorded a finding that the charges leveled against the Appellant were proved. After issuing a second show cause notice along with a copy of the findings, the order of dismissal came to be issued against the Appellant. The Appellant raised an industrial dispute which was adjudicated by the Labour Court wherein an award was passed holding that the order of dismissal was fully justified and there was no scope to invoke Section 11A of the Industrial Disputes Act (Act) to interfere with the punishment imposed on the Appellant.

Thereafter, Appellant filed a Writ Petition challenging the award of Labour Court and the said award was set aside and the order of dismissal was modified to withhold two increments with cumulative effect without consequential benefits and without back wages but with continuity of service along with reinstatement. The Division Bench, however, set aside the order of the learned Single Judge and upheld the order of dismissal.

Issue: Whether the order of dismissal was rightly set aside?

Held: The Supreme Court while upholding the order of the Labour Court and Division Bench opined that:

When the conduct of the employee towards the establishment as well as its fellow employees and higher authorities was highly condemnable, therefore, there was absolutely no scope for exercising the discretionary power vested in the Labour Court under the section 11A of the Industrial Disputes Act.

> *While exercising its powers under section 11A of the Industrial Disputes Act, the exercise of its power of discharge and dismissal for stated reasons and proven misconduct, the interference with such order of punishment cannot be made by Labour Court in a casual manner or for any flimsy reasons. Past conduct when not satisfactory and very bad will be taken into consideration by the Management while imposing punishment upon a workman for serious misconduct in misbehaving with the superiors.*

Travelling without ticket by the driver of the transport corporation has itself with a misconduct but its gravity was further increased when he misbehaved with the checking

squad threatening him that he will do away with his life as such the punishment of dismissal has been rightly upheld by the Labour Court and the Division Bench of the High Court.

Collector Singh

v.

L.M.L. Ltd. Kanpur

MANU/SCOR/44344/2014

Hon'ble Judge(s): T.S. Thakur, R. Banumathi JJ.

Facts: The appellant was working as a semi-skilled workman since 15.8.1986 in the respondent-company, namely, M/s. L.M.L. Limited (Scooter Unit), Kanpur. The appellant was served with a charge-sheet on 18.4.1992 stating that on that date, he threw jute/cotton waste balls hitting the face of Laxman Sharma, Foreman in the said company and on objecting to the same, the appellant is alleged to have further abused him with filthy language and also threatened him with dire consequences outside the premises of their factory. A departmental inquiry was conducted on 25.5.1992 and the appellant was given adequate opportunity to cross-examine the witnesses as well as for putting forth his defense. The Enquiry Officer submitted his report finding that the appellant was guilty of misconduct and on the basis of the enquiry report, the appellant was dismissed from the services of the company by an order dated 24.6.1992.

The appellant raised an industrial dispute before the Labour Court, Kanpur. The Labour Court relied upon the letter of apology and held that the termination of services of the appellant was justified. Aggrieved by the said order, appellant filed a writ petition before the High Court and vide its order dated 24.9.2012, High Court dismissed the writ petition upholding the award passed by the Labour Court. Aggrieved by the said order, the appellant has filed this appeal by way of special leave.

Issue: Whether the punishment of dismissal from service of the appellant is disproportionate to the act of misconduct proved against the appellant?

Held: The Court opined:

> *the contents of the said apology letter, it is discerned that the appellant has made admission only with respect to throwing of the jute/cotton waste balls by mistake and further stating that such a mistake would not be repeated in future and that he be pardoned for the same. The letter nowhere states that the appellant was involved in the incident of hurling abuses and using filthy language against his superior officer. In essence, even the incident of throwing of jute/cotton waste balls at the Foreman has been stated as a mistake. As we have already observed use of abusive language is not established by the apology letter. Therefore, mere act of throwing of jute/cotton waste balls weighing 5 to 10 grams may not by itself lead to imposing punishment of dismissal from service.*

The Supreme Court is of the view that the punishment of dismissal from service for the misconduct proved against the appellant is disproportionate to the charges. In the result, the impugned Order of the High Court confirming the award of the Labour Court is set aside and the appeal is allowed. The respondent-management is directed to pay the amount of compensation of Rs.5,00,000/- to the appellant within a period of six weeks from the date of receipt of copy of this order failing which, the said amount is payable with interest at the rate of 9% per annum thereon.

Sanatan Dharam Girls Secondary School

v.

Labour Court

MANU/RH/0046/2015

Hon'ble Judge(s): Sandeep Mehta, J.

Facts: The present case is a writ petition directed against the judgement passed by the Labour Court, Bikaner whereby the reference made by the State Government was disposed of by directing that the dismissal of the respondent workman Mahendra Yadav from service of petitioner school shall be effective from 21.9.1994 holding him guilty for gross

misconduct. The respondent No. 2 (workman) was engaged as watchman in the petitioner school in the year 1977. It appears that there were complaints regarding the performance of the duties and conduct of the employee on which he was dismissed from service w.e.f. 20.3.1986 after holding a domestic enquiry wherein it was found that the workman was guilty of misconduct.

Issue: Whether dismissal of Respondent from service of School could be effective from specified date and not original date of dismissal i.e. 22.3.1986?

Held: The Tribunal after holding an enquiry under Section 11A of the I.D. Act conclusively held that respondent No. 2 i.e workman was guilty of gross misconduct, dismissal of Respondent workman had to relate back to date when he was originally dismissed from service by employer after holding domestic enquiry. Therefore, order of the Labour Court was set aside and dismissal of services of Respondent was treated to be effective from date of his dismissal from service by Petitioner institution after holding domestic enquiry**.**

Raghubir Singh

v.

General Manager, Haryana Roadways

(2014)10SCC301

Hon'ble Judge(s): Sudhansu Jyoti Mukhopadhaya and V. Gopala Gowda, JJ.

Facts: In 1976, the Appellant-(Raghubir Singh herein) joined the Haryana Roadways as a conductor. On 10.08.1993, the Appellant was charged under Section 409 of the Indian Penal Code in a criminal case at the instance of the Respondent for alleged misappropriation of the amount collected from tickets and not depositing the cash in relation to the same in time. The Appellant was arrested by the Jurisdictional police and sent to judicial custody on 15.09.1994. Further, on 21.10.1994 the services of the Appellant were terminated by the Respondent-(General Manager, Haryana Roadways, Hissar herein). On 15.11.1994, the Appellant upon being released on bail was given an oral assurance by the Respondent that he will be reinstated to the post after his acquittal by the Court.

On 11.07.2002, upon being acquitted in the criminal case the Appellant reported to join his duty, but he was informed by the Respondent that his services stood terminated from 21.10.1994. The Appellant served the demand notice upon the Respondent which was not acceded to and therefore, the industrial dispute with regard to order of termination from his services was raised before the conciliation officer.

Prior History: On failure of the conciliation proceedings before him, the industrial dispute was referred by the State Government to the Labour Court, Hissar for adjudication of the existing industrial dispute in relation to the order of dismissal of the Appellant from his services. The Labour Court vide its award declared that the termination of the Appellant from his services was illegal and passed an award of reinstatement.

Aggrieved by the same, the Respondent-Haryana Roadways filed writ petition before the High Court and the High Court set aside the award and remanded the case back to the Labour Court for fresh adjudication in the light of the applicability of the provisions of Article 311(2)(b) of the Constitution of India, to the Appellant/workman. The Labour Court vide its award answered the reference by passing an award against the Appellant on the ground that the reference of the industrial dispute is time barred. The Appellant challenged the correctness of the said award by filing a Writ Petition before the High Court, which was dismissed by the High Court holding that the decision of the disciplinary authority of the Respondent is in the public interest and therefore, the same does not warrant interference.

The Appellant thereafter filed Letters Patent Appeal before the Division Bench of the High Court against the order of the learned single Judge. The same was dismissed on the ground that the services of the Appellant were terminated by the Respondent on 21.10.1994 in exercise of the powers conferred upon it under the provisions of Article 311(2) (b) of the Constitution of India, whereas the Appellant had raised the industrial dispute vide the demand notice in the year, 2002. The Division Bench of the High Court found no illegality or irregularity in the impugned judgement passed by the learned single Judge of the High Court.

Aggrieved by the impugned judgement and order dated 09.01.2012 of the High Court of Punjab and Haryana, the Appellant has filed this appeal urging various grounds.

Held: The Supreme Court set aside the order of termination passed by the Respondent, the award passed by the Labour Court and the judgement & order of the High Court and opined that

> *"In the present case, before passing the order of dismissal for the act of alleged misconduct by the workman-appellant, the Respondent should have issued a show cause notice to the Appellant, calling upon him to show cause as to why the order of dismissal should not be passed against him. The Appellant being an employee of the Respondent was dismissed without conducting an enquiry against him and not ensuring compliance with the principles of natural justice. The second show cause notice giving an opportunity to show cause to the proposed punishment before passing the order of termination was also not given to the Appellant-workman by the Respondent which is mandatory in law as per the decisions of this Court."*

Further on the point that there was delay on the part of workman, the Court was of the opinion that the dispute was raised by the workman after he was acquitted in the criminal case which was initiated at the instance of the Respondent. Further, the Court held

> *"With respect to the case on hand, the Appellant was on unauthorised absence only due to the fact that he had genuine constraints which prevented him from joining back his duties. The unauthorised absence of the Appellant which lead to his termination was due to the fact that the he was falsely implicated in the criminal case filed at the instance of the Respondent and that he must have had reasonable apprehension of arrest and was later in judicial custody. It is to be noted that out of the total period of the alleged unauthorised absence, the Appellant was under judicial custody for two months due to the criminal case filed against him at the instance of the Respondent.*
>
> *29. Further, assuming for the sake of argument that the unauthorised absence of the Appellant is a fact, the employer is empowered to grant of leave without wages or*

extraordinary leave. This aspect of the case has not been taken into consideration by the employer at the time of passing the order of termination. Therefore, having regard to the period of unauthorised absence and facts and circumstances of the case, we deem it proper to treat the unauthorised absence period as leave without wages. In our view, the termination order is vitiated since it is disproportionate to the gravity of misconduct alleged against him…..

The principle of 'Doctrine of Proportionality' is a well recognised one to ensure that the action of the employer against employees/workmen does not impinge their fundamental and statutory rights. The above said important doctrine has to be followed by the employer/employers at the time of taking disciplinary action against their employees/workmen to satisfy the principles of natural justice and safeguard the rights of employees/workmen.

36. The above said "Doctrine of Proportionality" should be applied to the fact situation as we are of the firm view that the order of termination, even if we accept the same is justified, it is disproportionate to the gravity of misconduct."

Bharat Heavy Electricals Limited

v.

Presiding Officer, Additional Industrial Tribunal –cum- Additional Labour Court and Others,

2002 LLR 255 (MP HC)

It was held as follows:

"The penalty imposed by the disciplinary authority, in the facts and circumstances of the case, in our view, was disproportionate to the proved misconduct and, therefore, not justified. Having carefully considered the entire facts and circumstances of the case, we could not find any impropriety or illegality in the award of the Labour Court as confirmed by the learned Single Judge in modifying the punishment of dismissal from service to that of reinstatement into service as a fresh candidate in the post of Assistant Grade – I. The

Labour Court, in our opinion, had exercised its discretionary power under Section 11-A judiciously and has given valid and cogent reasons for modifying the punishment.

Agricultural Produce Market Committee Arjuni Moregaon And Ors.

v.

Ashok and Ors.

MANU/MH/0108/2015

Hon'ble Judge(s): A.S. Chandurkar, J.

Facts: Present petition filed against order proving misconduct that led to dismissal of petitioner/employee. The employee was appointed as a clerk with the Agricultural Produce Market Committee by employer on 13-10-1986 and was getting daily wages @Rs.20/- per day. During the course of service, a chargesheet was issued on 5-2-1994 by the employer. The employee was put under suspension and an enquiry officer was appointed to hold the enquiry. Thereafter, a show cause notice was issued to the employee proposing to dismiss him from service. By order dated 10-8-1996, the employee came to be dismissed from service.

The employee filed the complaint before the Labour Court and held that the enquiry as held was not fair and proper and that the same had been held in breach of principles of natural justice and that the allegations of misconduct had not been proved against the employee holding that the order of dismissal amounted to victimization thereby resulting in an unfair labour practice. The employer aggrieved by aforesaid adjudication filed Revision before the Industrial Court whereby it the findings recorded by the Labour Court of the employer having engaged in unfair labour practice were confirmed. The employer, therefore, filed Writ Petition challenging the order passed by the Industrial Court, while the employee filed Writ Petition seeking restoration of the order passed by the Labour Court.

Issue: Whether employer be permitted to rely upon very same charges to dispense with Petitioner's services on ground of loss of confidence?

Held: The order of Labour Court was restored and it was held that the record indicates that the employer had accepted a finding recorded on the preliminary issue and had thereafter led evidence to prove the misconduct and that the burden to prove the misconduct was on the employer. The loss of confidence as alleged was based on the very same charges for which the employer held the inquiry and had terminated the services of the employee. Having failed in proving the misconduct the employer cannot be permitted to rely upon very same charges to dispense with services of the employee on the ground of loss of confidence.

Compensation in lieu of Reinstatement

Ashok Kumar Sharma

v.

Oberoi Flight Services

AIR2010SC502

Hon'ble Judge(s): Tarun Chatterjee, R.M. Lodha JJ.

Facts: Appellant was employed by respondent as a loader. One day while returning from work, he was found carrying 30 KLM soup spoons illegally in his shoe. Appellant admitted his guilt and was thereby dismissed from service. But appellant raised an industrial dispute before labour court.

Appellant contended that he was a union leader. The respondent management conspired against him to remove him. He added that his confession letters were obtained under threat and coercion. Moreover, no inquiry was conducted or principles of the natural justice were observed prior to his dismissal. Labour court though justified appellant's dismissal but awarded him full back wages from the date of his dismissal till the date of award.

Appellant challenged the award of Labour Court before Division Bench. The Division Bench held that it was difficult to believe allegations of the management that the appellant walked through the work area to security check area with spoons in his shoes. Also principles of natural justice were not followed. The Division Bench ordered respondent

management to pay Rs.60, 000 in lieu of reinstatement and back wages. Appellant challenged this judgement before the Supreme Court.

Issue: Whether High Court justified in holding that monetary compensation in lieu of reinstatement would be proper?

Held: Supreme Court held yes, further giving reason that compensation of Rs.60, 000 to be inadequate as appellant was a confirmed employee. It held that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given situation even where there is a lapse of prescribed procedure during termination of an employee. Thus, respondents were ordered to pay compensation of Rs.2 lakhs to the appellant in lieu of reinstatement and back wages.

B.S.N.L.

v.

Bhurumal

MANU/SC/1276/2013

Hon'ble Judge(s): K.S. Panicker Radhakrishnan and A.K. Sikri, JJ.

Facts: The Respondent herein raised an industrial dispute alleging his wrongful termination, by approaching the Assistant Labour Commissioner, Faridabad in the year 2000. He claimed that he was working as a Lineman on daily wages with the Sonipat Telephone Department, BSNL at Saidpur Exchange and was not paid his wages for the period from October 2001 till April 2002. He further stated that while working he got an electrical shock and because of this accident he was hospitalized. However, he was not allowed to resume his duty which amounted to. The Appellant stated that the Respondent may have worked as a contract employee with the said contractor and deployed at the establishment of the Appellant in that capacity. The conciliation proceedings were not successful; the Conciliation Officer sent his failure report to the Central Government and on that basis Central Government made a reference to the Central Government Industrial Disputes-cum-Labour Court (CGIT), Chandigarh, with the following terms of reference.

The CGIT came to the conclusion that there was clear evidence to the effect that the Respondent was directly working under the administrative control of the Appellant as a Lineman and his services were illegally terminated. Thus, answering the reference in favour of the Respondent, the CGIT directed reinstatement of the Respondent along with back wages.

The Appellant preferred the Writ Petition against the aforesaid award in the High Court of Punjab and Haryana. This Writ Petition was dismissed by the learned Single Judge. Even the intra court appeal filed by the Appellant i.e. Letters Patent Appeal (LPA) has been dismissed by the Division Bench of the High Court vide judgement dated November 2, 2011 holding that the concurrent finding of facts recorded by the CGIT as well as learned Single Judge did not warrant any interference.

Issue: Whether relief of reinstatement with full back wages rightly granted by Central Government Industrial-Disputes-cum-Labour Court (C.G.I.T.)?

Held: The Hon'ble Court opined: (para 23)

> *It is clear from the reading of the aforesaid judgements that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or malafide and/or by way of victimization, unfair labour practice etc. However, when it comes to the case of termination of a daily wage worker and where the termination is found illegal because of procedural defect, namely in violation of Section 25F of the Industrial Disputes Act, this Court is consistent in taking the view in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious*

Further the Court stated in Para 26.

> *Judicial notice can also be taken of the fact that the need of lineman in the telephone department is drastically reduced after the advancement of technology. For all these reasons, we are of the view that ends of justice would be met by granting compensation in lieu of reinstatement. In Man Singh (supra) which was also a case of BSNL, this*

Court had granted compensation of Rs. 2 Lakh to each of the workmen when they had worked for merely 240 days. Since the Respondent herein worked for longer period, we are of the view that he should be paid a compensation of Rs. 3 lakhs. This compensation should be paid within 2 months failing which the Respondent shall also be entitled to interest at the rate of 12% per annum from the date of this judgement. Award of the CGIT is modified to this extent. The appeal is disposed of in the above terms. The Respondent shall also be entitled to the cost of Rs. 15,000/- (Rupees Fifteen Thousand only) in this appeal.

K.C. Sharma

v.

Delhi Stock Exchange and Ors.

MANU/SC/0247/2005

Hon'ble Judge(s): K.G. Balakrishnan and B.N. Srikrishna, JJ

Facts: The service of the employee (General Manager) was terminated in accordance with terms and conditions of his appointment providing three months' notice. The employee challenged, in the High Court of Delhi that his termination was males fide supported with reasons pertaining to mala fide termination. Learned Single Judge accepting the plea of the employee holding that the Delhi Stock Exchange is 'State' under An. 12 of the Constitution of India and amenable to the Writ jurisdiction. Hence set aside the termination and directed reinstatement with consequential benefits. Thereafter, Letters Patent Appeal filed by the management. Division Bench modified the order of the Learned Single Judge holding that even though the termination was illegal and arbitrary and as such reinstatement would not be appropriate - Awarded compensation of Rs.I2 lakhs in lieu of reinstatement. Thus this present appeal was filed by Employee.

Issue: Compensation in Lieu of Reinstatement: When appropriate?

Held: Supreme Court upheld the judgement of the Division Bench holding that even though the termination is illegal but reinstatement will not be appropriate since in view of the

allegations, there had been bad blood between the parties - Amount of compensation enhanced to Rs.I5 lakhs.

Raj Kumar Dixit

v.

M/s. Vijay Kumar Gauri Shanker, Kanpur Nagar

(2015) 42 SCD 684

Hon'ble Judge(s): Mr. Justice V. Gopala Gowda, Mr. Justice C. Nagappan

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Facts: M/s.Vijay Kumar Gauri Shanker, the respondent-firm herein, was carrying on the business of transporting caustic soda from M/s.Modi Alkalies and Chemicals Ltd. in Alwar, Rajasthan. For the said purpose, the respondent-firm was in possession of seven tankers which were used for transporting caustic soda from Alwar to the place of supply. It is the case of the appellant that he was working as an accounts clerk in the respondent-establishment from the year 1994 and was looking after all the factories of the respondent-establishment. On 11.6.2001, when the appellant who had fallen sick approached the respondent-firm for his outstanding salary, the respondent-firm terminated him from his services. However, the workmen who were junior to him were still working in the respondent-establishment. The appellant-workman requested for reinstatement of his services in his post but the respondent-establishment refused the same which action amounts to retrenchment as they have done so without following the mandatory conditions as provided under Section 6N of the Uttar Pradesh Industrial Disputes Act, 1947.

Procedural history: The Labour Court, Kanpur held that the appellant was under the employment of the respondent-firm and terminating him from his services by the respondent-firm is in contravention to the provisions of Section 6N and other provisions of the Act which is improper and illegal. The Labour Court directed the respondent-firm to reinstate him in the said post and pay him 50% back wages from the date of termination till the date of passing of the Award.

The correctness of the said Award was challenged by the respondent-establishment before the High Court. The High Court, based on the findings and reasons recorded on the points of dispute, held that the termination order passed against the appellant-workman is not legal. High Court modified the Award by awarding Rs.2 lakhs compensation in lieu of reinstatement with 50% back wages as awarded by the Labour Court. The appellant-workman aggrieved by the judgement and order of the High Court has filed appeal by special leave.

Issue: Whether compensation in lieu of reinstatement awarded by High Court is correct?

Held: The Hon'ble Court held:

> *The High Court Judicature of Allahabad has erred in its decision, both on facts and in law in setting aside the order of reinstatement with 50% back wages to the workman. It is the workman who was aggrieved with regard to the non-awarding of 50% back wages and this aspect of the matter has not been considered by the High Court while interfering with the Award of the Labour Court and awarding compensation in lieu of the reinstatement and back wages. Therefore, the appeal must succeed in this case. The High Court in awarding compensation to the workman has erroneously held that the order of reinstatement passed in favour of the appellant-workman is illegal and void ab initio in law without assigning valid and cogent reasons and therefore, the same is liable to be set aside as there has been a miscarriage of justice.*

Hari Nandan Prasad And Anr.

v.

Employer I/R To Managemnt Of Fci And Anr.

AIR2014SC1848

Hon'ble Judge(s): K.S. Panicker Radhakrishnan and Arjan Kumar Sikri, JJ.

Facts: The two Appellants-employees were working on casual basis with the Food Corporation of India (FCI). After certain time, their services were dispensed with. Both of them raised industrial dispute alleging wrongful termination which was referred to the

Central Government-cum-Industrial Tribunal (CGIT). These proceedings culminated in two awards passed by the CGIT whereby termination of both the Appellants was held to be illegal and they were directed to be reinstated with 50% back wages alongwith regularization in service. FCI filed Writ Petitions which were dismissed and were challenged by filing Letter Patent Appeals wherein the orders of Single Judge and CGIT were set aside.

Issues: Whether the action of the Management of Food Corporation of India is legal and justified in retrenching the workmen arbitrary and in violation of Section 25 F of the I.D. Act and denying regularization of service is legal and justified?

Whether relief of monetary compensation in lieu of reinstatement is correct?

Held: The Hon'ble Court held that both the Appellant had worked for more than 240 days continuously preceding their disengagement/termination. At the time of their disengagement, even when they had continuous service for more than 240 days (in fact about 3 years) they were not given any notice or pay in lieu of notice as well as retrenchment compensation. Thus, mandatory pre-condition of retrenchment in paying the aforesaid dues in accordance with Section 25-F of the I.D. Act was not complied with and hence termination was incorrect.

With respect to relief of regularisation the Court opined that the grievance of the appellants is based in relation to a Scheme contained in Circular dated 6.5.1997 many similarly placed workmen have been regularized whereby those who had rendered 240 days service were regularized as per the provision in that Scheme/Circular dated 6.5.1987. But in the present case as far as Appellant No.1 is concerned, he was not in service on the date when Scheme was promulgated as his services were dispensed with 4 years before that Circular came. Therefore, relief of monetary compensation in lieu of reinstatement would be more appropriate in his case. However, in so far as Appellant No.2 was concerned, he was engaged on 5.9.1986 and continued till 15.9.1990 when his services were terminated and raised the Industrial dispute immediately thereafter. Thus, when the Circular dated 5.9.1987 was issued, he was in service and within few months of the issuing of that Circular he had completed 240 days of service. Non regularization of Appellant No.2, while giving the

benefit of that Circular dated 6.5.1987 to other similar situated employees and regularizing them would, would be discriminatory. Division failed to notice this pertinent and material fact and the High Court committed error in reversing the direction given by the CGIT, which was rightly affirmed by the learned Single Judge as well, to reinstate Appellant No.2 with 50% back wages and to regularize him in service.

Tapash Kumar Paul

v.

Bsnl & Anr.

(2014) 4 S.C.R. 875

Hon'ble Judge(s): Gyan Sudha Misra And V. Gopala Gowda, JJ.

Facts: This appeal has been preferred by the appellant-employee Tapash Kumar, who succeeded in getting an order of reinstatement in his favour by the Central Government Industrial Tribunal at Calcutta in Reference No. 27 of 1997 dated 13th May, 2002, by which the order of reinstatement was passed in his favour. However, the Tribunal declined to grant back wages to the appellant except Rs.20,000/- to be paid by the respondent as compensation towards back wages. This Award was passed by the Tribunal since the Management had failed to produce relevant documents to disclose the actual number of days for which appellant has worked and so his termination was held to be in violation of Section 25F of the Industrial Disputes Act, 1947. The respondent-Management of the BSNL, however, appealed against the Award passed by the Tribunal by way of a Writ Petition in the High Court before the Single Judge whereby the learned Single Judge affirmed the Award passed by the Tribunal and dismissed the writ petition filed by the respondent-Management. The respondent was not satisfied with the order passed by the Single Judge and refused to give effect to the Award in favour of the appellant and preferred a further appeal before the Division Bench. The Division Bench, however, was pleased to allow the appeal by setting aside the Award passed in favour of the appellant and in lieu of reinstatement, passed an order directing that the amount of Rs.20,000/- be paid by way of compensation to the appellant which in any case had been passed by the Tribunal as

compensation towards back wages. Thus, in effect, the compensation which has been ordered to be paid was legally due to the appellant towards back wages and the High Court set aside the entire Award passed by the Tribunal which in effect can be construed that no amount was paid by way of compensation.

Issue: Whether the grounds justifiable for paying compensation in lieu of reinstatement are present in the said case?

Held: The Supreme court held that the Court may substitute reinstatement by compensation but the same has to be based on justifiable grounds i.e. where the industry is closed or where the employee has superannuated or going to retire shortly and no period of service is left to his credit or where workman has been rendered incapacitated to discharge the duties and is not fit to be reinstated or when he has lost confidence of the management to discharge duties - In the instant case, the appellant's case did not fall in any of the categories so as to justify compensation in lieu of reinstatement - There was no justification for the Division Bench to interfere with the order of the Tribunal and single judge - The Division Bench of the High Court gravely erred in ignoring the normal rule that ordinarily 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.

Kayam Singh

v.

The State of Rajasthan and Ors

MANU/RH/0865/2015

Hon'ble judge: Jaishree Thakur, J.

Facts: The petitioner was appointed in the respondent-Department on 14.11.1989. After having worked in the said Department, his services were terminated by oral order dated 11.3.1991. Since the services were terminated in violation of the provisions of the Industrial Disputes Act, 1947, the petitioner raised an industrial dispute by approaching the Conciliation Officer. The matter could not be resolved and, thereafter, the Appropriate Government referred the matter to the Labour Court at Jodhpur. Before the Labour Court,

Jodhpur, the petitioner submitted his statement of claim stating therein that he had completed more than 240 days of service in a calendar year and his services were terminated without following the requirements of Chapter 5 of the Act of 1947. The respondent-Department filed its reply and thereafter, evidence was adduced. After hearing the parties, the Labour Court gave its award dated 24.4.1999 holding that the petitioner has completed more than 240 days of service in an year and also came to the conclusion that there was non-compliance of Section 25 of the Act of 1947 while terminating the service of the petitioner, while negating the plea of the petitioner- workman that persons junior to him had been retained in service. Though the Labour Court came to the conclusion that the petitioner had been illegally retrenched, it directed that a sum of Rs. 15,000/- be paid as compensation to the petitioner-workman instead of ordering reinstatement. Aggrieved by the award, the petitioner filed the present writ petitions.

Held: The Hon'ble Supreme Court posed a question as to whether the order of reinstatement should automatically follow in a case where an engagement of daily wager has been brought to an end in violation of Section 25 of the Act of 1947. It was held as under:-

> *"It is true that the earlier view of this Court articulated in many decision reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.*

It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court

has distinguished between a daily wager who does not hold a post and a permanent employee."

It was also held that ordinary principle of grant of reinstatement with full back wages should not be applied mechanically in all cases. It was further held that:-

> *"Reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily wage basis and even after he is reinstated, he has no right to seek regularization."*

Natha Singh

v.

Presiding officer, Industrial Tribunal-cum-Labor Court, Gurdaspur and others

2014 (11) TMI 386

Hon'ble Judge(s): Gurmeet Singh Sandhawalia, J

Facts: The workman was employed on 01.09.1994 as a keyman, controlling the flow of water. The said work was regular and perennial nature. The petitioner drew a salary of ₹ 2,500 per month and he was remained in employment till 31.10.2002. The respondent Municipal Council, Pathankot engaged him on contract basis and there was no break in service. A policy of regularization was framed by the Municipal Council by which persons having three years of service were entitled to be regularized. But the service of the petitioner was terminated without issuing any show cause notice, conducting inquiry and without making retrenchment compensation.

The Labor Court took into consideration of the statement of the workman and Section Officer of the Municipal Council. The Labor Court came to the conclusion that the post of keyman was created by the Director, Local Government, Punjab and the regular

appointment was not made by the competent authority. To regulate the work, applications had been taken by the Executive Officer and persons were appointed against these posts as a time gap arrangement for a specific period. The Labor Court held that these persons were not appointed or selected by the Selection Committee and the posts were temporarily created and the Government decided that the services of the contractual employees were not to be extended. The Labor Court observed that the workman had never alleged any complaint to any authority and the agreements were signed by the workman. Thus the Labor Court answered the references against the workmen and in favor of the respondents. The Labor Court held that the petitioners were not entitled to the relief of reinstatement.

Issues:

- Whether the petitioners were only contractual employees in view of the agreement that they entered into and the benefit of Section 25F of the Act would not be applicable to them;
- Whether the provisions of Section 2(oo)(bb) of the Act would be attracted in the facts and circumstances of the present case;
- If the provisions of Section 2(oo)(bb) are not applicable as to what would be the relief the workman would be entitled;
- Whether the workman would be entitled for reinstatement or compensation.

Held: The High Court found that there is no denying fact that the work of Keyman is of perennial in nature and the petitioner and had worked for eight and half years. The services of the petitioner were shunted out by the Municipal Council on the pretext and on the ground that they were contractual employees and were bound by the terms of the contract and therefore the Council is protected under Section 2(oo) (bb) of the Act. The services of the workmen were terminated in spite of the fact that the workman had completed 240 days in the preceding year. The Labor Court was in error in not granting the said benefit by holding that the provisions of Section 2(oo)(bb) would apply. High Court is to decide the compensation amount in lieu of reinstatement. The Court awarded 20,000/- as compensation per completed year along with the cost of the case 20,000/- to the petitioners.

Assistant Engineer, Rajasthan State Agriculture Board, Sub-Division, Kota

v.

Mohan Lal

(2013)14SCC543

Hon'ble Judge(s): R.M. Lodha and Madan B. Lokur, JJ.

Facts: Mohan Lal, the workman, was engaged as "Mistri" on muster roll by the Appellant-employer, from 01.11.1984 to 17.02.1986. On 18.02.1986, the services of the workman were terminated. While doing so, the workman was neither given one month's notice nor was he paid one month salary in lieu of that notice. He was also not paid retrenchment compensation.

Prior History: In 1992, the workman raised industrial dispute which was referred by the appropriate government to the Labour Court, Kota (Rajasthan) for adjudication and the Court held that the services of workman were terminated in violation of Section 25 F and declared that the workman was entitled to be reinstated with continuity in service and 30% back wages.

The employer raised the before High Court where the Single Judge in his judgement though agreed with the Labour Court that the employer had terminated workman's services in violation of Section 25 F but he was of the view that the Labour Court was not justified in directing the reinstatement of the workman because the workman had raised the industrial dispute after 6 years of his termination.

The workman challenged the order of the learned Single Judge in an intra-court appeal. The Division Bench restored the award passed by the Labour Court.

Issue: What should be the consequent relief to be granted to the workman whose termination is held to be illegal being in violation of Section 25F?

Held: The Court held that the judicial discretion exercised by the Labour Court was flawed and unsustainable as the Labour Court did not keep in view admitted delay of 6 years in raising the industrial dispute by the workman and opined that

"though Limitation Act, 1963 is not applicable to the reference made under the I.D. Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side."

The Court further held that the Division Bench of the High Court was clearly in error in restoring the award of the Labour Court whereby reinstatement was granted to the workman. Though, the compensation awarded by the Single Judge was too low and needed to be enhanced by the Division Bench but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief, so, the Court enhanced the compensation to Rupees one Lakh.

Jagbir Singh

v.

Haryana State Agriculture Mkt. Board

AIR2009SC3004

Hon'ble Judge(s): Tarun Chatterjee and R.M. Lodha, JJ.

The Hon'ble Supreme Court concluded as follows:

"It is true that the earlier view of this Court articulated in many decision reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.

It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-Falthough may be set aside but an award of reinstatement should not, however, automatically passed. The

award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee."

Backwages:

General Manager, Haryana Roadways

v.

Rudhan Singh

MANU/SC/0408/2005

Hon'ble Judge(s): R.C. Lahoti, C.J., G.P. Mathur and P.K. Balasubramanyan, JJ.

The Hon'ble Court opined:

"There is no thumb rule that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25 F, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment, the nature of the appointment, 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. If the workman had rendered a considerable period of service and was wrongfully terminated, he may be awarded full or partial back wages keeping in view his age and qualification possessed by him and that he may not secure another employment. However, where the length of service rendered is small, the award of back wages for the complete period from the date of his termination till the date of the award, would be wholly inappropriate. 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."

SESSION IV

ISSUE & APPROACH TO DOMESTIC INQUIRIES

For the smooth functioning of an industry, the defined codes of discipline, contracts of service by awards, agreements and standing orders must be adhered to. In the event of an employee not complying with these codes of conduct, he is liable to face disciplinary actions initiated by the Management according to the Standing Order. This procedure is called Domestic Enquiry and it is conducted in accordance with the standing order/agreements.

Domestic enquiry is similar to a trial in a court of law, but while a trial in a court is for crimes done against society, domestic enquiry is conducted for offences committed against the establishment for misconduct, punishable under the standing orders/rules and regulations of the organization. Further, while a trail in a court is in accordance with the criminal procedure code, civil procedure code, evidence act, the domestic enquiry is conducted in terms of what is known as 'Natural Justice'. Also, the enquiry officer while examining the evidence and pronouncing on the guilt is not authorized to penalize the employee. It is only the employer or the appointing authority also known as notified disciplinary authority who can pronounce the penalty. Domestic enquiry is not considered as a legal requirement under the Industrial Disputes Act, or other substantive laws such as the Factories act, Mines Act, etc. but has been provided under the standing orders to be framed in the Industrial Employment (Standing Order Act) 1946. As a result it is now well-established that such standing orders have the force of law and constitute statutory terms of employment. The case law established over a long period has made it obligatory for the employers to hold a fair and just enquiry to prove the misconduct before awarding any serious punishment. Dismissal of an employee without holding a fair and just domestic enquiry amounts to the violation of the principles of natural justice and is frowned upon by the Labour Courts/Industrial Tribunals and adverse conclusions may be drawn against the employer not holding a domestic enquiry, in so much so that the dismissal without holding a domestic enquiry is deemed to be illegal.

PRINCIPLES OF DOMESTIC ENQUIRY

1. Rule of Natural Justice must be observed.

2. The delinquent is entitled to a just hearing.

3. He can call for his own evidence.

4. Cross-examine any witness called by the prosecution.

5. Where rules are laid down, the procedure of such rules must be followed.

6. Disclose to the employee concerned, the documents of records and offer him an opportunity to deal with it.

7. Do not examine any witness in the absence of the employee.

8. The enquiry officer is at liberty to disallow any evidence after recording the reasons in writing.

Relevant cases:

U.P. State Road Transport Corporation and Another

v.

Suresh Chand Sharma and Another

2010 III LLJ 278

Hon'ble Judges: B.S. Chauhan, Swatanter Kumar JJ.

Facts: Services of a bus conductor of the U.P. State Road Transport Corporation were terminated, after conducting a domestic enquiry for the misconduct of 'carrying passengers without issuing tickets, after collecting fare from them'. The conductor challenged his termination from service. While the Labour Court decided the case against him, the High Court of Uttaranchal reversed the award of the Labour Court, on the ground that the passengers who were found traveling without ticket were not examined; nor the cash

available with the conductor was checked. The Corporation preferred an appeal before the Supreme Court against the judgement of the High Court.

Issue: Whether the termination of the services of the applicant/workman conductor by the employer is unjustified and/or illegal? If so, which benefit/compensation the applicant/workman is entitled and to what extent? And Whether the High Court's Judgement is correct.

Held: Restoring the award passed by the Labour Court, the Supreme Court set aside the judgement of the High Court, stating that:

The Labour Court recorded a finding that at the time of inspection, the Traffic Inspector found that 13 passengers were traveling without ticket; and that the conductor had taken Rs. 43/- from them as fare. To that extent, the said Inspector made a remark on the way-bill and obtained the signature of the conductor also on the way-bill. Further the conductor did not ask any questions during the cross-examination of the said Inspector in the enquiry proceedings.

The Labour Court also recorded a finding that it was not a case where the conductor could not issue the ticket and recover the fare from the traveling passengers, rather it was a case that after recovering the fare from the passengers, the conductor did not issue tickets to them. Thus, there was an intention on the part of the conductor to misappropriate the fare recovered from the passengers.

However, the Court rejected the contention that enquiry report stood vitiated for not recording the statement of the passengers who were found traveling without ticket. The Court held as under:

> *"We cannot hold that merely because statements of passengers were not recorded the order that followed was invalid. Likewise, the re-evaluation of the evidence on the strength of co-conductor's testimony is a matter not for the Court but for the administrative Tribunal. In conclusion, we do not think Court below were right in overturning the finding of the domestic Tribunal".*

In view of the above, the reasoning so given by the High Court cannot be sustained in the eye of law. More so, the High Court is under an obligation to give not only the reasons but cogent reasons while reversing the findings of fact recorded by a domestic Tribunal. In case the judgement and order of the High Court is found not duly supported by reasons, the judgement itself stands vitiated.

State of Haryana

v.

Rattan Singh

(1977) 2 SCC 491

Hon'ble Judge: V.R. Krishna Iyer, J.

The Hon'ble Supreme Court opined:

> *It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case-law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgement vitiates the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good.....*

Jawahar Khalifulla

v.

Deputy Commissioner of Labour (Appeals), Madras and Others

2010 II LLJ 370

Hon'ble Judges: Justice S.J. Mukhopadhaya, Justice Raja Elango

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Facts: An employee was dismissed from service for the proved misconduct, wherein he waved his fingers in front of the face of his superior, a lady officer, and raised his hand to hit her, further abused her by saying "see what I can do to the Company, I can close it within two months" and addressed her as a `bitch', `bastard' and `thevediya". He challenged his dismissal from service and in the process of litigation; the matter reached the attention of a Division Bench of the Madras High Court.

Issue: Whether Dismissal from service particularly when the domestic enquiry held was fair and proper is valid?

Held: The Bench dismissed the writ appeal and upheld the judgement of the Single Judge who confirmed the punishment, stating that:

The entries made in the 'Order Sheet' not only reflect the attitude of the employee in delaying the enquiry but also shows that he never wanted to take proper part in the said proceedings and wanted to avoid it.

On the basis of the evidence on record, the Enquiry Officer had finally submitted his report, based on which the Disciplinary Authority passed the order of dismissal from service on the employee. Prima facie rules of natural justice were followed and proper opportunity was given to the employee. Considering the gravity of charge, the order of dismissal cannot be stated to be disproportionate. Dismissal from service for using abusive language against the superior (lady officer) cannot be said to be disproportionate, particularly when the domestic enquiry held was fair and proper.

Reserve Bank of India & Anr

v.

The Presiding Officer

219 (2015) DLT 38

Hon'ble Judge: Justice Vibhu Bakhru

Facts: The petitioner impugns an order dated 19.02.2008 passed by the Central Government, Industrial Tribunal cum Labour Court-II. By the impugned order, the Tribunal decided the issue with regard to fairness of domestic inquiry held by the petitioner in respect of charges framed against respondent no.2, as a preliminary issue; the Tribunal held that the inquiry was vitiated as the Inquiry Officer had relied on evidence of the complainant who had not been examined by respondent no. 2 (hereafter the 'workman'). The petitioner challenges the impugned order as being perverse and contrary to the principles of law. This is controverted on behalf of the workman. The workman further contends that the present petition is not maintainable as it seeks to challenge an order with respect to a preliminary issue, while the disputes are still pending consideration before the Tribunal.

Prior History: A female employee of the petitioner (hereafter 'the complainant') had made a complaint to the Regional Director of the petitioner alleging that the workman had misbehaved with her and she had been sexually harassed. She had sought protection from the petitioner against the alleged harassment. Pursuant to the complaint, a show cause notice dated 30.06.2003 was issued by the competent authority of the petitioner to the workman, calling upon him to show cause why disciplinary action should not be initiated against him. The complainant made yet another complaint on 11.07.2003 alleging that she was being harassed and threatened to pressurize her to withdraw her complaint.

Thereafter, a charge-sheet was issued to the workman alleging that he had violated Regulation 41C of the Reserve Bank of India (Staff) Regulations, 1948 (hereafter the 'said Regulations') "by showing physical contact and advances towards a woman employee at workplace and thereby committing an act of misconduct". It was alleged that this constituted violation of Regulation 47 of the said Regulations. The Inquiry Officer's report was

forwarded to the workman who submitted his representation against the report. After considering the Inquiry Officer's report as well as the representation submitted by the petitioner, the competent authority held the workman to be guilty of misconduct and a penalty of dismissal was proposed. The workman challenged the dismissal order by way of a writ petition. The workman raised dispute against his dismissal referred to the Tribunal. The workman filed a statement of claims whereby he alleged that the Inquiry Officer was prejudiced and biased. He further alleged that the workman was not granted enough time for preparation to cross examine the witnesses and his persistent requests for an opportunity to cross examine the complainant, were rejected by the Inquiry Officer.

Issue: "Whether the action of the management of Reserve Bank of India in imposing the penalty of dismissal from service on Shri Madan Lal w.e.f. 20.2.2004 is legal and justified? if not, what relief the workman is entitled to".

Held: The Tribunal had concluded that:

> *"The complaint has not been cross-examined by the workman. The Inquiry Officer has given his findings on the examination - in - chief of the complainant and the evidence of the other witnesses. The domestic inquiry is not an empty formality. The Inquiry Officer should have given the opportunity to the workman for cross- examining the complainant. It is true that technicalities of the Evidence Act are not applicable in domestic inquiry but the examination - in - chief of the witnesses who have not been cross- examined by the workman is not admissible in evidence. The inquiry stands vitiated."* The Delhi High Court set aside the impugned order.

Nicholas Piramal India Ltd.

v.

Harisingh

(2015) 42 SCD 652

Honble Judge: V. Gopala Gowda, J.

Facts: The respondent was employed as a workman at the drug manufacturing unit of the appellant-Nicholas Piramal India Ltd. (for short "the Company"), situated at Pithampur, Madhya Pradesh. The Company issued two charge sheets dated 26.2.2000 and 13.3.2000 against him, alleging that he has violated and disregarded the orders of his senior officers and intentionally slowed down the work under process and made less production by adopting "go slow work" tactics which is a grave misconduct on the part of the respondent-workman under clause 12(1)(d) of The M.P. Industrial Employment (Standing Orders) Rules, 1963

The respondent denied the charges levelled against him by the appellant and submitted his reply to the charge-sheets. Not being satisfied with the same, the domestic enquiry proceedings were initiated by the disciplinary authority against him. In the domestic enquiry proceedings, the Inquiry Officer found the respondent-workman was guilty of the misconduct after holding that the charges levelled against him were proved which finding of fact is recorded by him in the enquiry report. The findings of the Inquiry Officer were accepted by the Disciplinary Authority of the appellant-Company and it served the second show cause notice on the respondent on 31.5.2001 along with the copy of the enquiry report, the same did not refer to any of his past service record. The respondent-workman submitted his written explanation to the second show cause notice, denying the findings of the Inquiry Officer by giving point wise reply to the findings of the enquiry report. On 30.7.2001 an order of dismissal was passed by the appellant-Company dismissing him from his service, after accepting the findings of the domestic Inquiry Officer in his report and not considering the reply of the respondent-workman to the said show cause notice.

Being aggrieved by the order of dismissal passed against the respondent-workman by the appellant-Company, he raised an industrial dispute before the Labour Court by filing

application under section 31(3) read with Sections 61 and 62 of the Madhya Pradesh Industrial Relations Act, 1960 questioning the correctness of the order of dismissal.

Issues: i) Whether the domestic enquiry conducted against the applicant is illegal, malafide and liable to be quashed?

ii) Whether the applicant is the guilty of misconduct as described in the charge-sheet?

iii) Whether the applicant is unemployed after termination of service?

Held: The enquiry report was produced before the Labour Court by the appellant-Company and was considered by it and answered the preliminary issue No. 1, regarding the validity of the domestic enquiry in the affirmative in favour of the appellant-Company. The Labour Court after re-consideration of the case has partly allowed the application of the respondent-workman and set aside the order of dismissal dated 30.7.2001 passed against the respondent-workman and the appellant-Company was directed to reinstate the respondent-workman in the service with 50% back wages.

The Hon'ble Supreme Court stated that it has found fault with the findings of the Inquiry Officer which was endorsed by the Disciplinary Authority which has erroneously held that the workman was guilty of the misconduct. The Labour Court after the two remand orders has rightly come to the conclusion on re-appreciation of the evidence on record and held that the charge levelled against the respondent is partially proved and even then the order of dismissal imposed upon him by the Disciplinary Authority, has been done without notifying the respondent-workman about his past service record, as required under Clause 12(3)(b)&(c) of the SSO, which aspect is rightly noticed and answered by the Labour Court in its Award dated 29.10.2007. Thus, the order of dismissal of the workman from the service is disproportionate and severe to the gravity of the misconduct.

Further directing the appellant-Company to reinstate the workman within 4 weeks from the date of receipt of the copy of this judgement and compute 50% back wages payable to him from the date of his dismissal from the service till the date of passing of the Award.

Board of Trustees of the Port of Bombay

v.

Dilipkumar Raghavendranath Nadkarni and Ors

MANU/SC/0184/1982

Hon'ble Judge(s): D.A. Desai and R.B. Misra, JJ.

The Apex Court held as follows:-

"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 the legal profession. This approach was grounded on the view that a domestic tribunal holding as 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 Broke Bond India (Pvt.) Ltd. v. Shubha Roman (S.) and Dunlop Rubber Co. v. Workmen, 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 demand 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., 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 witness. 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 ensure, 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."

Cooper Engineering Limited

v.

Shri P. P. Mundhe

1975 AIR 1900

Hon'ble Judge(s): Goswami, P.K. J.

The Hon'ble Supreme Court opined:

We are, clearly of opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication the Labour Court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural

justice. When there is no domestic enquiry or defective enquiry is admitted by the employer, there will be no difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary issue. On that decision being pronounced it will be for the management to decide whether it will adduce any evidence before the labour court. If it chooses not to adduce any evidence, it will not be thereafter permissible in any proceeding to raise the issue. We should also make it clear that there will be no justification for any party to stall the final adjudication of the dispute by the Labour Court by questioning its decision with regard to the preliminary issue when the matter, if worthy, can be agitated even after the final award. It will be also legitimate for the High Court to refuse to intervene at this stage. We are making these observations in our anxiety that there is no undue delay in industrial adjudication."

SESSION V

ISSUE OF RETRENCHMENT, LAY OFF: LEGAL IMPLICATIONS

Retrenchment in its ordinary sense connotes discharge of surplus workforce[2]. When a company or government goes through retrenchment, it reduces outgoing money or expenditures or redirects focus in an attempt to become more financially solvent. Many companies that are being pressured by stockholders or have had flagging profit reports may resort to retrenchment to shore up their operations and make them more profitable. Although retrenchment is most often used in countries throughout the world to refer to layoffs, it can also label the more general tactic of cutting back and downsizing. Retrenchment has more to it than just termination of employment by a employer.

The Industrial Dispute Act, as originally enacted, had no provision for the payment of 'lay-off' or 'retrenchment' compensation to the workmen who were laid off or retrenched in certain contingencies. The definition of retrenchment was not included in the Industrial Disputes Act, 1947 in its original form. It was inserted by Amendment to the Act in 1953. Thus the Industrial Disputes Act, 1947 provides for certain conditions in which the termination of employment would not be considered as retrenchment.

Retrenchment is defined under Section 2 (oo) under the Industrial Disputes Act and it refers to termination of services of workman for reasons besides termination owing to some disciplinary action. The definition further points out that retrenchment does not include voluntary retirement of the workman or retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf or termination due to non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated pertaining to such stipulation contained therein or termination of the service of a workman on the ground of continued ill-health.

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[2] *Pipraich Sugar Mills ltd. V. Pipraich Sugar Mills Mazdoor Union, 1957 I LLJ 235 SC*

Lay-off as defined under section 2 (kkk), means *the failure, refusal or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the break-down of machinery [or natural calamity or for any other connected reason] to give employment to a workman whose name is borne on the muster rolls of his industrial establishment and who has not been retrenched.* It is further provided that Every workman whose name is borne on the muster rolls of the industrial establishment and who presents himself for work at the establishment at the time appointed for the purpose during normal working hours on any day and is not given employment by the employer within two hours of his so presenting himself shall be deemed to have been laid-off for that day within the meaning of this clause.

Chapters VA and VB of the Act contains provisions relating specifically to retrenchment and lay off, and these chapters provide for the application of the sections in certain establishment i.e. Chapter VA is applicable industrial establishments in which less than fifty workmen on an average per working day have been employed in the preceding calendar month; or to industrial establishments which are of a seasonal character or in which work is performed only intermittently and Chapter VB is applicable to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen are employed on an, average per working day for the preceding twelve months. These chapters also include conditions precedent for retrenchment, procedure for retrenchment and lay off, compensation, prohibition of lay off etc.

Relevant Cases:

Gauri Shanker

v.

State Of Rajasthan

MANU/SC/0455/2015

Hon'ble Judges: V. Gopala Gowda and C. Nagappan, JJ

Facts: The workman was working in the respondent-Forest Department, Chattargarh, District Bikaner at Rajasthan State. It is the case of the workman that he was appointed against the permanent and sanctioned post with effect from 1.1.1987 till his services came to be retrenched, i.e. on 1.4.1992 and has rendered service of more than 240 days in every calendar year and has received salary from the respondent-Department each month. The workman aggrieved by the order of retrenchment passed by the respondent-Department has raised an industrial dispute questioning the correctness of the order in removing him from his service inter alia contending that the same is in violation of Sections 25F Clauses (a) and (b), 25G and 25H of the Industrial Disputes Act, (for short "the Act"), therefore, the retrenchment of the workman from his service is *void ab initio* in law and prayed for setting aside the same. The State Government in exercise of its power referred the industrial dispute between the workman and the respondent-department to the Labour Court, Bikaner for adjudication.

The Labour Court held that the action of the respondent-Department was in contravention of the aforesaid statutory provisions of the Act and Rules 77 and 78 of the Central Industrial Dispute Rules, 1957. Thus it was held by the Labour Court that the termination order passed against the workman is illegal and void ab initio in law and therefore, passed the award of reinstatement. The correctness of the award was challenged by the respondent-Department by filing a writ petition before the single Judge of the High Court. Single Bench of HC ordered for compensation in lieu of reinstatement. The division bench further confirmed the order of the division bench. The correctness of the same is challenged before this Court urging various legal contentions.

Issues: Whether removal of workman Gauri Shankar by the Employer, Deputy Conservator of Forest, Chhattargarh, Bikaner is just and legal? If no, to what relief and amount the workman is entitled to*?"*

Whether the Labour Court was justified in not awarding backwages and granting Rs.2,500/- as compensation in lieu of backwages though it has awarded reinstatement in the absence of gainful employment of workman?

Whether the High Court in exercise of its supervisory jurisdiction under Articles 226 and 227, is justified in interfering with the finding of facts recorded on the points of dispute recorded by the Labour Court in the award passed by it?

Held: Supreme Court stated that, the learned single Judge in exercise of its powers under Articles 226 and 227 of the Constitution of India erroneously interfered with the award of reinstatement and future salary from the date of award till date of reinstatement as rightly passed by the Labour Court recording valid and cogent reasons in answer to the points of dispute holding that the workman has worked from 1.1.1987 to 1.4.1992 and that non-compliance of the mandatory requirements under Sections 25F, 25G and 25H of the Act by the respondent-Department rendered its action of termination of the services of the workman as void ab initio in law and instead the High Court erroneously awarded a compensation of Rs.1,50,000/- in lieu of reinstatement. The learned single Judge and the Division Bench under their supervisory jurisdiction should not have modified the award by awarding compensation in lieu of reinstatement which is contrary to the well settled principles of law laid down in catena of cases by this Court.

In view of the foregoing reasons, the modified award passed by the learned single Judge of the High Court which was affirmed by the Division Bench of the High Court has rendered the impugned judgement and order bad in law as it suffers from not only erroneous reasoning but also an error in law.

The Hon'ble Court further restored the decision of the labour court so far as the order of reinstatement is concerned. The respondent-Department is further directed to reinstate the workman in his post and pay 25% back-wages from the date of termination till the date of award passed by the Labour Court and full salary from date of award passed by the Labour

Court till the date of his reinstatement by calculating his wages/salary on the basis of periodical revision of the same within six weeks from the date of the receipt of the copy of this judgement.

Jasmer Singh

v.

State Of Haryana

2015(1) SCALE360

Hon'ble Judge(s): V. Gopala Gowda and C. Nagappan, JJ.

Facts: The Appellant-workman was working as daily paid worker in the office of Sub Divisional Officer/Engineer, PWD B&R Karnal since 1.1.1993 and remained in service upto December, 1993. His services were terminated on 31.12.1993 without complying with the mandatory provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947. The Respondent-management neither issued notice nor notice pay nor retrenchment compensation was given to him. The principle of 'last come first go' was not followed as provided Under Section 25G of the Act and the persons who were juniors to him in service were retained. Therefore, he raised an industrial dispute under the provisions of the Act before the Conciliation Officer requesting for setting aside the order of termination as the same was void ab initio in law and sought an order for reinstatement with back wages and other consequential benefits. As the workman's demand made in his Notice dated 27.11.1996 was not complied with, the Conciliation Officer submitted a failure report to the State Government of Haryana which in exercise of its statutory power under Section 10(1)(c) of the Act and referred the industrial dispute to the Industrial Tribunal-cum-Labour Court.

Procedural History: This appeal is filed by the workman, aggrieved by the impugned judgement of the Punjab and Haryana High Court in L.P.A. affirming the judgement and order of the learned Single Judge by which Award of the Industrial Tribunal-cum-Labour Court was set aside.

Issue: Whether the termination of workman was illegal?

Held: The workman had completed more than 240 days of continuous service in one calendar year as evident from muster rolls presented before the Court from the Appellant's side which wasn't contested against by the respondent, so his working in two subdivisions is an immaterial fact when these are under administrative control of same Executive Engineer. Further, termination of his services is illegal as it is without issuance of neither notice nor notice pay and payment of retrenchment compensation i.e. without compliance of Section 25-F (a) and (b).

Bhavnagar Municipal Corpn.

v.

Salimbhai Umarbhai Mansuri

(2013) 14 SCC 456

Hon'ble Judge: K.S. Radhakrishnan, J.

Facts: The respondent-employee Salimbhai Umarbhai Mansuri, was appointed on daily wages as a helper in the Water Works Department in the appellant Corporation for two fixed periods from 02.05.1988 to 30.06.1988 and 04.07.1988 to 15.07.1988, under two separate office orders dated 19.05.1988 and 01.07.1988. The service of the respondent stood terminated on 15.07.1988 after serving a total period of 54 days. The respondent raised an industrial dispute on 07.12.1989 and the same was referred to Labour Court for adjudication. The Labour Court on 18.10.2003 passed an award holding that the Corporation had violated Section 25G and H of the ID Act by not calling the respondent for work before appointing new workmen. The Labour Court then directed the Corporation to reinstate the respondent with continuity in service.

Aggrieved by above-mentioned order the Corporation preferred Writ Petition SCA No.3290 of 2004 before the Gujarat High Court. The High Court vide its judgement dated 12.08.2010 set aside the award of the Labour Court and remanded the matter to the Labour Court for fresh consideration. The Labour Court on 15.11.2010 held that the Corporation had violated the provisions of Sections 25G and H of the ID Act and directed the Corporation to reinstate the respondent with continuity in service with consequential benefits. The Corporation then

preferred Writ Petition SCA No.7918 of 2011, which was dismissed by the learned Single Judge vide judgement dated 29.06.2011 against which Corporation preferred an appeal which was also dismissed. Aggrieved by the same the Corporation has preferred this appeal.

Issue: Whether termination of services of the respondent on the expiry of the contract period would amount to retrenchment within the meaning of Section 2(oo) of the Industrial Disputes Act, 1948 (for short "the ID Act")

Whether Section 25H will be applied in the present case?

Held: The court held that the Labour Court, learned Single Judge and the Division Bench have not properly appreciated the factual and legal position in this case. When rights of parties are being adjudicated, needless to say, serious thoughts have to be bestowed by the Labour Court as well as the High Court. For the above-mentioned reasons both the appeals were allowed, setting aside the award passed by the Labour Court and confirmed by the High Court.

The Court opined:

> *Section 25H will apply only if the respondent establishes that there had been retrenchment. Facts will clearly indicate that there was no retrenchment under Section 2(oo) read with Section 2(bb) of the ID Act. Consequently, Section 25H would not apply to the facts of the case.*

Mackinon Mackenzie and Company Ltd.

v.

Mackinnon Employees Union

MANU/SC/0188/2015

Hon'ble Judge(s): V. Gopala Gowda and C. Nagappan, JJ.

Facts: In the present case, the Appellant-Company questioned the correctness of the judgement and order passed in Writ Petition by the Division Bench of the High Court of Judicature at Bombay, affirming the Award of the Industrial Court, Mumbai.

The Appellant-Company was engaged in shipping business from its premises at Mackinnon Building, Ballard Estate, Mumbai. The activities were divided into ship agency, shipping management, ship owning and operating, travel and tourism, clearing and forwarding, overseas recruitment and property owning and development. It had approximately 150 employees who were all workmen and members of the Respondent-Union. The Respondent-Union is registered under the provisions of the Trade Union Act, 1926. A letter dated 27.07.1992, purportedly a notice of retrenchment together with the statement of reasons enclosed therewith was served upon approximately 98 workmen by the Appellant-Company stating that the same will be effective from closing of business on 04.08.1992. In the statement of reasons, it was stated that the Appellant-Company was accumulating losses and the proprietors had taken a decision to rationalise its activities apart from the property owning and development department, a portion of the clearing and development business relating to contracts with the Government of India, Institutions such as, Central Railway and Lubrizol India Ltd..

Aggrieved by the said action of the Appellant-Company, the concerned workmen of the Respondent-Union filed a complaint before the Industrial Court at Mumbai alleging the unfair labour practices on the part of the Appellant-Company in not complying with certain statutory provisions under item No. 9 of the Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (MRTU & PULP Act), in proposing to retrench the concerned workmen.

Issue: Whether the Respondent has committed breach of Section 25F, 25FFA, 25G of the I.D. Act 1947?

Held: The Court affirmed with the order of the Industrial Court on breach of Section 25F Clause (b) stating, that there was non compliance by the Respondent-Union. Neither one month notice was given to the concerned workmen before their retrenchment nor one month's salary in lieu of the retrenchment notice was paid to the concerned workmen. Therefore, the said action by the Appellant-Company was in breach of the above said provision of condition precedent for retrenchment of the workmen as provided Under Section 25F Clause (a) of the I.D. Act which is mandatory in law.

In the present case the Hon'ble Supreme Court affirmed the judgement of the Division Bench of High Court. The Court held that there was violation of statutory provisions of Section 25FFA of the I.D. Act have not been complied with and consequently the action of the Company in retrenching the concerned workmen will amounts to void ab initio in law as the same is inchoate and invalid in law since the statutory provisions contained in Section 25FFA of the I.D. Act mandate that the Company should have issued the intended closure notice to the Appropriate Government atleast 60 days before the date on which it intended to close down the concerned department/unit of the Company which was not served on the State Government by the Appellant-Company. The Court held that

> "*The object of serving of such notice on the State Government is to see that the it can find out whether or not it is feasible for the Company to close down a department/unit of the Company and whether the concerned workmen ought to be retrenched from their service, made unemployed and to mitigate the hardship of the workmen and their family members. Further, the said provision of the I.D. Act is the statutory protection given to the concerned workmen which prevents the Appellant-Company, from retrenching the workmen arbitrarily and unreasonably & in an unfair manner."*

Further, the Appellant-Company gave no valid reasons to justify the action of not following the principle of 'last come first go' as mandated Under Section 25G of the I.D. Act read with Rule 81 of the Bombay Rules to retrench the concerned workmen who are seniors to the workmen who were retained in the department. So, there was no non-compliance of Section 25G of the I.D. Act by the Appellant-Company which is also the statutory violation on the part of the Appellant-Company in retrenching certain concerned senior workmen since no reason was presented for retaining junior workmen to the concerned workmen in the department.

State of Maharashtra & Anr.

v.

Sarva Shramik Sangh, Sangli & Ors

And,

Sarva Shramik Sangh, Sangli

v.

State of Maharashtra and Ors.

MANU/SC/1088/2013

Hon'ble Judges/Coram: H.L. Gokhale and Ranjan Gogoi, JJ.

Facts: The Government of Maharashtra established a corporation named as the Irrigation Development Corporation of Maharashtra Limited, sometimes in December 1973. This Corporation was a Government of Maharashtra undertaking. It set up 25 lift irrigation schemes to provide free services to farmers. The corporation was established in the aftermath of a terrible drought which afflicted the State in the year 1972. Some 256 workmen were employed to work on the irrigation schemes of the said Corporation. Though it was claimed that the workmen were casual and temporary, the fact remains that many of them had put in about 10 years of service when they were served with notices of termination by the Appellant No. 2 on 15.5.1985. The notice sought to terminate their services w.e.f. 30.6.1985, and offered them 15 days compensation for every completed year of service. The retrenchment was being effected because according to the Appellants the lift irrigation schemes, on which these workmen were working, were being transferred to a sugar factory viz. Vasantdada Shetkari Sahakari Sakhar Karkhana, Sangli.

It is not disputed that some of the workmen accepted the retrenchment compensation, though a large number of them did not. Some 163 out of them filed Writ Petition, through the first Respondent Trade Union, against the above referred Corporation and the Appellants, seeking to restrain the transfer of the undertaking. The petition was dismissed by the Bombay High Court and hence, a Special Leave Petition was preferred to this Court. The Appellants defended the said petition by pointing out that the workmen concerned were

not employees of the Corporation, but were employees of the State. The court dismissed the said SLP and thus the workmen sought to refer the matter to the industrial tribunal under the ID Act it whereby was contended on behalf of the workmen that their retrenchment was illegal, inasmuch as the requirement of the adequate statutory notice as required under the I.D. Act, was not complied with.

Labour Court held that there was a violation of Section 25F of the I.D. Act, inasmuch as not even one month's notice had been given and hence the termination was illegal. The matter then went to the High court whereby the single Judge observed that the plea invoking Section 25FF could not be permitted to be raised in the High Court, inasmuch as transfer was a mixed question of facts and law. According to the learned Judge, it was a case of breach of Section 25N, and not merely 25F of the I.D. Act. The matter again went for appeal to the division bench.

Civil Appeal No. 2566 of 2006 has been filed by the above referred Trade Union, the Respondent in Civil Appeal No. 2565 of 2006, against the same two judgements of the Single Judge and the Division Bench of Bombay High Court. The Union is aggrieved by the award of only 25% backwages to the workmen, and seeks an order of 100% backwages, contending that if the retrenchment is held to be bad in law, the backwages could not be restricted to anything less than 100% backwages. Mr. Navare has appeared in support of this appeal, and Ms. Diwan has appeared to oppose the same. As can be seen from the narration of facts above, the Union is claiming reliefs for the present group of workmen on the basis of parity with the other group of 10 workmen viz. Pandurang Vishnu Sandage and Ors. and that submission has been accepted by us. Those workmen have been awarded only 25% backwages. That being so, the present group of workmen cannot be awarded backwages more than what have been awarded to the other workmen. The claim for award of higher backwages cannot, therefore, be entertained.

Issue: Whether the decision of Single judge of High Court and Division Bench correct?

Held: The court disposed of the two appeals against the impugned judgement and order of the learned Single Judge of the Bombay High Court, dated 14.9.2004, in Writ Petition No.

2699 of 1993, which is left undisturbed by the Division Bench, by passing the following order:

(i) The 163 workmen concerned in the present matter, will be placed into three categories, i.e., (a) those who have already reached the age of superannuation; (b) those who are yet to reach the age of superannuation; and (c) those who have expired. They will be entitled to the reliefs in the following manner.

(ii) The benefits to the workmen in category (a) will be till the date of their superannuation, for category (b) till the date of this judgement, and for those in category (c) till the date of expiry of the workman concerned.

(iii) The workmen of all the three categories will be entitled to continuity of service until the date of superannuation, or until the date of this judgement, or until the date on which the workman concerned has expired, as the case maybe.

(iv) All the workmen will be entitled to 25% backwages over and above the last drawn wages that they have received Under Section 17B of I.D. Act. The backwages shall be calculated until the date as mentioned in Clause (iii) above.

(v) All the workmen will be entitled to the same retirement benefits, if any (depending on their eligibility), as given to the other group of 10 workmen viz. Pandurang Vishnu Sandage and others.

(vi) All the aforesaid payments shall be made directly to the workmen concerned or their heirs, as the case maybe, within three months from the date of this judgement.

(vii) There shall not be any order of reinstatement.

Hari Nandan Prasad and Anr.

v.

Employer I/R To Managemnt of Fci And Anr.

AIR2014SC1848

Hon'ble Judge(s): K.S. Panicker Radhakrishnan and Arjan Kumar Sikri, JJ.

Facts: The two Appellants were working on casual basis with the Food Corporation of India (FCI). After certain time, their services were dispensed with. Both of them raised industrial dispute alleging wrongful termination which was referred to the Central Government-cum-Industrial Tribunal (CGIT). These proceedings culminated in two awards passed by the CGIT whereby termination of both the Appellants was held to be illegal and they were directed to be reinstated with 50% back wages alongwith regularization in service. FCI filed Writ Petitions which were dismissed and were challenged by filing Letter Patent Appeals wherein the orders of Single Judge and CGIT were set aside.

Issue: Whether the action of the Management of Food Corporation of India is legal and justified in retrenching the workmen arbitrary and in violation of Section 25 F of the I.D. Act and denying regularization of service is legal and justified?

Held: The Hon'ble Court held that both the Appellant had worked for more than 240 days continuously preceding their disengagement/termination. At the time of their disengagement, even when they had continuous service for more than 240 days (in fact about 3 years) they were not given any notice or pay in lieu of notice as well as retrenchment compensation. Thus, mandatory pre-condition of retrenchment in paying the aforesaid dues in accordance with Section 25-F of the I.D. Act was not complied with and hence termination was incorrect.

With respect to relief of regularisation the Court opined that the grievance of the appellants is based in relation to a Scheme contained in Circular dated 6.5.1997 many similarly placed workmen have been regularized whereby those who had rendered 240 days service were regularized as per the provision in that Scheme/Circular dated 6.5.1987. But in the present case as far as Appellant No.1 is concerned, he was not in service on the date when Scheme

was promulgated as his services were dispensed with 4 years before that Circular came. Therefore, relief of monetary compensation in lieu of reinstatement would be more appropriate in his case. However, in so far as Appellant No.2 was concerned, he was engaged on 5.9.1986 and continued till 15.9.1990 when his services were terminated and raised the Industrial dispute immediately thereafter. Thus, when the Circular dated 5.9.1987 was issued, he was in service and within few months of the issuing of that Circular he had completed 240 days of service. Non regularization of Appellant No.2, while giving the benefit of that Circular dated 6.5.1987 to other similar situated employees and regularizing them would, would be discriminatory. Division failed to notice this pertinent and material fact and the High Court committed error in reversing the direction given by the CGIT, which was rightly affirmed by the learned Single Judge as well, to reinstate Appellant No.2 with 50% back wages and to regularize him in service.

Divisional Logging Manager, U. P. Forest Corporation

v.

Surender Singh

MANU/SC/0526/2013

Hon'ble Judge(s): H.L. Gokhale and Ranjan Gogoi, JJ.

Facts: According to the Appellant-manager, the Respondent was working as a Logging Forest Guard and that he was engaged on seasonal basis. The case of the Respondent is that he had regular work, his employment was not on seasonal basis and he had rendered continuous service for more than one year. The Respondent had joined as a Forest Guard way back in 1986 and he continued in that position until February, 1993. It is the case of the Respondent that his services were discontinued thereafter whereas the case of the Appellant is that since he was not coming for work, the Appellant sent him a retrenchment notice dated 19.6.1995 which, according to the Appellant, he declined to receive. But in fact before the retrenchment notice, he had raised an industrial dispute in January, 1994.

The Labour Court came to the conclusion that the order of termination of the services of the workman was illegal and unjustified as the retrenchment notice was subsequent to his

termination. That being so, the Labour Court held that it was a case of termination of his services and not the case where he had stopped from coming to work. Therefore, the Labour Court was of the view that his termination with effect from 23.2.1993 was improper and illegal. The Labour Court, therefore, directed his reinstatement with 50% back-wages and with costs of Rs. 1,000/-.

A writ petition was filed by the Appellant before the High Court which was dismissed by the learned Single Judge of the Uttarakhand High Court.

Issue: Whether the order of Labour Court is correct?

Held: The order of the Labour Court was correct since he Forest Guards are very much required in the forest and there is no reason for a lowly paid employee not to report for duty. Similarly, the view taken by the Labour Court that the compensation amount was tendered to him subsequent to his retrenchment also appeared to be correct to the Court inasmuch as the Respondent had already raised an industrial dispute.

Maruti Udyog Ltd.

v.

Ram Lal and Ors.

MANU/SC/0056/2005

Hon'ble Judges: N. Santosh Hegde and S.B. Sinha, JJ.

Facts: Maruti Udyog Limited, the Appellant herein, is a Government company within the meaning of Companies Act, 1956. In terms of a notification issued under Section 6 of the Maruti Limited (Acquisition and Transfer of Undertakings) Act, 1980 (hereinafter referred to as 'the said Act') the undertakings of the Maruti Limited (the Company) has vested in the Appellant. It is aggrieved by and dissatisfied with the judgement and order passed by a Division Bench of the Punjab and Haryana High Court in Letters Patent Appeal No. 837 of 1995 whereby and whereunder a judgement and order passed by a learned Single Judge dated 19.4.1995 passed in C.W.P No. 15728 of 1993 questioning an Award dated 28.7.1993 passed by the Labour Court in Reference Nos. 437, 438 and 166 of 1988, was set aside.

Prior history: The Respondents-employees herein who are three in number were appointed by Maruti Limited as Electrician, Helper and Assistant Fitter with effect from 27.4.1974, 8.11.1973 and 8.4.1974 respectively. Their services stood terminated by the said company on or about 25/26.8.1977 as a result of closure of the factory. The said company came to be wound up by an order of Punjab and Haryana High Court. Maruti Limited could not continue with its production activity and the workmen employed therein could not be given any job, all workmen were retrenched in accordance with the provisions of the Industrial Disputes Act, 1947. Pursuant to or in furtherance of the said direction, a settlement was arrived at by and between the Official Liquidator and its employees, in terms whereof the employees were retrenched on payment of one month's salary in lieu of notice. The employees agreed to forgo their right of three months' notice. The termination took effect immediately upon signing of the settlement.

The Central Government, on 24.4.1981 issued a notification in exercise of its power under Section 6 directed that its right, title and interest in relation to the undertakings of the company in stead and place of continuing to vest in the Central Government shall vest in the Appellant Company. The erstwhile workmen of 'the Company' thereafter issued a notice of demand of reemployment upon the Appellant herein. The said writ petition was and the Respondents herein, long thereafter raised an industrial dispute by serving demand notices seeking reemployment in the services of the Appellant purported to be in terms of Section 25H of the 1947 Act.

Issue: Whether the Udyog is liable to re employ the aid employees under Sec 25H?

Held: Labour Court held that the Appellant herein is the successor-in-interest of the said company opined that it was liable to reemploy the Respondents with back-wages. The Appellant herein filed a writ petition before the Punjab & Haryana High Court questioning the said Award and the same was allowed by a learned Single Judge. Aggrieved by and dissatisfied with the said judgement a Letters Patent Appeal came to be filed by the Respondents, which by reason of the impugned judgement was allowed reversing the aforementioned findings of the learned Single Judge. Therefore this present appeal is made to the Hon’ble Supreme Court.

The court opined: "*While construing a statute, 'sympathy' has no role to play. This Court cannot interpret the provisions of the said Act ignoring the binding decisions of the Constitution Bench of this Court only by way of sympathy to the concerned workmen."*

Pramod Jha And Ors.

v.

State Of Bihar And Ors.

AIR2003SC1872

*Hon'ble Judge(s): R.C. Lahoti and Brijesh Kumar, JJ***.**

Elaborating on Section 25 F, the Court opined:

"*The underlying object of Section 25F is two-fold. Firstly, a retrenched employee must have one month's time available at this disposal to search for alternate employment, and so, either he should be given one month's notice of the proposed termination or he should be paid wages for the notice period. Secondly, the workman must be paid retrenchment compensation at the time of retrenchment, or before, so that once having been retrenched there should be no need for him to go to his employer demanding retrenchment compensation and the compensation so paid is not only a reward earned for his previous services rendered to the employer but is also a sustenance to the worker for the period which may be spent in searching for another employment. Section 25F nowhere speaks of the retrenchment compensation being paid or tendered to the worker along with one month's notice ; on the contrary Clause (b) expressly provides for the payment of compensation being made at the time of retrenchment and by implication it would be permissible to pay the same before retrenchment. Payment of tender of compensation after the time when the retrenchment has taken effect would vitiate the retrenchment and non-compliance with the mandatory provision which has a beneficial purpose and a public policy behind would result in nullifying the retrenchment.*

11. Compliance with Clauses (a) and (b) of Section 25F strictly as per the requirement of the provision is mandatory. However, compliance with Clause (c) is directory."

Ajaypal Singh

v.

Haryana Warehousing Corporation

MANU/SC/1231/2014

Hon'ble Judges: Sudhansu Jyoti Mukhopadhaya and Sharad Arvind Bobde, JJ.

Facts: The Appellant was a 'workman' within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 with the Respondent-Haryana Warehousing Corporation (Corporation), which is an 'Industry' within, the meaning of Section 2(j) of the Industrial Disputes Act, 1947. The Appellant had completed more than 240 days of service in the preceding calendar year but his services were terminated with effect from 1st July, 1988 without one month's prior notice or pay in terms of Section 25F of the Industrial Disputes Act, 1947.

Presiding Officer, Labour Court, Rohtak by the Award held that the termination of services of the Appellant-workman was not justified and he is liable to be reinstated with full back wages. The said order was challenged by the Corporation before the High Court whereby it was held that the appointment of the workman was made in violation of Articles 14 and 16 of the Constitution of India and, therefore, the workman is not entitled to reinstatement, but allowed compensation of ` 20,000/- in favour of the workman and this order was affirmed by the Division Bench of the High Court.

Issue: Whether the validity of initial appointment of a workman can be questioned in a case in which Court/Tribunal has to determine whether the termination of service of the workman which comes within the meaning of "retrenchment", is violative of Section 25F of the Industrial Disputes Act?

Held: The Court upheld the Award of the Labour Court and set aside the award of the High Court on the ground that

"in the present case, the services of Appellant was not terminated on the ground that his initial appointment was made in violation of Articles 14 and 16 of the Constitution of India. No such reasons was shown in the order of retrenchment nor was such plea raised while reference was made by appropriate Government for adjudication of the dispute between the employee and the employer. In absence of such ground, we are of the opinion that it was not open for the High Court to deny the benefit for which the Appellant was entitled on the ground that his initial appointment was made in violation of Articles 14 and 16 of the Constitution of India. "

The Court further opined:

"if any part of the provisions of Section 25F is violated and the employer thereby, resorts to unfair trade practice with the object to deprive the workman with the privilege as provided under the Act, the employer cannot justify such an action by taking a plea that the initial appointment of the employee was in violation of Articles 14 and 16 of the Constitution of India.

22. Section 25H of the Industrial Disputes Act relates to re-employment of retrenched workmen. Retrenched workmen shall be given preference over other persons if the employee proposes to employ any person.

23. We have held that provisions of Section 25H are in conformity with the Articles 14 and 16 of the Constitution of India, though the aforesaid provisions (Articles 14 and 16) are not attracted in the matter of reemployment of retrenched workmen in a private industrial establishment and undertakings. Without giving any specific reason to that effect at the time of retrenchment, it is not open to the employer of a public industrial establishment and undertaking to take a plea that initial appointment of such workman was made in violation of Articles 14 and 16 of the Constitution of India or the workman was a backdoor appointee.

24. It is always open to the employer to issue an order of "retrenchment" on the ground that the initial appointment of the workman was not in conformity with Articles 14 and 16 of the Constitution of India or in accordance with rules. Even for retrenchment on such ground, unfair labour practice cannot be resorted and thereby workman cannot be

retrenched on such ground without notice, pay and other benefits in terms of Section 25F of the Industrial Disputes Act, 1947, if continued for more than 240 days in a calendar year.

25. However, in other cases, when no such plea is taken by the employer in the order of retrenchment that the workman was appointed in violation of Articles 14 and 16 of the Constitution of India or in violation of any statutory rule or his appointment was a backdoor appointment, while granting relief, the employer cannot take a plea that initial appointment was in violation of Articles 14 and 16 of the Constitution of India, in absence of a reference made by the appropriate Government for determination of question whether the initial appointment of the workman was in violation of Articles 14 and 16 of the Constitution of India or statutory rules. Only if such reference is made, a workman is required to lead evidence to prove that he was appointed by following procedure prescribed under the Rules and his initial appointment was legal."

Sae Mazdoor Union, Jabalpur

v.

The Labour Commissioner, Indore

2001 (3) MPHT 200

Hon'ble Judge: S. K. Kulshrestha, J.

The fact that the situation of accumulation of stock would become inevitable if workers were not laid-off, would be within the scope of reasons of sec 25M read with sec 2(KKK) of Industrial Dispute Act 1947. Under the circumstances, the application for permission to lay off reflect a ground on the basis of which the labour commissioner could objectively consider the case for granting the said permission. Therefore the permissions for lay-off granted by the Labour commissioner was not assailable

D.C.M.Hyndai Ltd

v.

The State Of Tamil Nadu

2012 (135) FLR 57

Hon'ble Judge: Justice K.Chandru

Facts: The dispute in the present case is regarding declaration of illegal layoff of 50 workers from 16.8.2000 and who were denied employment. They demanded full wages for the said period. The State Government referred the dispute for adjudication by the Industrial Tribunal, Chennai. The contention of the workmen was that the petitioner industry is covered by Chapter V-B of the I.D. Act. Since an application seeking for prior permission for layoff was rejected by the State Government, they were entitled for wages for the said period in terms of Section 25M(8) of the I.D. Act. The Joint Commissioner of Labour, Chennai by his order dated refused to grant permission to layoff the workers numbering about 172. The officer found that the management's ground that due to lack of sale orders and its poor financial condition cannot be a ground for declaring layoff under Section 2(kkk) of the I.D. Act. The Labour court on an analysis of the materials placed before it came to the conclusion that though the management had attempted to invite the workers after lay off, but the transport facilities were withdrawn.

Judgement by Tribunal: Tribunal held that subsequent to the refusal of permission to grant layoff, the management had attempted to call the workers for work. But the same time, it had denied their service conditions, i.e., transport facility. Insofar as the canteen facility is concerned, it is the statutory requirement under Section 46 of the Factories Act, 1948. The denial of the canteen facility will deprive the workers of their having food during lunch time. The denial of transport facility which was hitherto provided will hamper the travel to the factory and it had already become a condition of service. No notice under Section 9A of the I.D. Act was granted for depriving the conditions of service. Hence the workers were legitimate in not reporting to work in the absence of their service conditions being followed. Depriving the workers of their condition of service will disable them to report for work.

This was especially when the conciliation officer himself on a demand made by the union had advised the management to restore those facilities.

Issue: Whether the decision of the Tribunal is correct?

Held: The Delhi High Court dismissed the writ petitions stating, the workers entitled to withdraw the amount lying in deposit either with this court or with the labour court pursuant to the interim directions issued by this court. With reference to claiming balance from the management, though in the written note given by the petitioner, they have stated that the factory has been sold by a title deed dated 9.7.2008 and there was no factory at Chennai. Such a plea was not taken either before the conciliation officer or before the Tribunal. Unless the management dispenses the services of the workmen in the manner known to law, the workers are entitled to get the relief as ordered by the Tribunal.

Krishan Singh

v.

Executive Engineer, Haryana State Agricultural Marketing Board, Rohtak

2010(2)SCALE848

Hon'ble Judge(s): H.S. Bedi and A.K. Patnaik, JJ.

Facts: The appellant worked as a daily wager under the respondent from 01.06.1988. His services were dispensed with in December, 1993. He served a notice of demand dated 30.12.1997 on the respondent contending that his services were terminated orally without complying with the mandatory provisions of Section 25F of the Industrial Disputes Act, 1947 (Act) and that he may be re-instated in service with full back wages from the date of illegal termination and he may be regularized according to Government policy. The respondent did not respond to the demand made by the appellant and by order dated 23.07.1999, the State Government referred the dispute under Section 10 of the Act to the Labour Court whereby an award was passed holding that the appellant had admittedly completed 267 days from 01.06.1988 to 30.04.1989 and his services were terminated without any notice or notice pay and without payment of retrenchment compensation and

the termination was, therefore, in violation of Section 25F of the Act and the appellant was entitled to be re-instated in his previous post with continuity of service and 50% back wages from the date of demand notice, i.e. 30.12.1997.

The respondent challenged the Award of the Labour Court before the High Court of Punjab and Haryana whereby the Award was set aside the and the respondent was directed to pay compensation of Rs. 50,000/- to the appellant within a period of four months. Aggrieved by the order of the High Court, the appellant filed this appeal.

Issue: Whether the High Court justified in setting aside the Award of the Labour Court?

Held: The Award of the High Court was set aside and the Court opined that though wide discretionary power is vested in Labour Court under Section 11A of the Act, but while adjudicating an industrial dispute relating to discharge or dismissal of a workman, if a Labour Court is satisfied that the order of discharge or dismissal not justified, then, it may, set aside the same by its award. But in the present case, Respondent has not proved before the Labour Court that the post in which the workman was working was not sanctioned or that his engagement was contrary to statutory rules or that he was employed elsewhere or that there was no vacancy. So, in such a situation, Labour Court exercised its jurisdiction after taking into consideration pleadings of the parties and evidence on record which amounted to unnecessary interference of High Court in social welfare legislations like Industrial Disputes Act which is not warranted.

SESSION VI

UNFAIR LABOUR PRACTICES: PROTECTION & REMEDIES

In the present scenario of increasing demand for labour flexibility by employers, some practices are followed that would legally amount to unfair labour practices (ULPs). The Industrial Disputes Act 1947 has provided against ULPs by employers, workmen and unions. Another important state law protecting against ULPs is the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act 1971 (MRTU & PULP Act). It provides important legal safeguards for workers against victimisation and persecution at the hands of their employers.

Chapter VC of the Industrial Disputes Act 1947 provides for Unfair Labour Practices under 2 sections. Section 25-T of the Industrial Disputes Act prohibits an employer or workman or a trade union from committing any unfair labour practice. Section 25-U provided for penalty for committing unfair labour practice and mandates that whoever is guilty of any unfair labour practice can be prosecuted before the competent court on a complaint made by or under the authority of an appropriate Government under Section 34(1) read with Section 25-U of the Industrial Disputes Act.

An unfair labour practice is defined as any practice specified under Fifth Schedule which mentions two categories which are unfair labour practices on the part of employers and trade unions of employers including instances like abolishing the work of a regular nature being done by workmen, and to give such work to contractors as a measure of breaking a strike; or to transfer a workman mala fide from one place to another, under the guise of following management policy; or to discharge or dismiss workmen by way of victimization, or not in good faith, but in the colourable exercise of the employer's rights, or by falsely implicating a workman in a criminal case on false evidence or on concocted evidence; etc. The other category mentioned in the Schedule relates to unfair labour practices on the part of workmen and trade unions of workmen which includes advise or actively support or instigate any strike deemed to be illegal under the Industrial Disputes Act; or to incite or indulge in willful damage to employer's property connected with the industry; or to indulge in acts of

force or violence or to hold out threats of intimidation against any workman with a view to prevent him from attending work, etc.

Umrala Gram Panchayat

v.

The Secretary, Municipal Employees Union & Ors.

2015(4) Scale 334

Hon'ble Judge: V. Gopala Gowda, J.

Facts: The appellant-Gram Panchayat was duly established under the provisions of the Gujarat Panchayat Act, 1993 (in short 'the Act'). The workmen of the Panchayat, some of whom are now deceased and are being represented by their legal heirs, were appointed to the post of safai kamdars of the appellant-Panchayat and have served for many years, varying from 18 years, 16 years, 8 years, 5 years etc. They were however, considered as daily wage workers and were therefore, not being paid benefits such as pay and allowances etc. as are being paid to the permanent safai kamdars of the appellant Panchayat.

The workmen raised an industrial dispute before the Conciliation Officer at Bhavnagar, through the respondent no.1, Municipal Employees Union (for short "Union") stating therein that after rendering services for a number of years, the workmen are entitled to the benefit of permanency under the appellant-Panchayat. The settlement between the workmen and the appellant-Panchayat failed to resolve amicably during the conciliation proceedings and therefore, the failure report was sent to the Dy. Commissioner of Labour, Ahmedabad, who referred the same to the Labour Court. The Labour Court by its Award held that the workmen are to be made permanent employees as safai kamdars in the appellant-Panchayat. The Labour Court directed the appellant-Panchayat that the workmen should be paid wages, allowances and other monetary benefits as well for which they are legally entitled to.

Aggrieved by the Award of the Labour Court, the Panchayat filed an appeal before the single Judge of the High Court, whereby the same was dismissed and it was held that the view taken by the Labour Court is just and proper. The appellant, thereafter, filed an LPA before the Division Bench of the High Court, which was also dismissed as not maintainable.

Hence, these appeals have been filed by the appellant seeking to set aside the judgements and orders of the High Court as well as the Award passed by the Labour Court.

Issue: Whether the appellant is practicing unfair labour practice as defined under Section 2(ra) of the Industrial Disputes Act, 1947 as enumerated at Entry No.10 in the Fifth Schedule to the ID Act.

Held: The Hon'ble Court held that the High Court has rightly dismissed the case of the appellant as the Labour Court has dealt with the same in detail in its reasoning portion of the Award. It is an admitted fact that the work which was being done by the concerned workmen was the same as that of the permanent workmen of the appellant- Panchayat.

They have also been working for similar number of hours, however, the discrepancy in the payment of wages/salary between the permanent and the non-permanent workmen is alarming and the same has to be construed as being an unfair labour practice as defined under Section 2(ra) of the ID Act r/w Entry No.10 of the Fifth Schedule to the ID Act, which is prohibited under Section 25(T) of the ID Act and it also amounts to statutory offence on the part of the appellant under Section 25(U) of the ID Act.

Bhuvnesh Kumar Dwivedi

v.

Hindalco Industries Ltd.

AIR2014SC2258

Hon'ble Judge(s): Gyan Sudha Misra and V. Gopala Gowda, JJ.

Facts: The Respondent-employer ("employer") engaged the Appellant-workman ("workman") for work against a post which was permanent in nature but his appointment was made only for a temporary period from 1992 to 1998. During the entire period of service of the workman with the employer, the management followed the process of annually terminating him from service and again reappointing him in the same post by assigning the same Badge No., ID No. in the same department of Construction Division with the marginal increase of salary and dearness allowance per month which was shown in

the fresh appointment letter. Thereafter, the Appellant was offered fresh employment as Badli worker and he applied for the same and was appointed at the said position. Further, he joined his duties as substitute workman but did not report for the said position and the present industrial dispute arose.

The state government on request of workman made a reference for adjudication of existing industrial dispute regarding the termination of service of the workman. The Labour Court passed an award in favour of the Appellant-workman holding that the termination of his service is not justified and held that the Appellant is entitled to reinstatement with back wages.

Prior History: These appeals are filed against the final judgement passed by the High Court of Judicature at Allahabad in Writ Petition and against judgement passed by the High Court of Allahabad in Review Application by allowing the writ petition filed by the Respondent-employer and setting aside the award of reinstatement with back wages passed by the Labour Court and substituting the same by issuing direction to the employer to pay a sum of 1, 00,000/- as damages to the workman.

Issue: Whether the concurrent finding recorded by the Labour Court and High Court on the question of termination of services of the workman holding that the case of retrenchment falls under Section 6N of the U.P. Industrial Disputes Act ("U.P.I.D. Act") is void ab initio and not accepting the legal plea that the case falls under Section 2(oo) (bb) of the Industrial Disputes Act, 1947 ("I.D. Act") is correct, legal and valid?

Held: The Court held the retrenchment of the workman to be illegal and opined that:

> *"the periods of service extends to close to 6 years save the artificial breaks made by the Respondent with an oblique motive so as to retain the Appellant as a temporary worker and deprive the Appellant of his statutory right of permanent worker status. The aforesaid conduct of the Respondent perpetuates 'unfair labour practice as defined Under Section 2(ra) of the I.D. Act, which is not permissible in view of Sections 25T*

and 25U of the I.D. Act read with entry at Serial No. 10 in the V Schedule to the I.D. Act regarding unfair labour practices.

Bajaj Auto Ltd.

v.

Rajendra Kumar Jagannath Kathar

(2013) 5 SCC 691

Hon'ble Judge(s): K.S. Radhakrishnan, Dipak Misra JJ.

Facts: The facts which are essential to be stated for adjudication of the present batch of appeals are that the appellant-company is engaged in manufacturing of two-wheelers and three-wheelers and it has factories at Akurdi (Pune) and Waluj (Aurangabad). The respondents, who were engaged as Welders, Fitters, Turners, Mechanics, Grinders, Helpers, etc., initiated an action against the appellant- company under Section 28 of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971 (for short "the 1971 Act") before the Industrial Court, Aurangabad, seeking a declaration that there has been unfair labour practices under items 5, 6 and 9 of Schedule IV of the 1971 Act on the foundation that though they were engaged in the year 1990, yet in every year, they were offered employment for seven months each year and after the expiry of the said period, their services used to be terminated and the said practice continued till they filed the complaints in 1997, 1998 and 1999.

Seventeen of them also filed a separate complaint in the year 2003 for providing work to them as they were kept outside the factory premises without work. It was alleged that because of this unfair labour practice, none of them could complete 240 days in employment in any corresponding year to make them eligible to earn the status and privilege of permanent employees. It was contended before the Industrial Court that in the year 1996, the employer, in order to improve work culture, used multi-skill and multi-operational system and thereby the employees termed as multi-skill operators were required to undertake various jobs, but the employer, by taking recourse to unfair labour practice, saw to it that their services were terminated immediately after the expiry of seven months.

The Industrial Court took note of the stand of the complainants with regard to the assertion that the employer deliberately adopted rotational system throughout the year as a consequence of which the temporary employees were rotated and not allowed to complete the requisite number of days to have permanency of employment and further directed to pay compensation adjustable to the salary. The writ Court acceprted the order of Industrial Court as earlier finding of unfair labour practice under Item 6 of Sch. IV and proceeded to grant relief of compensation to complainants before it.

Issue: Whether or not the said practice by the company amounts to Unfair Labour Practice?

Held: The Court opined:

> *"…Peace in industrial atmosphere requires the parties to behave and conduct in a just and fair manner. The grievance of the aggrieved workmen has to be adjudicated under the necessary enactments on the bedrock of fairness and just needs. It is to be borne in mind that the primary obligation and duty of an industrial forum is to see that peace is sustained between the management and the employees in an industry. An unfair action by the employer against an individual worker has its effect and impact. It could disturb peace and harmony in an industrial sphere and similarly, when a workman behaves contrary to the code of conduct and accepted norms, unhealthy tribulation comes into existence. That is why the enactments provide a mechanism for arriving at a settlement to see that the growth and progress of industry is not scuttled by taking recourse to such methods which will eventually affect the national growth. This being the position behind the philosophy which has to be kept in mind by the employer and the employee, all efforts are to be made to avoid any kind of unfair labour practice."*

The appellant is directed to pay lump sum amount calculated at 65 days' salary, inclusive of all allowances for the number of year each complainant has actually worked irrespective of the days a complainant may have put in in a year.

Bennet Coleman Co. Ltd.

v.

State Of Bihar and Ors.

2015(2) SCALE571

Hon'ble Judge(s): Kurian Joseph and N.V. Ramana, JJ.

Facts: The present case started with an allegation that the recommendations of the Manisana Wage Board have not been properly implemented and a section of the journalists have been discriminated in a hostile manner and thus, there is unfair labour practice.

The Deputy Labour Commissioner, Patna preferred a complaint before the Chief Judicial Magistrate, Patna with the allegations referred to above seeking prosecution of the Appellant under Section 25U read with Section 29 of the I.D. Act. The Appellant preferred a petition before the High Court, the same was dismissed holding that the complaint was maintainable and thus, the present appeal.

Issue: Whether Appellant was liable to be prosecuted under Section 25U read with Section 29 of Act?

Held: The Court set aside the impugned order and held that

> "*Allegation was that recommendations of Wage Board had not been properly implemented, and thus, there was unfair labour practice. Prosecution for unfair labour practice was maintainable only under Section 25U of Act. Wage Board recommendations made under Section 10 of Working Journalists Act was not award Under Section 2(b) of I.D. Act. Bare reading of Section 11 of Act would show that same provides for exercise of powers of Tribunal by Wage Board in process of making its recommendations in regulating its procedure. Said provision did not make Wage Board Tribunal. Tribunal under I.D. Act did not make recommendations, it passes award whereas Wage Board under Working Journalists Act was competent only to make recommendation in terms of Section 10 of Act.*"

Cimco Birla Ltd.

v.

Rowena Lewis

2015(1)ABR440

Hon'ble Judge(s): V. Gopala Gowda and C. Nagappan, JJ.

Facts: Present case is filed by the Appellant-employer questioning the correctness of the order passed by the Division Bench of the High Court in Letters Patent Appeal affirming the judgement and order passed by the learned single Judge in Writ Petition whereby the learned single Judge dismissed the Writ Petition. The writ petition was filed by the Appellant-employer against the order passed by the Industrial Court, Mumbai in complaint filed by the Respondent-workman.

The Respondent-workman filed the complaint before the Labour Court, Mumbai under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (Act) questioning the legality of the order of his termination from service and alleging that it amounts to an unfair labour practice by the Appellant and prayed for setting aside the same and passing an award of reinstatement and continuity of service with full back wages.

Issue: Whether Industrial Court rightly directed Appellant to comply with award of Labour Court?

Held: The Court held that the finality of award in relation to unfair trade practice was attained by the award of the Labour Court to which High Courts didn't interfered with. Award regarding wrongful termination of Respondent from services was not deliberately implemented by Appellant. Therefore, Respondent rightly approached Industrial Court seeking for implementation of same. Award passed in favour of Respondent by Labour Court had attained finality.

B.S.N.L.

v.

Bhurumal

MANU/SC/1276/2013

Hon'ble Judge(s): K.S. Panicker Radhakrishnan and A.K. Sikri, JJ.

Facts: The Respondent herein raised an industrial dispute alleging his wrongful termination, by approaching the Assistant Labour Commissioner, Faridabad in the year 2000. He claimed that he was working as a Lineman on daily wages with the Sonipat Telephone Department, BSNL at Saidpur Exchange and was not paid his wages for the period from October 2001 till April 2002. He further stated that while working he got an electrical shock and because of this accident he was hospitalized. However, he was not allowed to resume his duty which amounted to. The Appellant stated that the Respondent may have worked as a contract employee with the said contractor and deployed at the establishment of the Appellant in that capacity. The conciliation proceedings were not successful; the Conciliation Officer sent his failure report to the Central Government and on that basis Central Government made a reference to the Central Government Industrial Disputes-cum-Labour Court (CGIT), Chandigarh, with the following terms of reference.

The CGIT came to the conclusion that there was clear evidence to the effect that the Respondent was directly working under the administrative control of the Appellant as a Lineman and his services were illegally terminated. Thus, answering the reference in favour of the Respondent, the CGIT directed reinstatement of the Respondent along with back wages.

The Appellant preferred the Writ Petition against the aforesaid award in the High Court of Punjab and Haryana. This Writ Petition was dismissed by the learned Single Judge. Even the intra court appeal filed by the Appellant i.e. Letters Patent Appeal (LPA) has been dismissed by the Division Bench of the High Court vide judgement dated November 2, 2011 holding that the concurrent finding of facts recorded by the CGIT as well as learned Single Judge did not warrant any interference.

Issue: Whether relief of reinstatement with full back wages rightly granted by Central Government Industrial-Disputes-cum-Labour Court (C.G.I.T.)?

Held: The Ho'ble Court opined:

> *23. It is clear from the reading of the aforesaid judgements that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or malafide and/or by way of victimization, unfair labour practice etc. However, when it comes to the case of termination of a daily wage worker and where the termination is found illegal because of procedural defect, namely in violation of Section 25F of the Industrial Disputes Act, this Court is consistent in taking the view in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.*

Siemens Ltd. and Anr.

v.

Siemens Employees Union and Anr.

AIR2012SC175

Hon'ble Judge(s): D.K. Jain and A.K. Ganguly, JJ.

Facts: Present case lies in appeal against the order of the Division Bench which affirmed the finding of Single Judge and passed order against Appellant/Company by holding that work given to officers/trainees was work of workman and if workmen were promoted they would be doing job of workman with some additional work which would be considered it unfair labour practice.

The Appellant No. 1 is a public limited company having its registered office in Mumbai and is engaged in the business of manufacturing switchgears, switchboards, motors, etc., of its

many factories, one is located at Kalwe, Thane. The Appellant employs about 2200 employees. The Appellant No. 2 is the Chief Manager (Personnel) of the said Company.

Respondent No. 1, the contesting Respondent, is a registered trade union of the workers employed by the Appellant No. 1. It is recognized under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter, referred to as the Maharashtra Act). Respondent No. 2 the Switchboard Unit of the company, and is responsible for the routine functioning of the plant at Kalwe.

In 2007 the trade union preferred a complaint under Section 28 of the Maharashtra Act for unfair labour practices, jointly and severally against the company, its Chief Manager for personnel (appellant No. 2) and its Works Manager (respondent No. 2) before the Industrial Court, Thane, Maharashtra. The trade union impugned a notification dated 3rd May, 2007 issued by the company for its workmen employed in its factory located in Kalwe, whereby applications were invited to appear for a selection process to undergo a two year long period as an 'Officer Trainee'. This training was to be in the fields of manufacturing, quality inspection and testing, logistics and technical sales order execution. The notification stated that after the successful completion of the said two years, the trainees were to be designated as 'Junior Executive Officers'. The case of the Respondent trade union is that though the designation of 'Junior Executive Officer' was that of an officer belonging to the management cadre, in fact it was merely a nomenclature, with negligible content of managerial work. It was urged that the job description of a Junior Executive Officer was same as that of a workman, with little additional duties. Resultantly, the Junior Executive Officers of the factory were now to do the very same work that had always been done by the workmen.

According to the trade union, any such change could not have been affected without giving the workmen a prior notice to such effect in terms of Section 9A of the Industrial Disputes Act, 1947. In this regard, the trade union referred to an agreement entered into between itself and the company in 1982. Clause (7) ensures that the job opportunities for workers shall not be reduced by the company by making its managerial staff perform the workmen's job. Clause (16) ensured the perpetuity of this Settlement until expressly overruled by a subsequent Settlement. It was submitted by the trade union that the change sought to be

brought about by the company by its notification dated 3rd May, 2007, was in violation of Clause (7). The trade union thus complained that the company and its two officers resorted to unfair labour practices mentioned in items 9 and 10 of Schedule IV of the Maharashtra Act, and had thereby violated the mandate of Section 27 of the Maharashtra Act.

Issue: Whether, Division Bench was justified in passing impugned order?

Held: The Court held that by introducing the scheme of promotion to which the workers overwhelmingly responded on their own it cannot be said that the management has indulged in unfair labour practice and opined that

> *"Any unfair labour practice within its very concept must have some elements of arbitrariness and unreasonableness and if unfair labour practice is established the same would bring about a violation of guarantee under Article 14 of the Constitution. Therefore, it is axiomatic that anyone who alleges unfair labour practice must plead it specifically and such allegations must be established properly before any forum can pronounce on the same. It is also to be kept in mind that in the changed economic scenario, the concept of unfair labour practice is also required to be understood in the changed context. Today every State, which has to don the mantle of a welfare state, must keep in mind that twin objectives of industrial peace and economic justice and the courts and statutory bodies while deciding what unfair labour practice is must also be cognizant of the aforesaid twin objects…*
>
> *In the instant case no allegation of victimization has been made by the Respondent-union in its complaint. In the absence of any allegation of victimization it is rather difficult to find out a case of unfair labour practice against the management in the context of the allegations in the complaint. It is nobody's case that the management is punishing any workmen in any manner. It may be also mentioned here that no workmen of the appellant-company has made any complaint either to the management or to the union that the management is indulging in any act of unfair labour practice."*

Adarsh Gupta

v.

State of Haryana through Secretary Labour Department and Ors.

2010(124) FLR844

Hon'ble Judge: K. Kannan, J.

Facts: The above writ petition and a batch of 70 other cases involve a common question, The prosecution notices which are impugned in the writ petitions germinated from individual complaints of about 70 workmen against the Management when they were served with orders of transfer from the place where, the factory was situate, namely, at Gharaunda District Karnal to Phusgarh Road where, according to the workmen, no unit of factory had been as yet established. Mala fides of the action, according to the workmen were seen from the fact that they were deliberately transferred after their plea to the government to close down some units was turned down, to a place where there was not even a manufacturing unit and the orders issued by the Management to constituted 'unfair labour practice'.

Issue: Whether the complaints made by individual workers and not through trade union seek for adjudication?

Held: The definition of 'Industrial dispute' under Section 2-K contains a larger scope for an enquiry relating to a dispute between employees and hence confined only to a dispute espoused through a Union, it would lead to an absurd consequence of a complaint of unfair labour practice being unavailable to an individual workman. Sections 25-T and U could not be seen in a restrictive sense as enabling only the union to seek for adjudication through reference and disabling any individual workman to complain of unfair trade practice.

In this case, a reference is not sought by either the workman or the Management and the Government had taken a prima facie decision that there had been an offence committed. Most importantly, the Government, at this stage when it proposes to take the action, does not itself have the power to impose any penalty, it is always left in the hands of the judiciary. In this case, it shall be the Judicial Magistrate who shall decide

whether it is a fit case to take cognizance of the case and issue summons and if it chooses to issue summons to decide whether the offence has been committed against the persons who are accused.

Durgapur Casual Workers Union

v.

Food Corporation of India

2015(1) SCT 186(SC)

Hon'ble Judge(s): Justice Sudhansu Jyoti Mukhopadhaya, Justice Prafulla Chandra Pant

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Facts: The Corporation had long back setup a rice mill in the name and style of Modern Rice Mill at Durgapur and it had been handed to successive contractors for running the same. The concerned workmen, forty nine in numbers, had been working as contract labours under the contractors in the rice mill. The last contractor was M/s Civicon. The contract system was terminated and the rice mill was closed in the year 1990-1991. Thereafter, the concerned workmen were directly employed by the Corporation in June, 1991 as casual employees on daily wage basis in the Food Storage Depot at Durgapur for performing the jobs of sweeping godown and wagon floors, putting covers on infested stocks for fumigation purpose, cutting grass, collections and bagging of spillage from godowns/wagons etc. There being an industrial dispute between the workmen the Corporation regarding the regularisation of services of the workmen, the Government of India, Ministry of Labour referred the following dispute to the Tribunal for adjudication.

The Tribunal on appreciation of evidence brought on record by the Management of the Corporation and the workmen and hearing the parties answered the reference in favour of the workmen by Award dated 9th June, 1999 and held that continued casualization of service of workmen amounts to unfair labour practice as defined in item no.10 in part I of the Fifth Schedule of the Act and that social justice principle demands order of absorption and thereby directed the Management to absorb 49 casual workmen as per list.

SESSION VII

PROBLEMS FACED IN EXECUTION OF ORDER AND AWARDS BY LABOUR COURT AND INDUSTRIAL TRIBUNAL

One important change brought in September 2010 to the industrial Disputes Act 1947 is the change made in the Section 11– Enforcing the Awards of Labour Court.

In section 11 of the principal Act, after sub-section eight, the following sub-sections is inserted, namely:

"(9) Every award made, order issued or settlement arrived at by or before Labour Court or Tribunal or National Tribunal shall be executed in accordance with the procedure laid down for execution of orders and decree of a Civil Court under order 21 of the Code of Civil Procedure, 1908

(10) The Labour Court or Tribunal or National Tribunal, as the case may be, shall transmit any award, order or settlement to a Civil Court having jurisdiction and such Civil Court shall execute the award, order or settlement as if it were a decree passed by it."

Relevant Cases:

Kishorbhai Dahyabhai Solanki

v.

Nagjibhai Muljibhai Patel

(2002) IILLJ 1034 Guj

Hon'ble Judge: Jayant Patel, J

Facts: The present case involves multiple petitions, in all these petitions, the Labour Courts have passed the awards under the provisions of I.D. Act, and it is the contention of the petitioners that the awards are duly published as per the provisions of the I.D. Act and they have come into operation. It is also the contention of the petitioners that the respondent

employers are aware about the awards passed by the Labour Courts and their publication. However, inspite of the same, the awards are not implemented inasmuch as, neither the workmen are reinstated by the employer nor any amount of back wages is paid to them. Under the circumstances, all these petitioners have approached this Court by preferring these contempt petitions under the Contempt Act so as to initiate the proceedings under the Contempt Act and to suitably punish them in accordance with law.

At the stage of preliminary hearing, all the learned counsel for the petitioners were called to address on the point as to why this Court should relegate the petitioners to take the recourse including that of execution of award made under the provisions of I.D. Act itself.

The other reason for examining this issue at the preliminary hearing was that if the powers of this Court under the Contempt Act are used as an executing Court, then, in those circumstances, this Court would be required to initiate proceedings under the Contempt Act, even though, normal procedure or regular procedure for execution of decree are available under the CPC. Therefore, keeping in mind the aforesaid aspects, we are inclined to examine the wider question on the point that when the I.D. Act itself provides the remedy for execution of the award, this Court should normally not initiate the proceedings under the Contempt Act in sound exercise of its judicial discretion.

Issues: Whether filing of petition under Contempt of Courts Act, 1971, this Court directly is the only remedy for the purpose of ensuring that the awards or the other orders passed by the Labour Courts or the Industrial Tribunal, as the case may be, are implemented? Or Are there provisions made under the Industrial Disputes Act, 1947 for ensuring the execution of awards or orders made by the Labour Courts or Industrial Tribunal?

Held: The Hon'ble Court referred Section 10 of the Contempt Act reads as under:

"10. Power of High Court to punish contempt's of subordinate Courts:

> *Every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of Courts subordinate to it as it has and exercises in respect of contempts of itself.*

Provided that no High Court shall take cognizance of a contempt alleged to have been committed in respect of a Court subordinate to it where such contempt is an offence punishable under the Indian Penal Code."

Court also referred to the provisions of Article 215 of the Constitution which reads as under:

"Article 215: Every High Court shall be a Court of record and shall have all the powers of such a Court including the power to punish for contempt of itself."

Therefore, the powers to punish for the contempt are conferred upon the High Court by the Constitution. Therefore, the Contempt Act is to be read and interpreted accordingly. On true construction of Section 10 of the Contempt Act, it transpires that by using the language in Section that 'every High Court shall have and exercise the same jurisdiction' is meant by the legislature to make a declaration of power of the High Court, which is, even otherwise, conferred by the Constitution and the words shall exercise the same jurisdiction cannot be read so as to give a mandate by the legislature to the High Court to exercise the jurisdiction in all cases.

"The Apex Court further observed that "if right is created to the party who moves or draws the attention of the Court, the Court itself decides not to initiate the proceedings for contempt or refuse to initiate the proceedings for contempt, there is no right conferred even to such a party for preferring appeal". Therefore, it cannot be said at all that it is mandatory for the High Court to exercise powers to initiate proceedings under the Contempt Act, but once the contempt or breach of the order of the Court subordinate to it is brought to the notice by moving appropriate application, it is for the High Court to exercise its discretion to decide whether or not to initiate the proceedings for contempt.

The Court further concluded that under I.D. Act itself there is inbuilt mechanism provided for the purpose of enforcement and execution of awards passed by the Labour Courts and the Industrial Tribunals and the award passed by the Labour Court is more or less at par with the decrees of the Civil Court but the only distinction is that the monetary benefits of

the award or the settlement is only to be recovered under Land Revenue Code whereas in the decree of Civil Court the other modes are also permissible. Further, non-compliance of award would invite criminal prosecution. However, providing for the recovery under the Land Revenue Code is made a vigorous mode of recovery and therefore it is clear that in the Act itself sufficient and enough measures have been provided for execution of award.

It is clear that the power of the Contempt Act should not be considered as that of executing Court nor the Court should normally not exercise the power when the party to the award or decree has alternative remedy also for the purpose of implementing or executing the decree or award.

Thus, the Court dismissed the petitions by stating that, when the Act itself in the present case I.D. Act provides sufficient and effective measures for execution of the award, normally this Court relegate the party concerned who are petitioners in the present case to resort to such remedies provided under the Act for implementation and execution of the award.

S.Gunasekaran

v.

The Government of Tamil Nadu

And,

R. Chandaran

v.

The Presiding Officer, Labour Court and The Management of Lower Kothagiri Industrial Cooperative Tea Factory

MANU/TN/2250/2011

Hon'ble Judge: K. Chandru, J.

Facts: In the first writ petition, the first Petitioner is the workmen, who was an employee of Tamil Nadu Civil Service Corporation and covered by the Award in I.D. No. 359 of 1979

passed by the Labour Court, which was upheld by this Court in the writ petition as well as in a writ appeal. He sought for the execution of the Award by filing an application under Section 11B of the Industrial Disputes Act on 08.12.2009. Since the Labour Court do not have any infrastructure pursuant to the State amendment to the Industrial Disputes Act, the second Petitioner Association took up the cause and filed the first writ petition seeking for a direction to first and second Respondents to create sufficient infrastructure for the effective implementation of the Award or order passed by the Labour Court and Industrial Tribunal as per Section 11B of the I.D. Act

In the second writ Petition the petitioner is a workman covered by I.D. No. 484 of 1999, dated 8.7.2002, wherein and by which he was given the relief of reinstatement with service continuity but without backwages. Since the said award was not implemented, he filed a petition under Section 33C(2) of the ID Act being before the Labour Court, Coimbatore. In that computation petition, the Labour Court had computed a sum of Rs. 83,329/- as due and payable to the Petitioner. It was at that stage, the Tamil Nadu Act 45 of 2008 was enacted, wherein the Labour Courts were specifically empowered with power to execute its own award as a decree of the civil court by introducing Section 11B of the ID Act. The said amendment was brought into force with effect from 07.11.2008. Therefore, the Petitioner filed an execution petition before the Labour Court. The Presiding Officer of the Labour Court had returned the papers by stating that there were no Government orders issued granting the power to the Labour Court.

The workmen have been given power to approach the Labour Courts directly in case of his non employment. The Labour Court after the adjudication of a dispute passes an Award. Such an Award is published in terms of Section 17 of the ID Act. Once an Award is published, it becomes operational within 30 days from the date of publication of the Award. In case, if the employer did not implement the award which is favourable to the workman, two courses are open to the workman. One is to prosecute the employer under Section 29 of the ID Act or in alternative seek for the computation of monetary benefits arising out of such award in terms of Section 33C(2) of the I.D. Act. If the award itself quantifies the monetary benefits or after computation of monetary benefits of Award by the Labour Court

under Section 33C(2) of the ID Act, if amounts are not paid by an employer, Section 33C(1) of the ID Act provides for recovery of money dues by an employer on a certificate issued by the appropriate Government to collect or recover amounts as if it is an arrear of land revenue.

Issues: Whether there are any distinction between the Central Law and State Law?

Held: The Court held, there is no conflict between the State amendment and the Central amendment made by the Parliament, though they occupy the same subject like the execution of awards of the labour court. But the State amendment also covers wider area of settlements coming within the meaning of Section 2(p) of the ID Act also. There is neither any apparent or real conflict between the two amendments. It must also be noted that both amendments related to procedure for executing Awards, orders or settlements. While the Parliament amendment enabled the jurisdictional civil court to execute such decrees in terms of Order 21 of Code of Civil Procedure, the State Government had given powers only to the Labour Court.

It was further stated that, having introduced the legislation and also brought it into force, it is not open to the State Government to resile from their obligation on account of the funding that was required. The earlier cumbersome procedure of moving the Government for a certificate under Section 33C(1) is not only time consuming, but the revenue recovery machinery provided therein is a colonial process and proved to be most ineffective. In fact, neither the State amendment nor the Central amendment had taken away the jurisdiction of the State Government to issue a certificate under Section 33C(1) for recovering the amounts as arrears of land revenue. The State Government was unnecessarily saddled with the long cumbersome procedure for issuing certificates and placing the revenue authorities to collect the amounts from the employer. It is an unnecessary diversion and an extra load on the revenue staff. Therefore, it is in the interest of State Government itself, the Act was amended. Having created the power to the Labour Courts, they should also provide the supporting machinery, lest the workmen will be left high and dry.

In the light of the above, both the writ petitions stand allowed. The first Respondent State was further directed to provide the infrastructure and machineries as requested by the High Court.

Water Meter Reader Association

v.

Respondent: State of Rajasthan and Ors

MANU/RH/0003/2012

Hon'ble Judge: Dr. Justice Vineet Kothari, J.

Facts: This writ petition has been filed by the petitioner- Association seeking implementation of award dated 21.10.1994 passed by learned Labour Court, Jodhpur in Labour Dispute Case No.9/1989 (Mahamantri, Water Meter Reader Association Vs. Chief Engineer, PHED, Jaipur). The learned Tribunal by its award directed grant of pay scale of Meter Reader and Meter Inspector from 1.9.1968 in place of 1.9.1983. Thus, by way of present writ petition, the petitioner- Association seeks implementation of the said award dated 24.10.1994.

Issue: Whether the present writ petition for implementation of award of labour court can be entertained?

Held: The Court stated that by amendment of Section 11 of the Industrial Disputes Act, 1947 providing for procedure and power of Conciliation Officer, Board, Courts and Tribunals by insertion of sub-Section (9) therein by Act No.24 of 2010 w.e.f. 15.09.2010, the award made by the Tribunal is now an executable decree before the civil court in accordance with Order 21 of CPC.

"*11. Procedure and power of conciliation officer, Boards, Courts and Tribunals*

(1) to (8) .....

(9). Every award made, order issued or settlement arrived at by or before Labour Court or Tribunal or National Tribunal shall be executed in accordance with the

procedure laid down for execution of orders and decree of a Civil Court under Order 21 of the Code of Civil Procedure, 1908 (5 of 1908).”

In view of availability of this alternative remedy available to the petitioner to get execution of award before the civil court in accordance with Order 21 of the CPC, this writ petition for implementation of award cannot be entertained. The amendment in law appears to have been made to save higher court to become an executing court for a decree passed by a lower court viz. the Industrial Tribunal.

Consequently, this writ petition is dismissed with liberty to the petitioner to seek execution of the said award/decree before the executing court i.e. Civil Court in accordance with provisions of Order 21 of Civil Procedure Code. Copy of this order be sent to the learned Industrial Tribunal and opposite parties forthwith for information.

SESSION VIII

RECOVERY OF MONEY UNDER ID ACT 1947

Industrial Disputes Act 1947 under Section 33 C deals with the proceeding for recovery of money due to a workman from an employer under a settlement or an award or under the provisions of Chapter VA or VB

The application for recovery of money due may be made by the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs made to the appropriate Government. If the Government is satisfied that the claim in genuine it shall issue a certificate for that amount to the District Collector, who shall recover the amount, as shown in the recovery certificate as an arrear of land revenue.

Every application for recovery shall be made within one year from the date on which the money becomes due to the workman from the employer. However, the appropriate Government may consider the application which was presented even after one year if it is satisfied that the applicant had sufficient reason for not making the application within the period of one year. Even after expiry of one year, such an application can be made and delay can be condoned if the if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

The Court has held that the proceeding under this Section is in the nature of execution proceeding which provides as an additional mean to recover money. The right is an existing right, a right culminating out of an already adjudicated issue, so right of the workmen herein arises when the workmen becomes entitled to receive such an amount.

Further Sec 33C (3) provides for appointment of Labour Commissioner in computation of the amount to be recovered by the labour court if it thinks fit.

Relevant Cases:

Vijaya Bank

v.

Shyamal Kumar Lodh

(2010) 7 SCC 635

Hon'ble Judge(s): G.S. Singhvi, C.K. Prasad, JJ.

Facts: Shyamal Kumar Lodh-respondent herein is an employee of the appellant-Vijaya Bank. It is a Nationalised Bank. The employee filed application before the Labour Court, Dibrugarh constituted by the State Government under Section 7 of the Industrial Disputes Act, 1947 for an award computing his suspension /subsistence allowance under Section 33C(2) of the Act.

It is not in dispute that the appropriate Government in relation to an employee is the Central Government and the employee had filed the application before the Labour Court constituted by the State Government. It is further not in dispute that the Labour Court before whom the employee had filed the application has not been specified by the Central Government. On the application so filed the Labour Court issued notice to the appellant-employer. The appellant appeared before the Labour Court and questioned its jurisdiction to adjudicate the dispute on the ground that the said Court having not been specified by the Central Government under Section 33C(2) of the Industrial Disputes Act, 1947 it had no jurisdiction to entertain the application.

The Labour Court over-ruled that objection and held that its jurisdiction to adjudicate the dispute is not ousted. Employer aggrieved by the aforesaid order preferred writ application. A learned Single Judge of the Gauhati High Court upheld its contention and while doing so observed as follows: *"As the Labour Court at Dibrugarh was not specified by the appropriate Government they have no jurisdiction to issue notice to the Petitioner in both the cases."*

Issue: Whether the Labour court has the jurisdiction in the said matter?

Held: The Court opined:

"In the instant case, the Labour Court at Dibrugarh has not been 'specified' by the Central Government for the said purpose and accordingly, we are unable to agree with the first submission advanced by the learned counsel for the appellant that the Labour Court at Dibrugarh would have jurisdiction to entertain the application filed by the Appellant only on the basis of the provisions under the Act. However, the provisions of the Standing Orders Act appear to indicate that a Labour Court constituted under the 1947 Act, whether by the State Government or Central Government, would have jurisdiction to entertain a claim of subsistence allowance payable to a workman on an application made to such Labour Court by the concerned workman. The provisions of Section 10A(2) of the Standing Orders Act is a special provision incorporated only for adjudicating on claim relating to payment of subsistence allowance. Having regard to the special provision under Section 10A(2) of the Standing Orders Act, we feel that the Labour Court of Dibrugarh, although constituted by the State Government, would have jurisdiction to entertain a claim for subsistence allowance even in respect of employees under a nationalized banks. It is not specified in Section 10A(2) of the Standing Orders Act that the Labour Court constituted under the 1947 Act has to be a Labour Court constituted by an appropriate Government. It is also not stipulated that the appropriate Government has to 'specify' such a Labour Court for entertaining on application under

Section 10A(2) of the Standing Orders Act. The only requirement for assumption of jurisdiction by a Labour Court under Section 10A(2) of the Standing Orders Act is that the Labour Court has to be one, which has been constituted under the 1947 Act and the concerned establishment must be functioning within the local limits of the jurisdiction of such Labour Court.

Having noted the provisions as above, we are of the view that the entertainment of the application by the Labour Court at Dibrugarh was proper in respect of the claim for subsistence allowance put forward by the Appellant, we hold that with regard to the claim for subsistence allowance put forward by the Appellant against the Respondent bank, the Labour Court at Dibrugarh has jurisdiction. We accordingly declare that the Labour Court at Dibrugarh was competent and had jurisdiction to entertain the claim

for subsistence allowance put forward by the Appellant. The impugned decision of the learned Single Judge to the contrary is accordingly interfered with."

Assistant General Manager, Karnataka State Financial Corporation

v.

General Secretary, Mysore Division Industrial Workers General Union and Ors.

2014 II CLR 285

Hon'ble Judge(s): Mr. H.L. Gokhale, Mr. Ranjan Gogoi JJ.

Facts: The short facts leading to the present special leave petition are this wise: The respondent No.1 is a Trade Union registered under the Trade Unions Act, 1926 and was representing the workmen of the industrial concern known as Mysore Panel and Boards Pvt. Ltd. This company closed down its manufacturing activities sometime in January, 2002, leaving some 83 workmen jobless. Consequent upon the closure of the said company, there were various statutory and legal dues of the workmen, and for that purpose they filed Applications under Section 33- C of the Industrial Disputes Act, 1947 as well as under the Payment of Gratuity Act. Those applications were allowed by the concerned authorities. Thus, one Application was allowed by order dated 4.3.2005 for a claim of Rs.4,71,781/-, another Application was allowed by the order dated 30.8.2005 for a claim of Rs.16,66,585/- and the third Application filed under the Payment of Gratuity Act was allowed by order dated 13.9.2005 for a sum of Rs.7,78,696/-, resulting into total dues of Rs.29,17,062/-. Having waited sufficiently, the respondent Trade Union wrote to the Deputy Commissioner of the Mysore District, Mysore by its letter dated 28.8.2008 seeking recovery of these amounts.

The Deputy Commissioner was not quick enough to take necessary steps to sell the assets of the company to realize the amount due to the workmen. However, in the meantime, KSFC sold the hypothecated property for Rs.24 lakhs to a third party. The Trade Union approached the Hon'ble High Court of Karnataka by filing writ petition which was dismissed. The Union filed appeal before the Division Bench. The Division Bench of Hon'ble High Court

of Karnataka allowed the claims of workmen holding that the workmen have preferable claims against claims of KSFC.

KSFC filed appeal before the Hon'ble Supreme Court of India contending that claims of the workmen cannot have preference over the claims of KSFC, since under Sec. 46-B of the State Financial Corporations Act the said act would prevail over all other acts. The Apex Court relying on the words in Sec. 46-B that the provisions of KSFC Act shall be in addition to and not derogatory of any other law for the time being applicable to industrial concern, means Industrial Law has preference to the KSFC Act, because of the words "not derogatory of any other law". Therefore, the Apex Court held that the claims of the workmen under the I.D. Act would prevail over claims of KSFC under the State Financial Corporations Act.

Issue: Whether the claims of workmen have preference over the claims of KSFC?

Held: Hon'ble Supreme Court dismissed the appeal of KSFC and upheld the judgement of the Division Bench of Hon'ble High Court of Karnataka. The sum and substance of the judgement is that if there are any claims of the workmen, the same shall have preference over the claims of KSFC and KSFC cannot appropriate the entire amount of sale proceeds towards its dues.

Arun Engineering Works

v.

Deputy Labour Commissioner

2014(3)KCCR2737

Hon'ble Judge(s): N. Kumar and C.R. Kumaraswamy, JJ.

Facts: The management is a factory registered under the Factories Act engaged in the activity of machining of crank shaft i.e. a job oriented activity. The workmen of the factory were being represented by the Union called "The Arun Group of Industries, Mazdoor Sabha, Belgaum". There was a strike in the factory during the period July 2002 to October 2002.

Wages were not paid. Subsequently, the management was constrained to reduce the manpower through resignation and settlement.

About 286 workmen filed joint application before the Government on 8.3.2003 claiming a total amount of Rs. 88, 89,303.73 as arrears of salary from June 2002 to February 2003 and bonus for the year 2001-2002. A show cause notice was issued to the management by the Government to show cause as to why a recovery certificate for the amount claimed should not be issued under Section 33C (1) of the Act, to which the management strongly contended that the claim under Section 33C (1) is not maintainable since no amount is determined either through settlement or award. Further, they contended that the Government cannot adjudicate disputed questions of fact and create right to the workmen. Whether the workmen were on illegal strike or not was a disputed question of fact and the authority while conducting proceedings under Section 33C (1) of the Act has no power to adjudicate the disputed questions of fact and, therefore, they sought for dismissal of the petition.

However, overruling the said objections an order was passed on 16.6.2003 determining the amount of arrears of Rs. 78, 15,496.23 in respect of 252 workmen who have signed the claim application and directed the Deputy Commissioner to recover the said amount from the management and remit to the office of the second respondent.

Aggrieved by the said order, the management preferred Writ Petitions before the High Court. During the pendency of the proceedings there was a settlement. The said settlement signed between Arun Engineering Works and Arun Group of Industries Mazdoor Sabha and all the workmen who were the parties to the settlement submitted their resignation on 10.9.2004 and they further agreed that neither any complaint nor any demand pertaining to monetary settlement remained pending against the management. The Trade Union and the workmen agreed that they will not raise any legal disputes of any kind about their service conditions in future against the management. They also agreed for disposal of the Writ Petition and undertook to co-operate to complete the legal formalities both in the pending Writ Petitions and in application before the Additional Labour Court. The Writ Petition was disposed on the ground of becoming infructuous, reserving liberty to the workmen who have not received the benefit of the settlement to agitate the matter.

Thereafter the President of the Union filed an application dated 6.11.2007 contending that the Writ Petition filed by the management has been dismissed, so, he sought for re-issue of the recovery certificate after adjusting the amount already paid by virtue of the interim order of the High Court. The authority issued the recovery certificate dated 30.5.2008 to recover Rs. 40, 20,268.75. Aggrieved by the said order, the management preferred a Writ Petition wherein the learned single Judge passed an order that the workmen arrayed as respondents 3 to 254 have not accepted the settlement laid in earlier Writ Petition.

Present case is a Writ Appeal against the order passed by the learned single Judge who has declined to interfere with the order passed by the Government under Section 33C (1) of the Industrial Disputes Act, 1947 on the ground that when the earlier order is not set aside, the management cannot challenge the recovery certificate which was issued after rejecting the settlement pleaded by the management.

Issue: Whether the claim put forth on behalf of the workmen was maintainable under Section 33C (1) of the Act?

Held: The Court opined that Section 33 C is a recovery proceeding and that

> *"if the employer does not pay the money which is due to the workmen which is not in dispute then this provision enables the workmen to approach the appropriate Government and seek for a certificate being issued so that the said amount due could be recovered as land revenue. Therefore, it is in the nature of execution proceeding. Now the condition precedent for invoking this provision by the workmen as is clear from Section 33C (1) is, money should be due to the workmen from the employer under*
>
> *(a) a settlement; or*
>
> *(b) an award; or*
>
> *(c) under the provisions of Chapter V-A or Chapter V-B."*

The Court opined that in the present case the claim does not fall in above mentioned three categories as the amount due is bonus and salary so,

"first an enquiry is to be conducted, the dispute is to be adjudicated and only after an award determining the amount due to the workmen is passed, then if that amount is not paid, Section 33C (1) comes to the rescue of the employee to recover the amount.

Unfortunately, the essence of this provision has not been understood by the Government before issuing a certificate at the earliest point of time. Though this contention is raised in the earlier proceedings, because of the settlement entered into between the parties, the Writ Petition came to be dismissed on the ground of the same having become infructuous. Because the workmen objected to the statement of the management that the matter is settled, liberty is reserved to them to agitate their rights in an appropriate forum. Therefore, the legality of the said order in these circumstances was not gone into. Now that a request is made setting out all the facts for revival of the certificate, again the Government without proper application of mind, without looking into the provisions of Section 33C (1) and without appreciating the contentions of the very application for revival has issued the impugned certificate. The learned single Judge proceeds on the assumption that, as the Writ Petition challenging the earlier certificate is dismissed, they are estopped from challenging the subsequent proceedings. We find it difficult to accept the said approach. Whether the earlier certificate issued by the Government or subsequent certificate issued by the Government, the Government should possess power under Section 33C (1). A mere perusal of the earlier claim petition or the petition filed subsequently for revival, would go to show that there exist a dispute between the parties, the amount due is not paid in the manner known to law and it is only a claim. For a claim, no certificate could have been issued."

The Court summed up the law in relation to Section 33 C (1) as

"in a proceeding under Section 33C (1) a disputed question of fact cannot be gone into by the appropriate Government. The proceedings under Section 33C (1) are in the nature of execution proceedings, providing an additional mode of speedy recovery of money due to a workman from an employer under a settlement or an award or the provisions of Chapter V-A or V-B. The said provision does not vest any power of

adjudication on the appropriate Government. The appropriate Government has a limited right of examining the objection of the management to the claim of the workmen, only to form a prima facie opinion whether the objections of the management is perverse, frivolous or mala fide taken with a view to deprive the workman of the money due to him under an award or a settlement or under the provisions of Chapter-VA or Chapter VB. In the absence of any award or settlement, application of Chapter VA or Chapter VB to the dispute in question, the Government has no power to issue a certificate without adjudicating the claim and ascertaining the amount due."

The Court set aside the order passed by the Judge and the certificate issued. Further, the claim made by the workmen under Section 33C (1) was held to be non maintainable as their representative wasn't clear with respect to the actual number of workmen whose claims were not settled so the contention of management creating doubt in representative character of the body stood right, but the workmen were allowed to approach the Labour Court to settle their claims. Further, it was held that the Government had no jurisdiction to entertain the application and issue a certificate under Section 33C (1). Therefore, the order passed by the learned single Judge was set aside.

Thomas P. K.

v.

Sahithya Pravarthaka Co-Op. Society

ILR2014 (3)Kerala429

Hon'ble Judge(s): Antony Dominic and Alexander Thomas, JJ.

Facts: The 1st appellant and the deceased 2nd appellant retired from the service of the 1st respondent in February and March, 1998 respectively. Thereafter, they filed petition before the Labour Court invoking its powers under Section 33C (2) of the Act and claiming various monetary benefits that were allegedly due to them, from the 1st respondent. The Labour Court partially allowed their claim for annual increments, fixation, earned leave, and DA

arrears. This order was challenged before the learned Single Judge and by the judgement under appeal, the order was set aside.

Issue: Whether an application filed by two retired workmen, under Section 33C (2) of the Industrial Disputes Act is maintainable?

Held: The Court set aside the order of the Single Judge and held that Section 33C was incorporated in the Statute to provide for a forum and speedy remedy to individual workman to recover his dues from the employer, without having to undergo the process of adjudication of dispute as contemplated under Section 10. If such an object is meant to be achieved by Section 33 C (2), there is no reason to understand the term 'workman' occurring in the Section in the restricted sense in which it is understood in the context of Section 2(s) and to deprive retired workman, the benefit of that Section, provided his claim is in relation to a period when he was a workman under the employer against whom claim is made.

Satyanarayana Reddy and Ors

v.

The Presiding Officer, Labour Court, Guntur & Ors

2009(2)ALT 23(SC)

Hon'ble Judge(s): S.B. Sinha and V.S. Sirpurkar, JJ.

Facts: Management of the industrial undertaking declared lay off where for compensation was to be paid. Employees' Union of the industrial undertaking filed a Writ Petition in the High Court questioning a Memo where under lay off compensation was denied to the workmen. Thereafter, Government of Andhra Pradesh issued orders providing for a special compensation package for the employees. The Amount of compensation was to be paid to the workmen only in the event they had not opted for employment with the new owner. As the Voluntary Retirement Scheme did not provide for payment of lay off compensation, workmen filed applications under Section 33C (2), Industrial Disputes Act, 1947 claiming lay off compensation. Labour Court did not entertain the applications holding that the same

were not maintainable. Writ petition was preferred there against which was dismissed by a single judge of the High Court.

Hence, present petition Appellant contended that the existing right of the workmen for obtaining the lay off compensation payable to them under the Industrial Disputes Act, 1947 have nothing to do with the Voluntary Retirement Scheme, and hence, the proceedings under Section 33C(2) was maintainable. Further the Respondents contended that in view of the definition of workman in Section 2(s) the workman having opted for voluntary retirement ceased to be the workman of the State and thus proceedings under Section 33C(2) was not maintainable.

Issue: Whether the workmen continue to be workmen for the purpose of filing an application under Section 33C(2)?

Whether the employees having opted for the Voluntary Retirement Scheme can ask for benefits under a settlement which were overlapping with each other?

Held: The Court held:

> *"In order to remove this repugnancy s. 33C(2) must be so construed as to take within its fold a workman, who was employed during the period in respect of which he claims relief, even though he is no longer employed at the time of the application. In other words the term "workman" as used in s. 33C(2) includes all persons whose claim, requiring computation under this sub-section, is in respect of an existing right arising from his relationship as an industrial workman with his employer. By adopting this construction alone can we advance the remedy and suppress the mischief in accordance with the purpose and object of inserting Section 33C in the Act*."

Therefore, the right of the workman to claim payment of lay off compensation is not denied or disputed. If the said claim has no nexus with the Voluntary Retirement Scheme, in our opinion, in a given case, like the present one, it is possible to hold that a proceeding under Section 33C(2) of the Act would be maintainable.

State Bank of India

v.

Ram Chandra Dubey and Ors.

MANU/SC/0687/2000

Hon'ble Judge(s): S. Rajendra Babu and S.N. Variava, JJ

The Court opined:

"*Whenever a workman is entitled to receive from his employer any money or any benefit which is capable of being computed in terms of money and which he is entitled to receive from his employer and is denied of such benefit can approach Labour Court under Section 33-C(2) of the Act. The benefit sought to be enforced under Section 33-C(2) of the Act is necessarily a pre-existing benefit or one flowing from a pre-existing right. The difference between a pre-existing right or benefit on one hand and the right or benefit, which is considered just and fair on the other hand is vital. The former falls within jurisdiction of Labour Court exercising powers under Section 33-C(2) of the Act while the latter does not. It cannot be spelt out from the award in the present case that such a right or benefit has accrued to the workman as the specific question of the relief granted is confined only to the reinstatement without stating anything more as to the back wages. Hence that relief must be deemed to have been denied, for what is claimed but not granted necessarily gets denied in judicial or quasi-judicial proceeding. Further when a question arises as to the adjudication of a claim for back wages all relevant circumstances which will have to be gone into, are to be considered in a judicious manner. Therefore, the appropriate forum wherein such question of back wages could be decided is only in a proceeding to whom a reference under Section 10 of the Act is made. To state that merely upon reinstatement, a workman would be entitled, under the terms of award, to all his arrears of pay and allowances would be incorrect because several factors will have to be considered, as stated earlier, to find out whether the workman is entitled to back wages at all and to what extent. Therefore, we are of the view that the High Court ought not to have presumed that the award of*

the Labour Court for grant of back wages is implied in the relief of reinstatement or that the award of reinstatement itself conferred right for claim of back wages."

M/S. Colcom Plastic Ltd.

v.

Union of India And Others

(1997)ILLJ1230Del

Hon'ble Judges: D.K. Jain and Y.K. Sabharwal, JJ.

Facts: The Management shifted the premises of the industry and thereafter the workers were notified to report at their specified offices. Due to such transfers, the Union of the workers started a strike outside the premises of the institution on the ground that transfer of establishment is not due to some economic reasons but to disrupt works of Union. Thereafter a meeting was held with the Minister of Labour of Delhi Government which was attended by the representatives of the management, workmen and officers of the Labour Department and the Delhi Government and it was decided that management will transfer the workers to five units but workers were ready to be transferred to only two units. So, many of the workers didn't join the work and were served notices. Meanwhile, the Union sent an application to Assistant Labour Commissioner claiming that there exists an illegal lockout. Simultaneously, Management served another notice stating the workmen absenting themselves for four months must report and state reasons for the same. Thereafter, petitioner- Management wrote to Assistant Labour Commissioner that the workmen had unauthorisedly absented themselves for 4 months and did not pay heed to the advise of the management, Labour Department and the Labour Minister and have voluntarily abandoned their service on their own accord of which the workmen have been duly informed and therefore, their names have been removed from the rolls of the company and intimations have been sent to all the absenting employees and hence no claim under Section 33 C (1) can be made out.

Issue: Whether issuance of recovery certificates under Section 33C (1) vests any right of adjudication to appropriate Government?

Held: The Court opined:

"*the proceedings under Section33C(1) are in the nature of execution proceedings providing an additional mode of speedy recovery of money due to a workman from an employer under a settlement or an award or the provisions of Chapter V-A or Chapter V-B. Section 33C(1) does not vest any power of adjudication on the appropriate Government except to the limited extent of examining the facts to find out whether objections to jurisdiction of the appropriate Government except to the limited extent of examining the facts to find out whether objections to jurisdiction of the appropriate Government have been taken by the employer simply with a view to oust the jurisdiction of the appropriate Government under the said Section and deprive the workman of money due to him. On the interpretation of Section 33C (1) of the Act and scope of power of the appropriate Government under this Section, we summarise our conclusions as follows:-*

(i) Proceedings under Section 33C (1) of the Act are in the nature of execution proceedings.

(ii) The appropriate Government has not been invested with powers of a Labour Court or Industrial Tribunal to hold a formal enquiry.

(iii) In case the management raises bona fide disputes on the right of a workman to claim of money due under a settlement or an award or under the provisions of Chapter V-A or V-B, the appropriate Government has no right of adjudication of such dispute/s.
(iv) In case of bona fide dispute about the right of a workman of the money claimed as due from the management, the workman will have to raise an industrial dispute for reference being made for adjudication by the Labour Court/Industrial Tribunal.

(v) The appropriate Government has, however, a limited right of examining the objection of the management to the claim of the workman, only to form a prima facie

opinion whether the objection of the management is perverse, frivolous or mala fide taken with a view to deprive the workman of the money due to him.

(vi) The appropriate Government is required to afford a reasonable opportunity complying with the principles of natural justice to the management and the workman before taking a decision under Section 33 C (1) and is also required to make a speaking order giving reasons so that the aggrieved party-management or workman may seek judicial review of the decision of the appropriate Government in accordance with law."

Central Bank of India

v.

P. S. Rajagopalan Etc.

AIR1964SC743

Hon'ble Judge(s): J. C. Shah, K.C. Das Gupta, K.N. Wanchoo, N. Rajagopala Ayyangar and P.B. Gajendragadkar, JJ.

Facts: The respondent filed an application that claimed special allowance for operating the adding machines under the Industrial Disputes Act, 1947. The appellant disputed the respondent's claims urging three preliminary objections against the competence of the applications that the respondents could claim only non-monetary benefits under the Sastry Award that were capable of computation and so, Section 33C(2) was inapplicable to their claim. It was also contended that without a reference made by the Central Government, the applications were not maintainable, and it was pleaded that since the applications involved a question of the interpretation of the Sastry Award, they were outside the purview of Section 33C (2). The Central Government Labour Court before which these applications were made by the respondents overruled the preliminary objections raised by the appellant and on the merits, found that the respondents were entitled to claim the special allowance under the relevant clause of the Sastry Award.

Issue: Whether the Labour Court exceeded its jurisdiction?

Held: In the present case in relation to Section 33 C (2) the Court opined that

"16.....The only point which the Labour Court can determine is one relation to the computation of the benefit terms of money. We are not impressed by this argument. In our opinion, on a fair and reasonable construction of sub-s.(2) it is clear that if a workman's right to receive the benefit is disputed, that may have to be determined by the Labour Court. Before proceeding to compute the benefit in terms of money the Labour Court inevitably has to deal with the question as a to whether the workman has a right to receive that benefit. If the said right is to disputed, nothing more needs to be done and the Labour Court can proceed to compute the value of the benefit in terms of money; but if the said right is disputed, the Labour Court must deal with that question and decide whether the workman has the right receive the benefit as alleged by him and it is only if the Labour Court answers this point in favour of the workman that the next question of making the necessary computation can arise. It seems to us that the opening clause of sub-s.(2) does not admit of the construction for which the appellant contends unless we add some words in that clause. The clause "Where any workman is entitled to receive from the employer any benefit" does not mean "where such workman is admittedly, or admitted to be, entitled to receive such benefit". The appellant's construction would necessarily introduce the addition of the words "admittedly, or admitted to be" in that clause, and that clearly is not permissible."

Uttar Pradesh Electric Supply Ltd.

v.

R. K. Shukla

AIR1970SC237

Hon'ble Judge(s): G.K. Mitter and J.C. Shah, JJ.

The Hon'ble Supreme Court noticed the distinction between Sections 33C (1) and 33C (2) and held:

> *"The legislative intention disclosed by Ss 33C (1) and 33C (2) is fairly clear. Under S.33C(1), where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter 5A, the workman himself, or any other person authorized by him in writing in that behalf, may make an application to the appropriate Government to recover the money due to him. Whether the workman, who is entitled to receive from the employer, any money or any benefits which is capable of being computed in terms of money applies in that behalf, the Labour Court may, under S. 33C (2) decide the questions arising as to the amount of money due or as to the amount had which such benefit shall be computed. Section 33C (2) is wider than Section33C (1). Matters which do not fall within the terms of Section 33C(1) may, if the workman is shown to be entitled to receive the benefits, fall within the terms of Section33C(2)."*

M/s. Fabril Gasosa
v.
Labour Commissioner and others

With,

M/s. Agencia E. Sequeira
v.
Labour Commissioner and others

MANU/SC/0212/1997

Hon'ble Judge(s): Dr. A.S. Anand and S.B. Majmudar, JJ.

The Hon'ble Court opined in Para 17:

Section 33C is in the nature of execution proceedings designed to recover the dues to the workmen. Vide Section 33C(1) and (2), the legislature has provided a speedy remedy to the workmen to have the benefits of a settlement or award which are due to them and are capable of being computed in terms of money, be recovered through the proceedings under those sub-sections. The distinction between Sub-section (1) and Sub-section (2) of Section 33C lies mainly in the procedural aspect and not with any substantive rights of workmen as conferred by these two subsections. Sub-section (1) comes into play when on the application of a workman himself or any other person assigned by him in writing in this behalf of his assignee or heirs in case of his death, the appropriate Government is satisfied that the Amounts so claimed are due and payable to that workman. On that satisfaction being arrived at, the Government can initiate action under this subsection for recovery of the amount provided the amount is a determined one and requires no 'adjudication.' The appropriate Government does not have the power to determine the amount due to any workman under Sub-section (1) and that determination can only be done by the Labour Court under Sub-section (2) or in a reference under Section 10(1) of the Act. Even after the determination is made by the Labour Court under Sub-section (2) the amount so determined by the Labour Court, can be recovered through the summary and speedy procedure provided by Sub-section (1). Sub-section (1) does not control or affect the ambit and operation of Sub-section

(2) which is wider in scope than Sub-section (1). Besides the rights conferred under Section 33C(2) exist in addition to any other mode of recovery which the workman has under the law. An analysis of the scheme of Section 33C(1) and 33C(2) shows that the difference between the two subsections is quite obvious. While the former sub-section deals with cases where money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter V-A or V-B, Sub-section (2) deals with cases where a workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money. Thus, where the amount due to the workmen, flowing from the obligations under a settlement, is pre-determined and ascertained or can be arrived at by any arithmetical calculation or simpliciter verification and the only inquiry that is required to be made is whether it is due to the workman or not, recourse to the summary proceedings under-section 33C(1) of the Act is not only appropriate but also desirable to prevent harassment to the workmen. Sub-section (1) of Section 33C entitles the workmen to apply to the appropriate Government for issuance of a certificate of recovery for any money due to them under an award or a settlement or under the provisions of Chapter VA and the Government, if satisfied, that a specific sum is due to the workmen, is obliged to issue a certificate for the recovery of the amount due. After the requisite certificate is issued by the Government to the Collector, the Collector is under a statutory duty to recover the amounts clue under the certificate issued to him. The procedure is aimed at providing a speedy, cheap and summary manner of recovery of the amount due, which the employer has wrongfully withheld. It, therefore, follows that where money due is on the basis of some amount predetermined like the VDA, the rate of which stands determined in terms of the settlement an award or under Chapter V-A or V-B, and the period for which the arrears are claimed is also known the case would be covered by Sub-section (1) as only a calculation of the amount is required to be made.

SESSION IX

LEGAL REPRESENTATION AND LEGAL AID IN LABOUR MATTERS

The subject of appearance of the Advocates as of right before the Labour courts and industrial Tribunal created under the Industrial disputes at 1947 had been a matter of controversy for a long time. The reason being that although the Advocates Act 1961 was enacted, still Sec. 30 of the said Act was ineffective for want of notification by the Central Government, the Central government issued notification dated 9/6/2011 giving effect to Section 30 of the Advocate Act 1961 with effect from 15th of June 2011. The section is reproduced below for reference:

> *"30. Right of Advocate to practice: Subject to the provisions of this Act, every advocate whose name is entered in the [State roll] shall be entitled as of right to practice throughout the territories to which this Act extends,--*
> *(i) In all courts including the Supreme Court;*
> *(ii) Before any tribunal or person legally authorised to take evidence; and*
> *(iii) Before any other authority or person before whom such advocate is by or under any law for the time being in force entitled to practice."*

However, Sec. 36 (4) of the Industrial Disputes Act 1947 provided that the Advocates cannot appear before the authorities under the said Act, without consent of the opposite side and permission of the authority.

This provision in the Industrial Disputes Act debarring the lawyers from appearing before the Labour Court/Industrial Tribunal is unconstitutional being violative of Articles 14 and 19(1)(g) of the Constitution of India. This is because industrial law has become so complex that a layman cannot possibly present his case before a Labour Court or Industrial Tribunal. Hence to debar lawyers will really be denying justice to millions of people.

Relevant Cases:

Hygienic Foods

v.

Jasbir Singh and Ors

MANU/SC/0708/2011

Hon'ble Judge(s): Markandey Katju and Gyan Sudha Misra, JJ.

Facts: The services of workmen-respondents were terminated by their employer- Hygienic Foods who are the appellants in this letters patent appeal. The workmen-respondents raised industrial disputes regarding termination of their services. The dispute was referred to the Labour Court, Ludhiana, in the shape of various references. During the pendency of the proceedings when most of the references were fixed for arguments, an application was filed on 18.12.2006 on behalf of the workmen-respondents before the Labour Court raising objection to the appearance of Mr. B.P. Bansal and his associates for the Hygienic Foods (P-1). The principal plea raised by placing reliance on Section 36(4) of the ID Act was that the workmen- respondents did not consent to the appearance of Mr. B.P. Bansal and his associates for Hygienic Foods being advocates and that they could not be regarded as 'officer' of an association of employer or federation of such an association of employers within the meaning of Section 36(2)(a) and (b) of the ID Act. The application was contested by the employer Hygienic Foods by filing reply (P-2). The Labour Court held that Sarvshri B.P. Bansal, Manoj Bansal and their associates have been representing the Hygienic Foods in those industrial disputes since the year 2000/2001 and most of the references were then fixed for arguments, therefore, there was implied consent by the workmen- respondents for their appearance to represent Hygienic Foods and the same could not be withdrawn.

Feeling aggrieved, the workman challenged the order of the Labour Court, Ludhiana. The learned Single Judge held the order passed by the Labour Court was not sustainable because the requirement of Section 36(4) of the ID Act is that appearance of a practising advocate for the management could be possible only if (a) the workman has accorded express consent and (b) the leave of the Labour Court was granted. Learned Single Judge rejected the contention of the employer- Hygienic Foods. The employer-Hygienic Foods did not feel satisfied with the view taken by the learned Single Judge and preferred LPA. The High

Court held that a lawyer cannot appear before a Labour Court/Industrial Tribunal under the Industrial Disputes Act without the consent of the workman and the leave of the Court in view of Section 36(4) of the Industrial Disputes Act.

Issue: Whether an employer can be validly represented by a practising advocate enrolled under the Advocates Act, 1961, in an industrial dispute by becoming an officer of an association of employers of which such an employer is a member, or a federation of such associations of employer under Section 36 (2) of the Industrial Disputes Act, 1947?

Held: The Hon'ble Supreme Court prima facie, are of the opinion that this provision in the Industrial Disputes Act debarring the lawyers from appearing before the Labour Court/Industrial Tribunal is unconstitutional being violative of Articles 14 and 19(1) (g) of the Constitution of India. This is because industrial law has become so complex that a layman cannot possibly present his case properly before the Labour Court/Industrial Tribunal. Hence to debar lawyers will really be denying justice to millions of people. The matter is yet to receive a final verdict from the Hon'ble Supreme Court.

R.Rajamani

v.

The PO, II Addl. Labour Court and P.V.Sundaram (Director), Addisons Paints and Chemical Limited

(2007) II LLJ 704

Hon'ble Judge(s): Ajit Prakash Shah, C.J. and K. Chandru, J.

Facts: The appellant has raised a dispute under Section 2A(ii) of the I.D. Act in I.D. No. 256/2002 for reinstatement with backwages, continuity of service and all other attendant benefits as against the management of the 2nd respondent-Company. The appellant has also filed Complaint No. 4/2002 as against Mr. R. Viswanathan, (IRO of the respondent-company) under Section 33(a) of the I.D.Act and I.A. No. 88/2004 is filed to implead Mr. P.V. Sundaram, Director to the Complaint No. 4/2002 as a respondent in the place of deceased R. Viswanathan. In all the above three proceedings, on behalf of the respondent

Mr. R. Ganesan, Company Secretary of the respondent has authorised Mr. N.Balasubramanian, a practising advocate and a member of the Managing Committee of the Employers' Association, namely, All India Manufacturers Organisation to represent the respondent.

The appellant-workman objected to the appearance of Mr. N. Balasubramanian admittedly a qualified advocate, on the ground that he is a legal practitioner and consequently, not entitled to represent the respondent-company in view of the provisions of Section 36(2) of the I.D. Act. The appellant has not disputed the position that Mr.N. Balasubramanian is a member of the Managing Committee of an Employer's Association i.e. All India Manufacturers Organisation and that he intents to represent the respondent-company in that capacity. However, according to the appellant Mr.N. Balasubramanian is not on the pay-roll of any of the member establishment and not in the respondent-company either, hence, he is disentitled to appear in his capacity as a member of the Employers' Association. the Labour Court has upheld the right of Mr. N. Balasubramanian to represent the respondent-company under Section 36(2) of the I.D. Act.

Aggrieved by the order of the Labour Court, the appellant filed the present writ petition questioning the entitlement of Mr.N. Balasubramanian to appear on behalf of the respondent-company.

Issue: Whether in an industrial adjudication, an employer can be represented by an office bearer of an association of employers when such office bearer is also a legal practitioner?

Held: The Court held Section 2(a) of Section 36 of the Act provided that an officer of association of employers of which he was member is entitled to represent employer. Object of Section 36 of Act was to enable employee or employer to be represented by persons who could effectively espouse their cause, barring legal practitioners in conciliation proceedings or proceedings before Court. However, meaning of word 'officer' in Sub-Section 2 could be taken to carry same meaning for purpose of representation, as substituted in Section 36(1) of Act. Hence, practising advocate and member of Managing Committee of Employers' Association was entitled to represent Respondent in his capacity as member of Committee.

Vadodara Mahanagar Seva Sadan

v.

Maha Gujarat Industrial Employees Union and Ors

MANU/GJ/0383/2015

Hon'ble Judge: N.V. Anjaria, J.

Facts: Respondent No.1 union has invoked the jurisdiction of the Industrial Tribunal by way of Reference, raising industrial dispute for treating the workers working in the Suez Treatment Plant as permanent employees and to accord to them from the date of their entry, salary and other allowances at par with permanent employees. In the said reference proceedings, the Statement of Claim came to be filed by the second party on 06.01.2014. Thereafter, on 21.01.2014, on behalf of petitioner-first party No.1, an advocate presented his Vakalatnama at Exh.12. The same was objected to by the union representative appearing before the Industrial Tribunal on behalf of the workers. It appears that advocate presented his Vakalatnama, however any application seeking permission in that regard was not filed. On behalf of the union, written objections were filed before the Tribunal submitting inter alia that consent of the second party was not obtained for seeking representation through advocate by the first party-the petitioner herein, that no consent was given.

The petitioner i.e. Vadodara Mahanagar Seva Sadan has filed this petition under Articles 226 and 227 of the Constitution, to challenge order dated 23rd December, 2014 passed by Industrial Tribunal No.1, Vadodara, allowing application of respondent No.1 Union. By the said application, the Union objected filing of Vakalatnama of Advocates on behalf of first party No.1-the petitioner as well as on behalf of first party Nos. 2 and 3-respondent Nos. 2 and 3 herein.

The petitioner has prayed to set aside the said order dated 23rd December, 2014, seeking a further direction that the petitioner may be permitted to engage an advocate to represent its case before the Industrial Tribunal.

Issue: Whether the petitioner can be permitted to engage an advocate to present its case before Industrial Tribunal?

Held: The Court opined*:*

> *The legal statement that emerges is simple of one side in the proceedings before the Labour Court or Industrial Tribunal has the benefit of being rep- resentated through a legal practitioner, an advocate, the other side cannot be refused the service of enga- ging a lawyer. The shackles of phraseology of Section 36(4) have been relaxed by the courts in such situ- ation. In the facts and circumstances of given case, individually considered, the provision of Section 36(4) is purposively viewed and applied so as to per- mit the other side to engage a lawyer irrespective of consent of other party, which while not giving consent to rival side to be represented by legal practitioner-lawyer, rides the advantage of having a lawyer's service for itself. In such cases or in certain other cases where peculiar facts and complexities of the case may require, the need for consent by the other side may be rightly discarded, and the Court would be justified in exercising the discretion to allow the other party to be represented by advocate-legal practitioner. The underlying rationale for detouring the language of Section 36(4) is the higher principle of equality and fairness enshrined in and emanating from the mandate of Article 14, which would outweigh and clinch. As already noted, this is not the case here. The office bearer of respondent-union is not a legal practitioner. Section 36(4) would have a full play.*

The crux of the matter is that representative of respondent-Union appearing in the proceedings of Reference before the Industrial Tribunal is not a legal practitioner. He is an office bearer of the Union and in that capacity represents the Union to conduct the case before the Tribunal. When he is not shown to be an advocate or even holding a degree in law, the petitioner- Vadodara Mahanagar Seva Sadan cannot claim as of right to engage an advocate in the proceedings.

The reasoning supplied and view taken by the Industrial Tribunal, Vadodara in its impugned order dated 23rd December, 2012 allowing the application of the second party Union and consequently not permitting the first party employer to be represented by an advocate, could not be said to be booking any error, much less an error of law or an error of jurisdictional exercise.

Rajya General Kamdar Mandal and Ors

v.

Member or Her successor in Office AS and Ors

MANU/GJ/0188/2015

Hon'ble Judge: N.V. Anjaria, J.

The High Court in the present case opined:

"The question of giving permission to other party to engage advocate would have to be addressed on the con- sideration and on the principles of equality and the guiding principles would be the reasonableness, fair- ness and non-arbitrariness in meeting out treatment to a party vis-a-vis other party in the matter of engaging advocate. The scales in the contest would have to be balanced placing both the sides at par in terms of availing them the opportunity to be represented by a legal practitioner. This is necessary to put equal weight to balance the scales of the parties who would be contesting before the Labour Court or Industrial Tribunal. Where one party has the lawyer engaged, deni- al to the other party for similar services of engaging his advocate would be irrational and arbitrary."

"If the side of the worker or the union is represented through office bearer who is an advocate a legal practitioner but appearing in capacity of an office bearer or the employer is being represented by its Manager who is having a qualified law degree, then in either case it would be only reasonable to allow the request of the other party to engage an advocate. The word "legal practitioner" appears as a common connotation and if one party is taking services of a legal practitioner in that sense, the other party has to be allowed to en- gage."

South Arcot Vallalar District Mazdoor Union, rep. by its General Secretary, N. Rajendiran

v.

The Presiding Officer, Labor Court, Parry's Confectionary Limited, rep. by its General Manager and Lotte India Corporation Limited

2011(129)FLR995

Hon'ble Judge: K. Chandru, J.

Facts: An industrial dispute was raised by the petitioner which ultimately was referred for adjudication by the first respondent Labour Court by Government Order. The petitioner Union filed a claim statement, dated 29.8.2005. On behalf of the respondents, M/s. T.S. Gopalan & Co. had filed vakalath. As soon as vakalath was filed to appear on behalf of the respondents by a legal practitioner, the petitioner had filed an objection memo, dated 29.8.2005 asking the Labour Court to reject the valalath on the ground that they did not give consent for filing vakalath and permitting the respondents to be represented by the legal counsel. For the said memo, the respondents filed an objection statement stating that vakalath was filed for respondents. The Labour Court had rejected the objection. It held that Mr Gopalan was entitled to represent.

Issue: Whether a belated plea by the employee objecting the appointment of legal practitioner by the management should be allowed?

Held: The Madras High Court held that management was entitled to engage a legal practitioner in an industrial dispute raised by an employee. A belated plea of the employee objecting to the said appointment could not be allowed to be raised.

Further, Mr Justice K. Chandru, who heard the petition, stated:

> *"It was rather unfortunate that the dispute was not allowed to be completed on technical question as to who should represent the management. According to petitioner-union, the order of the Labour Court was illegal, and that Mr Gopalan,*

being a legal practitioner, could not be said to be an officer of the federation of associations of employers to which the Association referred to was affiliated.

Even in respect of Section 36(2)(c) of the Industrial Disputes Act, a legal practitioner, who was not an employee of the employer, could not be an officer. Therefore, the order was illegal, the petitioner submitted."

This court was not inclined to entertain the writ petition against order of the Labour Court on an issue which was not even directly connected with the dispute raised by workmen, the Judge ruled. Secondly, when Mr Gopalan had filed vakalath, the petitioner objected to his appearance as a lawyer. Thereafter, when a memo was filed, an objection was raised long thereafter, and it was not conducive for smooth conducting of dispute. Hence, the judge ruled there was no reason to disagree with a view taken by this court. Hence, writ petition stood dismissed.

Management of Muttrapore Tea Estate

v.

Presiding Officer, Labour Court and Ors

(2005) 1 LLJ 660

Hon'ble Judge: P.G. Agarwal, J.

Facts: The writ petitioner-management of Muttrapore Tea Estate is engaged in the business of manufacturing of tea having tea estate in the District of Sibsagar. An industrial dispute arose between the workmen of the said tea estate and the management whereupon a reference being Reference No. 5 of 1985 was made before the Labour Court of Dibrugarh by the appropriate Government. The petitioner was represented by an advocate before the Labour Court and the same was objected to by the Assam Chah Sramik Sangha. The objection as upheld by the Labour Court rejecting the application filed by the management. The Labour Court, however, allowed the management's prayer to the extent that one of its lawyers may remain present as amicus curiae.

The case of the petitioner is that the Industrial Law is a complicated branch of law and only persons having knowledge of Labour Laws are in a position to tackle the legal intricacies of the labour disputes. The petitioner further contends that Section 36(4) of the Act confers unrestricted and unfettered power on a litigating party in a proceeding to withhold his consent in the matter and allowing the other party to be represented by a legal practitioner and the court has no say in the matter and thus, the above provision abridges the power of the court.

Issue: Whether the denial of legal representation by one party to another in an Industrial Dispute would tantamount to denial of reasonable opportunity to represent their cases before the Tribunal and the same would amount to injustice to the litigating parties?

Held: The Court held that the law has recognized the unequal strength of the Parties in adjudication proceedings related to an Industrial Dispute The intention of the Legislation in question is to discourage the representation by legal practitioners and to dispose of the cases expeditiously Therefore, as the language of Section 36 is unambiguous in its meaning and effect, the Court cannot interpret it differently to invoke the plea of injustice Therefore, the said provisions cannot be held to be unconstitutional.

Further Court stated that provisions of Section 36(4) of the Act are not violative of Article 14 of the Constitution of India or the principles of natural justice and hence, no interference is called for in the impugned order.

Schneider Electric India Pvt. Ltd.

v.

Kailashben R. Valand

MANU/GJ/1268/2013

Hon'ble Judge: Paresh Upadhyay, J.

Facts: A Reference of industrial dispute is pending for adjudication before the Labour Court, Vadodara. Merits of the said Reference are not relevant for the purpose of these petitions. During pendency of the said Reference, two workmen - the present respondents,

filed Complaint Applications under Sec. 33A of the Industrial Disputes Act, 1947, agitating about their discontinuance of employment.

In the said Complaint Applications, reply was filed on behalf of the employer on 27-11-2012. During the course of hearing of the said applications, an objection was raised on behalf of the workmen that, the employer be not permitted to represent its case through an Advocate, since the concerned workmen have refused to give consent, in that regard.

It was the case of the employer before the Labour Court that, the workmen are represented through a very Senior Advocate like Mr. M.S. Mansuri, who is also a regular practitioner before the High Court of Gujarat, and therefore the employer be also permitted to represent its case through a legal practitioner. It is the say of the learned Advocate for the workmen that, the workmen have refused to give consent. Under these circumstances, considering the provision of Sec. 36(4) of the Industrial Disputes Act, 1947, the Labour Court has passed the impugned order, refusing leave to the employer to represent its case through a legal practitioner.

Held: The Court held:

> *"It is not that, occasionally services are availed of legal practitioners by the Unions. It is the legal practitioners themselves, who also run Unions. At the time of independence of our Nation in the year 1947, the foremost consideration of our law making elders was the concern for the workmen, which was a suppressed class, which was required to be protected against exploitation by the employers in legal proceedings, since in the circumstances then prevailing, it was not envisaged that Union activity would one day become a parallel profession for practising lawyers. Under these circumstances, in my view, it is the duty of the Court of Law to have purposive reading and application of the provisions of law. Further, even the concept of the reading down of rule has also to be kept in view. True it is, that a workman needs to be protected against exploitation by employers in the legal proceedings, but at the same time, it is also the need of the time to ascertain that it does not result into reverse exploitation of an employer. What was envisaged by this provision, was not giving an upper hand to a workman, what was*

assured was, that the workman was to be protected against the upper hand of the employer in judicial proceedings. The complexity in Labour Legislation, and the outcome of a long drawn labour disputes, sometime results in enormous financial liability of the employer, which entitles the employer to have at least equal opportunity before the Labour Courts to put its case.

Considering the totality of the facts and circumstances, this Court finds that, in the present case, refusal of leave by the Labour Court to the employer to avail services of an Advocate, has resulted in denial of reasonable and equal opportunity to him to defend his case, as compared to the one, which the contesting party of that very litigation, is ceased of. Under these circumstances, injustice meted out to the petitioner-employer needs to be undone, and he needs to be protected, to the extent that, he also gets equal opportunity to put his case before the Labour Court."

SESSION X

CONCERNS OF MANAGEMENT: EMPLOYER'S RIGHTS

PROTECTING EMPLOYERS AGAINST WORKERS AND TRADE UNIONS

NEW BILL ON INDUSTRIAL RELATIONS

By: Sharit K Bhowmik

As part of its attempt to improve growth, the government has put forth the Labour Code on Industrial Relations Bill, which amalgamates the provisions of the Industrial Disputes Act and the Trade Union Act. In spite of some positive features, the bill's aversion to the rights of workers and trade unions is quite apparent. For instance, penalties are imposed on individual workers for illegal strikes, but for illegal lockouts, the fine is borne by a collective entity; this is but one of many unequal provisions.

Soon after the victory of the National Democratic Alliance (NDA) in the 2014 elections, there was euphoria in industry. After coming to power, the Prime Minister repeated in many forums that economic growth would be the main objective. This would boost industry and commerce, which, in turn, would increase employment. Labour would get the spillover benefits of high growth. At the same time, the government stressed that there were too many laws regulating work (read, granting protection to labour) and that they needed to be changed. Rajasthan, led by Chief Minister Vasundhara Raje Scindia, took the lead by announcing that laws relating to labour protection and firing of workers had to become more liberal to generate more employment. The state legislative assembly resolved in July 2014 that laws such as the Factories Act, Industrial Disputes Act (ID Act), and Contract Labour (Regulation and Abolition) Act should be amended to release employers from their stranglehold and increase investment in industry, creating more jobs.

The argument that removing legal protection for labour and allowing industries to shut down at will, will increase employment is not new or even original. The World Bank's *World Development Report* for 1995, noted,

In many Latin American, South Asian and Middle Eastern countries, labour laws establish onerous job security regulations, rendering hiring decisions practically irreversible; and the system of worker representation and dispute resolution is often subject to unpredictable government decision-making, adding uncertainty to firms' estimate of future labour costs (p 34).

It explained that laws providing too much protection would discourage foreign investment because even though it may be easier to employ comparatively low-cost labour, retrenching workers would be almost impossible. This appears to be perverted logic. It implies that reducing job security and not regulating wages would lead to an increase in employment and benefit the country. What neither the World Bank nor Indian enthusiasts for an unregulated labour market are unable to explain is why industrialised European countries (Germany, Norway, Sweden, France, for example) have laws for protecting labour that are more stringent and more effective than ours and yet remain high-employment countries. In fact, it can be argued that high growth with equity is possible only under conditions of "decent work" (Heymann and Earle 2010).

Rajasthan has been the first case where a state has successfully reduced job security. This seems to have been a test case because the central government has in the past few months announced a spate of changes affecting labour, which are more or less on the Rajasthan model. Some of the existing laws have been amended or replaced by more "dynamic" ones. The Labour Code on Industrial Relations Bill is the latest proposed by the government. It amalgamates the ID Act and Trade Union Act (TU Act) into a single bill. We examine the main provisions of this bill and explain how it goes against the interests of the working class.

Code on Industrial Relations

The bill deals with the whole gamut of industrial relations. The attempt is "to consolidate and amend the law relating to registration of Trade Unions, conditions of employment, investigation and settlement of disputes," and related matters (quoted from the introduction of the bill). The second chapter deals with bi-partite forums. The bill (Sections 3 and 4) lays down two such forums—the works committee (WC) and the grievance redressal committee (GRC). The former is a part of the ID Act, and the new bill retains the original in form, though not in content. It states that all industries with 100 or more workers must have WCs, which have equal representation for labour and management.

However, differences crop up with the scope of these committees. The ID Act has laid down the functions of WCs in considerable detail. They would deal with specific problems in the workplace, including lighting, hygiene, canteen facilities, annual holidays and so on. It is very clear that WCs cannot discuss issues that are the prerogative of collective bargaining. For example, they cannot discuss issues relating to wages, bonus, industrial disputes and so on. The bill, however, states, "It shall be the duty of the Works Committee to *promote measures for securing and preserving amity and good relations between employer and workers"* (emphasis added) (Section 3, Subsection 2). The WC has not been given any specific task apart from commenting on matters of common interest and resolving differences of opinion. If the main purpose of the WC is to maintain harmony and resolve differences between management and labour, it is likely that trade unions may become redundant. We will return to the issue of collective bargaining later.

The other body is the GRC. This committee must be formed in any industry having 20 or more workers. This is a welcome move for industries, especially the smaller ones (the amendments proposed in the Factories Act make it applicable to only units with 20 or more workers if they use power). Moreover, the committee must submit its decision within 45 days of receiving a complaint. This committee also comprises workers and managers with equal representation. On further examining the functioning of this committee, we find that in case a worker is not satisfied by the ruling, he or she can appeal to the employer, who must dispose of the case in a month. This seems very strange, to say the least, because it is

assumed that most grievances will be directed against the employer. The bill proposes that the employer be both defendant and judge. There is no mention of the case being referred to an independent authority.

Registration of Trade Unions

The bill (Chapter 3, Section 5) mentions that a trade union can be registered if its membership includes 10% of the workers in an industry or 100 workers, whichever is less. A minimum of seven workers is required to make an application for registration. Newspaper reports indicate that trade unions are upset over this and have voiced strong opposition to it. However, this section does not depart substantially from the provisions of the TU Act, 1926 and its amendments. A positive aspect is that this section states that in the unorganised sector, where there is no employer–employee relationship or it is not clear, the 10% requirement shall not apply. This would imply that the self-employed, such as street vendors, home-based workers, domestic workers, and ragpickers, can have their own registered trade unions. This is important because many states deny registration of trade unions of these workers because they do not have employers. The bill also states that employers' associations can register as trade unions with the minimum membership of seven.

Section 7 of the bill deals with the administration of trade unions. It says that every state will have a registrar of trade unions who will be the authority for registering unions and monitoring. There will be other officials such as an additional registrar, joint registrar and deputy registrar of trade unions, each of whom will have specific areas of operation and will have the same powers as the registrar in their areas. This means that a trade union cannot appeal against the decision of a deputy registrar to a higher authority in the office of the registrar. The trade union has to appeal to the industrial tribunal, which will be the final judicial authority in such cases. If agreements are not enforced, or there are disputes between trade unions, the final authority is the labour tribunal. Section 21 debars any civil court from enforcing or recovering any damages for breach of agreement. The bill puts a lot of responsibilities on labour tribunals for dispensing justice. Given the present situation where labour tribunals are hopelessly understaffed and suffer from an acute shortage of

judges, one wonders how they will function effectively with more work. The workers, in general, and trade unions, in particular, will be prevented from approaching higher courts of law for solving their grievances.

Section 18 deals with how the general fund of a trade union can be used. This is more or less the same as in the TU Act. An interesting addition is Section 18A, which states that a union may have a separate fund for funding political activities. This is important because most trade unions are linked to political parties and they may indirectly fund them. Allowing trade unions to have a separate fund for these activities will make the funding of political parties transparent. The fund will be separate from the regular fund and contributions should be voluntary. In most countries, trade unions fund political parties that they feel will take forward the issues of labour. In some cases, trade unions have formed political parties. The Labour Party in Britain was formed by the Trades Union Congress, a federation of trade unions. Similarly, other countries in Europe have trade unions that are linked to political parties.

The other aspects of trade unions are the same as in the TU Act (immunity from civil suits and of certain sections of the Indian Penal Code [IPC] dealing with criminal conspiracy).

Standing Orders

Chapter 7 of the bill deals with standing orders. These are important as they provide the guidelines for implementing its provisions. The model orders will be framed by the central government and the states will frame their orders based on the model guidelines. The standing orders cover all aspects of the working life of an industrial worker, but in industries employing 100 or more workers. The employers too must frame standing orders for their units and these will be certified by a certifying officer appointed by the government. The certifying officer will also examine the fairness of the orders before certifying them.

The bill states that when disciplinary proceedings against a worker are initiated by the employer, the worker may be suspended pending an enquiry (Section 45). The enquiry should be completed within 90 days, during which time the worker will be paid half wages.

In case the enquiry takes more than 90 days, the worker will be paid 75% of the wages for the next 90 days, and full wages beyond this period. However, the enquiry must be completed within a year. This is a positive sign as it puts pressure on employers to complete enquiries without delay. Section 64 states that if the tribunal gives a verdict in favour of the worker, he/she will be paid full wages even if the employer prefers to go to a higher court for appeal against the judgement of the tribunal. The worker must be paid full wages during this period of appeal.

Strikes, Lockouts and Penalties

The chapter on strikes and lockouts (Chapter 5) starts with the presumption that they are illegal. The first section in the chapter (Section 71) reads, "Prohibition of Strikes and Lockouts." In both cases, the parties concerned must give the other side six weeks' notice before striking or having a lockout. Moreover, there are conditions that both sides must follow before declaring a strike or lockout, such as there can be no strike or lockout when conciliation proceedings are in progress. Management cannot declare a lockout when a strike is on. Similarly, a strike cannot be declared during a lockout.

Though the bill treats strikes and lockouts on the same plane, they cannot be termed equal because workers suffer in both cases if they are illegal. An illegal strike would mean that the workers involved would lose their wages. In an illegal lockout as well, workers do not get paid. In this case, the employer gets penalised, but that does not help the workers who have been without wages. One of the ways of overcoming this would be to make employers pay full wages to their workers during a period of lockout, or it could be deposited in the state government's treasury, to be released later after the issue is settled. This would certainly dissuade employers from declaring lockouts on whim.

Penalising Illegal Strikes

The other important issue relating to strikes and lockouts is the penalties imposed if they are declared illegal. The ID Act prescribes a punishment of Rs 50 a day for the employer if a lockout is illegal. This paltry sum could encourage employers to declare lockouts to pressure

or blackmail workers and their unions, and plead guilty to an illegal lockout. This bill has increased the penalties, but there is a catch. The penalties for illegal strikes and lockouts are the same, but in both cases the burden is more on the workers. Chapter 12, Section 103 covers penalties. Subsections 14 to 17 deal with penalties for illegal strikes and lockouts. Out of the four subsections, only one covers punishment for lockouts. Subsection 15 notes, "Any employer who commences, continues, or otherwise acts in furtherance of a lock-out that is illegal under this Code, shall be punished with a fine which shall not be less than Rs 20,000 but which may be extended to Rs 50,000 or with imprisonment of one month or both."

The punishment for an illegal strike is the same, but Subsection 14 says that all workers who participate in an illegal strike will get the same punishment. This means that if 500 workers participate in a strike that is declared illegal, each will have to pay the above-mentioned fine and/or face a month's imprisonment whereas only one employer will pay penalties if the lockout is illegal. Besides this, Subsection 16 states that any person instigating or inciting others to take part in strikes will face the same punishment. This has obvious reference to trade union leaders who are not workers in the industry.

Subsection 17 states that the same nature of penalty will be imposed on any person who lends monetary support to an illegal strike or lockout. It is doubtful if monetary support will be provided to a company for helping an illegal lockout, but the same does not apply to workers and illegal strikes. The subsection basically says that when workers are engaged in a strike and their wages are stopped, no one should help them with monetary support. Would this include spouses, kinsfolk and friends who lend monetary support to striking workers? In letter, the subsection includes them as well.

Penalties on Trade Unions

The anti-worker/union approach of the bill can be seen in Section 103, Subsection 7. This relates to non-submission of returns by trade unions. It reads,

If default is made on the part of any registered trade union in giving any notice or sending any statement or other document as required by or under any provisions of this Code, every office-bearer or other person bound by the rules of the trade union to give or send the same, or, if there is no such office bearer or person, every member of the executive of the trade union, shall be punishable with fine which shall be not less than rupees ten thousand but which may be extended to rupees fifty thousand. The continuing default would attract an additional penalty of rupees hundred per day so long as the default continues (emphasis added).

The next Subsection (8) mentions that if any false entry is made in the returns submitted by a trade union or a rule is altered, the person will be fined Rs 5,000. Sub-section 9 states that any person who tries to deceive a member of a trade union by giving them false information or tries to convince workers that an unregistered trade union is indeed registered will be punished by a fine up to Rs 25,000.

The above subsections relate to the section on filing returns of trade unions (section 33). The offences are not very significant, but the penalties imposed are disproportionately high. In all cases where workers are concerned, fines are imposed on individuals (usually more than one), but in the case of lapses by employers, the fine is imposed on the collective entity. For example, Subsection 7 imposes the fine on each member of the executive, whereas in the case of the employer, the fine is imposed on the company and not on each director or other officials. This shows bias.

There are other chapters and sections dealing with retrenchment and lay-offs. But these are not very significant as they are the same as in the existing law, except that the compensation for a worker who is retrenched is 45 days for every year of service. This is higher than the existing rate. The bill has put forth some positive points but the problem is of having these implemented. Will industrial tribunals be able to attend to the needs of workers and employers? The existing labour courts do not have enough judges for the already existing cases. The labour departments in the states function with a depleting staff. The Prime Minister has stressed self-certification by employers. He has repeated at many forums that employers should be trusted to implement laws. Could this mean that workers or their

representatives cannot be trusted? This would be the implication, given the unequal nature of the penalties for the two groups.

In its present form, if the bill does become a law, it will be a major setback for workers. As pointed out, the penalties for trade unions and workers are so high that it would deter them from raising issues against employers or putting up any form of resistance that could be declared illegal. So far, the resistance from trade unions hovers around the registration of trade unions. Newspaper reports say that trade unions have opposed the minimum number for registering a union. This is a very minor fault of the bill. If one looks at the chapter on registration of trade unions, one finds that it is more or less similar to the existing rules and laws. The main problem is with the stiff penalties imposed on trade unions and workers for even seemingly minor violations. Trade unions of all political hues ought to take up the challenge of opposing these undemocratic portions of the bill.

Two Perennial Issues

Recognition of trade unions and right to collective bargaining have been perennial problems of the working-class movement. The right to collective bargaining has not been given under any of the laws relating to labour in India. If the right to freedom of association can be a fundamental right, why can the right to collective bargaining not be the same? Most countries in Europe and Latin America have this right as a means of protecting the interests of labour. In India, we are still lagging behind.

The right to collective bargaining is linked with the recognition of trade unions. The bill makes it compulsory for all trade unions to be registered. At present, most trade unions are not registered under the TU Act because of specific reasons. Though this bill and the TU Act have laws for registration of trade unions, there is no law that provides for the recognition of a trade union as a bargaining agent. The only benefit that registration can provide is that the trade union will be exempted from civil cases and some sections of the Indian Penal Code. The recognition of a trade union as a representative for collective bargaining is left to the employer. The employer has the right to select a trade union as an

agent of collective bargaining. A union representing the majority of workers in a factory may not be recognised by the employer if it is not conducive to the management's policies.

The main problem in recognition arises from the method of selecting the majority union. While most unions support the secret ballot as the main means of recognition, the Congress-supported Indian National Trade Union Congress (INTUC) opposes this. It insists that membership should decide the issue, that is, the union having the highest number of members (through membership receipts) should be the recognised union. The issue remains unresolved because of the INTUC's obstinacy. The government and employers are not too eager to upset the present system as they benefit from it. If this bill was serious about integrating trade unions in the industrial process, it would have shown some more concern about recognition.

Given the anti-labour nature of the bill, it is clear that workers will be at the receiving end if it is passed—unless they show their collective opposition to its harmful sections.

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SESSION XI

PROBLEMS FACED BY LABOUR COURTS & INDUSTRIAL TRIBUNALS

D. K. AGARWAL

PROBLEMS OF DELAY IN LABOUR JUDICIARY : A CASE STUDY

The author argues, with the help of statistics, that delay in the labour judiciary in India is proverbial, and the delay is a result of three factors : procedural, human, and administrative. To avoid delay, he pleads for the revival of the Labour Appellate Tribunal, and for manning the Industrial Tribunals with personnel trained in labour judiciary.

EVOLUTION OF LABOUR JUDICIARY

SALMOND has said that "the administration of justice is the modern and civilised substitute for the primitive practices of private vengeance and violent self-help."[1] In the beginning man redressed his wrongs by his own hands or with the help of his kinsmen, "but at the present day he is defended by the sword of State."[2] The evolution and growth of labour judiciary in India is an eloquent testimony to this statement.

The "sword of State" had first emerged in industrial relations through an Act known as the Employers' and Workmen's (Disputes) Act, 1860, which provided for summary disposal of disputes relating to wages by Magistrates. But the judicial processes in the present form were imported into industrial relations in 1938 when the Government of Bombay set up an Industrial Court under the provisions of the Bombay Industrial Disputes Act, 1938. This measure was adopted on all-India level by Rule 81-A of the Defence of India Rules during the Second World War, and was retained in the Industrial Disputes Act, 1947, and other similar Acts passed by State legislatures. The subsequent amendments to the Industrial Disputes Act, 1947, only

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refined and made progressively effective the machinery provided by the Act of 1947.

The courts falling within the description of labour judiciary are of varied character. Besides the courts that were established by the Workmen's Compensation Act, 1923, and the Payment of Wages Act, 1936, the courts established under other labour legislation such as the Minimum Wages Act, the Employees State Insurance Act, and various Shops and Establishments Acts also influence and affect (through the cases of individuals) industrial relations and are as much part of the fabric of labour judiciary as are the Industrial Tribunals and the Labour Courts. Therefore, it may not be wholly accurate to limit the concept of labour judiciary and that of delay only to the machinery established by the Industrial Disputes Act. However, for want of space, the question of delay is being discussed here with reference to Industrial Tribunals alone. The reference to the Act and rules is to the Industrial Disputes Act, 1947 (Central) and the Industrial Disputes (Central) Rules respectively.

CONTROL BY SUPERIOR COURTS

Industrial courts have grown to be part of the judicial pyramid in India. At the State level, they fall within the writ jurisdiction of the High Court under Article 226 of the Constitution of India. Under Article 136 of the Constitution, decisions of the Industrial Tribunals are subject to the Appellate Jurisdiction of the Supreme Court. The problem of delay in labour judiciary, therefore, may not be appreciated in its proper perspective without taking into account the powers of these courts to interfere with the decisions of the Industrial Tribunals.

THE PROCEDURES ADOPTED BY INDUSTRIAL TRIBUNALS

Although the Code of Civil Procedure, 1908, in terms does not apply to the Industrial Tribunals, the rules of procedure prescribed for the Industrial Tribunals by the Act of 1947 and the rules draw heavily upon the provisions of the Code. The Act confers upon the Industrial Tribunals the powers of civil courts in respect of enforcement of attendance and examination of witnesses, summoning of documents, issuance of commissions for examination of witnesses, etc.[3] The power to

appoint assessors and commissioners has also been conferred.[4] As regards pleadings, though the rules briefly require the parties to file their statements,[5] the personnel of the Industrial Tribunals and Labour Courts, coming as they do normally from civil judiciary, import with them the paraphernalia of the civil procedure in this respect as well. Both the Act and the rules neither provide for the framing of issues nor speak about the interim decision of the preliminary points raised by either party, but in the course of trial both these processes are freely adopted.

HOW MUCH TIME SHOULD A CASE TAKE?

The Law Commission of India has said that delays are proverbial and, perhaps, are as old as law itself.[6] But it is in the interest of all concerned that the matters are decided by law courts within a reasonable time. What is a reasonable time, however, cannot be easily determined without an element of arbitrariness. In the opinion of the Law Commission, a civil suit in the Munsif's Court should not take more than one year, and in the Subordinate Judge's Court not more than 1½ years.[7] A criminal case in the Magistrate's Court should be disposed of in two months, the committal proceedings within six weeks from the dates of the apprehension of the accused, and the sessions trial in three months.[8]

How much time should the Industrial Tribunal take in disposing of a reference? No definite answer to this question is easy. A query made to a leading management representative brought the jocular reply that delay did not concern him at all and hence he had not thought of it. An official of a Tribunal informed that they were under instructions to dispose of a reference within six months.

That both the legislature and the government have been eager for an early disposal of labour matters is evident. Section 12 (6) of the Industrial Disputes Act provides that the Conciliation Officer should submit his report within 14 days. The rules relating to procedure provide that the parties should file their respective statements within two weeks from the receipt of the order of reference by the Tribunal,[9] and rejoinders also are to be filed within a period of two weeks thereafter.[10] The first hearing of the dispute should take place within six weeks from the order of reference and should continue ordinarily

from day to day till it is finally heard.[11] Ordinarily, not more than three adjournments in all at the instance of any one party to the dispute for a period not exceeding a week at a time can be granted.[12] Thus, if the rules are strictly observed, taking into consideration the time for writing the judgement, a reference should ordinarily be disposed of well within six months from the date of its registration with the Court.

THE VARIOUS STAGES OF A CASE

Broadly speaking, in the course of trial a reference passes through four stages, *viz.*, pleadings, evidence, arguments, and judgement. The first stage begins with the day the reference is received by the Tribunal, and lasts till it frames issues, *i.e*, the questions that require determination in the case. Then the reference passes on to the second stage. At this stage the parties lead evidence and help the Tribunal to collect relevant material for the decision on the various questions framed. Quite often between the first and the second stages an intermediary stage arises when the court is asked to decide the preliminary questions raised on the maintainability of the reference.

After the closure of evidence, the court asks the parties to argue the case with reference to the questions framed and on the basis of material collected by it. After hearing the arguments, the judge gives his verdict. These are the third and the fourth stages respectively.

CASES PROCESSED

Out of the cases decided by the Industrial Tribunal, Delhi, in 1964 ten cases of different natures, such as, wage fixation, bonus, dismissal, etc. were analysed to study the time consumed in their disposal and the reasons therefor. The results are given in Tables 1 to 4 (appended). A study of these tables tended to show that out of the total period of duration of the cases, the time taken in the first three stages was comparatively smaller, and the cases lingered on because of adjournments long in duration and larger in number. As will be evident from Table 1, out of ten cases seven took one to three months to cross the stage of pleadings. The movement was slower at the evidence stage, four cases taking three to six months to complete it. Again, at the arguments stage the cases progressed fast, six cases taking only one to

three months to cross through. They appear to have been deadlocked at the judgement stage, seven cases taking between three to six months to complete.

As given in Table 2, in six out of the ten cases 10 to 15 hearing dates were fixed. Five cases stood adjourned five to ten times. The actual dates on which the work due at different stages was completed normally were one to three at each stage. Table 3 gives the number of adjournments sought by the parties at different stages of the cases. Table 4 gives the time consumed by the cases, and Table 5 shows the disposal rate of the Tribunal.

REASONS OF ADJOURNMENT

Cases stand adjourned for various reasons. The parties may feel a genuine difficulty and seek adjournment. Sometimes they may be mischievous also, and sometimes careless. Similarly, the court may be overworked and may be finding it difficult to hear cases at short intervals and also be unable to give them full time on the days fixed. The personnel may be inefficient, lazy, or inexperienced in law, and because of these factors freely sanction adjournments thus delaying the cases. If these factors are controlled, the delay by long adjournments will be considerably minimised.

DELAYS BY SUPERIOR COURTS

Adjournments alone do not cause delay during the trial stage. Delay also occurs when a party being dissatisfied with an interlocutory order of the Tribunal seeks its scrutiny by a superior court and obtains stay of the proceedings. In the superior court, it takes time to get decisions, and cases easily remain stayed for three to four years in the lower court. One instance will illustrate this. In a reference relating to gratuity, a management and one of the unions of its workmen were cited as parties. Another union of the workmen intervened and prayed to be impleaded as a party and claimed to be heard, and the prayer was allowed by the Tribunal. The management challenged the order of the Tribunal in the High Court on the ground of jurisdiction. The writ was ultimately dismissed as misconceived, but the case remained pending before the Tribunal for more than three years.[13]

However, it may not be concluded that cases will always take as much time as taken by the cases noticed above. They may take less or more time, depending upon various factors. The Law Commission of India, after reviewing more than a million cases, had observed that the statistics did not always give a true indication of the position, and the figures particularly of average might not accurately reflect the state of affairs.[14] Each case has its individuality. Its disposal depends upon its nature, parties to it and their representatives and also upon the quality of the judge and the time available with him. These factors may differ from case to case producing varying results.

The life of a case does not necessarily come to an end by the delivery of the award by the Tribunal. The party that feels dissatisfied carries the case either by a writ to the High Court or by way of an appeal to the Supreme Court. Some times, the cases decided in writ by the High Court are carried in appeal to the Supreme Court. All these steps when undertaken consume considerable time.

DELAY IN THE HIGH COURT

In the High Court the procedural steps are nominal. When a writ is filed and admitted, a *rule nisi* issues, and the opposite party is required to file an affidavit in reply to the rule. A rejoinder affidavit, if allowed by the High Court, is then filed by the party petitioning. This whole procedure may normally take about two to three months. Once these are complete, the case remains pending for hearing for a long time.

A reference made to the High Courts' judgements published in the *Labour Law Journal* in 1965 showed that the High Courts generally took between 18 months to three years to dispose of a writ. But this gives only a broad idea. There may be cases which remain pending for more than three years. In the opinion of the Law Commission of India disposal of a writ ought not to take more than six months.[15] Judged from this standard, disposal of a case even in 18 months seems oppressive.

The Law Commission of India has been severely critical of the delay in the High Courts.[16] It noticed the inadequacy of the strength of judges, and the fact that the High Courts were vested with so many jurisdictions, besides doing administrative work which blocked the

way of smooth disposal of cases.[17]

JURISDICTION OF THE SUPREME COURT

At the Supreme Court stage, the case passes through another procedure. An appeal to the Supreme Court can be filed only after obtaining special leave for which ninety days' time to be reckoned from the date of the publication of award is allowed. After the grant of special leave petition, the record of the Tribunal is summoned for printing.[18] It takes nearly one and a half to two years and sometimes even longer, depending upon the volume, to print the record. Then the appeal is registered. The appeal is heard between seven months and one year after its registration. Cases decided showed that the normal life of a case if it lived up to Supreme Court level was three to five years. (See Table 6)

CONCLUSION

HOW FAR PROCEDURE IS RESPONSIBLE?

Three broad factors of delay that emerge from the above analysis may be classified as procedural, human, and administrative. The object of the procedural provisions is to bring the disputants together for the purpose of trial, ascertaining facts and law in the dispute, and reaching a decision after full investigation. They are based on the theory that each party should make full disclosure of its case to the other. The rival contentions will be reduced in the shape of precise questions which should be promptly adjudicated upon. If dealy is occasioned, it is not because of the provisions of the procedure but because of several personal and extraneous factors.

HUMAN FACTOR

The time taken in the disposal of cases depends upon the number of parties to the dispute, their efficiency to file pleadings, collect evidence and produce the same in the court and present their arguments. It will also depend upon the efficiency of the judge as well as his experience in law. Delays also take place not because of the provisions of

procedure, but because of their faulty application or non-application. This is the view expressed by the Law Commission of India[19] and has been recently endorsed by P. B. Gajendragadkar, the former Chief Justice of India.[20]

The parties to the reference also contribute to the delay by carrying interlocutory orders of the Tribunal in appeal or revision.

THE QUESTION OF PRUNING HIGH COURT'S JURISDICTION

Serious thought should be given to the question whether the jurisdiction of the High Court to interfere with Tribunal's orders in writ proceedings should not be controlled. The question, of course, is not easy; it is a complicated one. Quick disposal of labour matters will also depend to a great extent upon the solution of this question. How this should be done, however, is a different matter.

PLEA FOR REVIVAL OF THE LABOUR APPELLATE TRIBUNAL

Appeals to the Supreme Court have registered phenomenal rise because of the abolition of the Labour Appellate Tribunal in 1956. Petitions for special leave to appeal rose from 57 in 1955 to 291 in 1956 after the abolition of the LAT.[21] (See Table 7) A way has to be found out to reduce the number of appeals. The Law Commission of India has suggested as an alternative the revival of the Appellate Tribunal under labour legislations or giving of powers of appeal to the High Court in labour matters. Both these suggestions deserve serious consideration.[22]

If delays are to be eliminated, two more steps are imperative. The primary need is to secure such cadre to man the labour judiciary which is really efficient, fully trained and experienced in spirit, tradition, and letter of the labour laws. The retired personnel imported from civil judiciary do not fulfil these requirements. Moreover, the strength of judiciary has to be adequate at all levels— Tribunal, High Court, and Supreme Court—if the dream of early disposal of reference is to be made a reality.

REFERENCES

1. Salmond, *Jurisprudence*, 11th ed., p. 107.
2. *Ibid.*
3. Sec. 11 (3) of the Industrial Disputes Act, 1947.
4. Sec. 11 (5) and Sec. 33 (3) of the Industrial Disputes Act, 1947.
5. Rule 10(B) of the Industrial Disputes (Central) Rules, 1957.
6. Law Commission of India, 14th Report, Part I, p. 129.
7. *Ibid.*, p. 130, para 5.
8. *Ibid.*, p. 130, para 6.
9. Industrial Disputes (Central) Rules, 1957, Rule 10 (B) (1).
10. *Ibid.*, Rule 10 (B) (2).
11. *Ibid.*, Rule 10 (B) (3) (4).
12. *Ibid.*, Rule 10 (B) (5).
13. Industrial Disputes Act No. 70 of 1958, Management of D.C.M. and others *Vs.* Their Workmen. The reference was made in April, 1958.
14. Law Commission of India, 14th Report, Part I, p. 133, para 9 and p. 261.
15. *Ibid.*, p. 91, para 55.
16. *Ibid.*, p. 64, paras 2-3.
17. *Ibid.*
18. Supreme Court Rules 1966, Order XV, Rule 14.
19. Law Commission of India, 14th Report, Part I, p. 262.
20. *The Hindustan Times*, March 16, 1966
21. Law Commission of India, 14th Report, Part I, p. 51, para 37.
22. *Ibid.*, p. 39.

TABLE I

Table showing the Duration of Cases at Different Stages

(*No. of Cases Processed*=10)

Pleadings (Months)			*Evidence (Months)*			*Arguments (Months)*			*Judgement (Months)*		
1-3	3-6	Beyond 6	1-3	3-6	Beyond 6	1-3	3-6	Beyond 6	1-3	3-6	Beyond 6
7	2	1	4	3	2	6	1	1	1	7	..

Notes :

(*a*) In one case, immediately after pleading, the parties negotiated settlement for which the case remained pending. This case was taken into consideration to show the time taken at pleading stage, and adjournments. No time was taken at evidence, arguments, and judgement stages. This was over in seven months' time.

(*b*) In one case, immediately after pleading, the parties, though the case remained for evidence which was not recorded, argued the case after which it passed to judgement stage. The time taken in disposal was nearly eight months.

(c) In one case, the parties went up to the evidence stage and then negotiated a settlement. This case was included to show the time taken at the pleading and the evidence stages and for showing adjournments and total hearings. The case was disposed of in nearly 13 months' time.

TABLE 2

Table showing Total Number of Hearings, Adjourned Hearings and Days consumed at Different Stages of the References

Number of Total Hearings			*Number of Adjourned Hearings*			*Number of Pleadings*			*Hearings at different stages*					
									Evidence			*Arguments*		
10-15	15-20	20-25	1-5	5-10	10-15	1-3	3-6	6-12	1-3	3-6	6-12	1-4	3-6	6-12
6	3	1	3	5	2	8	2	..	6	3	..	5	3	..

TABLE 3

Table showing Number of Adjournments either taken at the instance of the Parties or given by the Court at Different Stages

Workmen			*Management*			*Court*			
Up to 2	2-4	4-6	Up to 2	2-4	4-6	Up to 2	2-4	4-6	Beyond 6
Pleading Stage									
2	..	..	5	..	..	2	..	..	..
Evidence Stage									
4	3	..	1	..	..	2	2	2	..
Arguments Stage									
3	..	..	1	..	..	3	1	..	..

TABLE 4

Table showing Time taken in the Disposal of Cases

Up to 6 Months	*6 Months to one year*	*One year to one and a half year*	*One and half year to two years*	*Beyond two years*
..	5	4	..	1

TABLE 5

Table showing Rate of Disposal by the Tribunal at Delhi in 1964

Cases pending in the begining of the year	*New cases referred*	*Cases disposed of*	*Cases remaining pending at the end of the year*
264	164	166	262

TABLE 6

Table showing the Time taken by Cases from the Order of Reference to Final Disposal by Supreme Court

(*No. of cases processed*=8)

Consumed in Tribunl		*From date of award to grant of special leave petition*		*From grant of special leave to final disposal*		*Total time consumed from Tribunal to Supreme Court*		
Up to 1 *year*	1 *year to* 2 *years*	*Up to* 3 *months*	3 *months to* 6 *months*	1½ *year to* 2 *years*	2 to 3 *years*	*Less than* 3 *years*	3 *to* 5 *years*	*Beyond*
3	5	4	4	4	4	1	6	1

TABLE 7

Statement Regarding Petitions for Special Leave to Appeal on Labour Matters, 1950-1957 (31*st October*, 1957)

Year	*Registered*	*Granted*	*Dismissed*
1950	19	18	1
1951	20	11	9
1952	9	3	6
1953	59	23	36
1954	51	21	30
1955	57	37	20
1956	291	257	32
1957 (Up to 31st Oct.)	189	148	16
Total	695	518	150

Source : Borrowed from the 14th Report of the Law Commission of India, Part I.

SESSION XIII

RECENT LEGISLATIVE AMENDMENTS IN EMPLOYMENT LAWS

India is far behind on both, with low literacy and complex labour laws. The laws are archaic (one dating back to 1926) and among the most rigid in the world. Of particular concern is the job security law, which was first introduced in 1976 and then further stiffened in 1982. At that time the objective was to improve job security in private sector firms so they were in line with the public sector.

The outdated laws create problems for restructuring particularly during economic downturns. Furthermore, in the long run it discourages employers from increasing recruitment of permanent staff (on its own payroll), and also adversely affects the workers' incentive to acquire skills. The overall employment effect of job-security regulations has been significantly negative, as various studies confirm.

Recent legislative initiative relating to labour laws at the national level is evident from amendment to the Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain Establishments) Act providing for maintenance of registers in establishments employing 40 workers which was initially 19; and also providing for maintenance of registers and filing registers electronically under 7 more labour laws in addition to earlier 9 Labour Acts. Further, there are few other legislations which are being considered at the central level like Small Factories (Regulation of Employment and Conditions of Services) Bill, 2014; Factories (Amendment) Bill, 2014[3] to ease regulations on hours of work and overtime to workers and to increase the threshold of workers for definition of a factory.

Industrial harmony can only be achieved when the objectives of employment and employability are interwoven with the goals of industrial development and national growth..

[3] http://www.prsindia.org/uploads/media/Factories/Factories%20%28A%29%20bill,%202014.pdf

The Ministry of Labour & Employment is therefore committed to good governance through transparency and accountability in the enforcement of labour laws.

Amendments done so far:

- **The Labour Laws (exemption from furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1948:** passed by the Parliament in winter Session 2014.

  (i) The 'small' establishments would now cover the establishments employing between 10 to 40 workers as against the existing provision of 10 to 19 workers.

  (ii) The small establishments will be required to maintain two registers as against the existing provision of maintaining three registers.

  (iii) Allow maintaining of registers or records in computer, floppy, diskette or on other electronic media and submitting return through e-mail.

- **Comprehensive Amendments in Apprentices Act 1961:** passed by the Parliament in winter Session 2014

  (i) Trade-wise regulation of seats is to be replaced by a minimum and maximum percentage the total strength of the workers. Within this band, apprentices can be engaged in any trade.

  (ii) Industry can also engage apprentices in optional trades which are not designated, with the discretion of entry level qualification and syllabus.

  (iii) Scope extended also to non-engineering occupations at diploma and degree level.

  (iv) Penalties in the form of fine only.

Initiatives under Progress:

- **The Small Factories (Regulation of Employment & Condition of Service) Bill:**

  This Bill aims to bring the provisions under multiple labour laws concerning the Small Factories employing less than 40 workers, at one place. This Bill will help in easy compliance of the Labour Laws by these small units.

- **Labour Codes:-**

  Based on the recommendations of Second National Commission of Labour, the Ministry of Labour & Employment has taken up an exercise of rationalising Multiple Labour Laws into

five labour codes on (a) Wages, (b) Safety and Working Conditions, (c) Industrial Relations, (d) Social Security & Welfare, (e) Employment Training and Miscellaneous.

- **Amendments to Child Labour Protection and Regulation (CLPR) Act.**

(i) Complete prohibition on employment of children.

(ii) Prohibition on employment of adolescent in hazardous occupations.

(iii) Graded penalty.

(iv) Lenient punishment for parents/guardians.

(v) Creation of Rehabilitation Fund.

MINISTRY OF LABOUR AND EMPLOYMENT

NOTIFICATION

New Delhi, the 15th September, 2010

S.O. 2278(E).- In exercise of the powers conferred by sub-section (2) of Section 1 of the Industrial Disputes (Amendment) Act, 2010 (24 of 2010), the Central Government hereby appoints the 15 th Day of September, 2010, as the date on which the said Act shall come into force.

[F.No.S-11012/1/2007-IR(PL)]

RAVI MATHUR, Addl. Secy.

THE INDUSTRIAL DIPSUTES (AMENDMENT) ACT, 2010

No.24 OF 2010

[18 th August, 2010]

An Act further to amend the Industrial Disputes Act, 1947

Be it enacted by Parliament in the Sixtieth Year of the Republic of India as follows:-

1. (1) This Act may be called the Industrial Disputes (Amendment) Act, 2010.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In the Industrial Disputes Act, 1947 (hereinafter referred to as the principal Act), in section 2 (i) in clause (a),-

(a) in sub-clause (i), for the words “major port, the Central Government, and”, the words “major port, any company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government , or any corporation, not being a corporation referred to in this clause, established by or under any law made by Parliament, or the Central public sector undertaking , subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the Central Government, the Central Government and” shall be substituted:

(b) for sub-clause (ii), the following sub-clause shall be substituted, namely:-

"(ii) in relation to any other industrial dispute , including the State public sector undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the State Government, the State Government.";

Provided that in case of a dispute between a contractor and the contract labour employed through the contractor in any industrial establishment where such dispute first arose, the appropriate Government shall be the Central Government or the State Government, as the case may be, which has control over such industrial establishment.";

(ii) in clause (5), in sub-clause (iv), for the words "one thousand six hundred rupees", the words "ten thousand rupees" shall be substituted.

3. Section 2A of the principal Act shall be numbered as sub-section (1) thereof and after sub-section (l) as so numbered, the following sub-sections shall be inserted, namely:-

"(2) Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of three months from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1)."

4. In section 7 of the principal Act, in sub-section (3), after clause (e), the following clauses shall be inserted, namely:-

"(f) he is or has been a Deputy Chief Labour Commissioner (Central) or Joint Commissioner of the State Labour Department , having a degree in law and at least seven years' experience in the labour department after having acquired degree in law including three years of experience as Conciliation Officer:

Provided that no such Deputy Chief Labour Commissioner or Joint Labour Commissioner shall be appointed unless he resigns from the service of the Central Government or State Government, as the case may be, before being appointed as the presiding officer; or

(g) he is an officer of Indian Legal Service in Grade III with three years' experience in the grade."

5. In section 7A of the principal Act, in sub-section (3), after clause (aa), the following clauses shall be inserted, namely:-

"(b) he is or has been a Deputy Chief Labour Commissioner (Central) or Joint Commissioner of the State Labour Department, having a degree in law and at least seven years' experience in the labour department after having acquired degree in law including three years of experience as Conciliation Officer:

Provided that no such Deputy Chief Labour Commissioner or Joint Labour Commissioner shall be appointed unless he resigns from the service of the Central Government or State Government, as the case may he, before being appointed as the presiding officer; or

(c) he is an officer of Indian Legal Service in Grade III with three years' experience in the grade."

6. After section 9B of the principal Act, for chapter IIB, the following Chapter shall be substituted, namely:-

“CHAPTER IIB

GRIEVANCE REDRESSAL MACHINERY

9C. (l) Every industrial establishment employing twenty or more workmen shall have one or more Grievance Redressal Committee for the resolution of disputes arising out of individual grievances.

(2) The Grievance Redressal Committee shall consist of equal number of members from the employer and the workmen.

(3) The chairperson of the Grievance Redressal Committee shall be selected from the employer and from among the workmen alternatively on rotation basis every year.

(4) The total number of members of the Grievance Redressal Committee shall not exceed more than six:

Provided that there shall be, as far as practicable, one woman member if the Grievance Redressal Committee has two members and in case the number of members are more than two, the number of women members may be increased proportionately.

(5) Notwithstanding anything contained in this section, the setting up of Grievance Redressal Committee shall not affect the right of the workman to raise industrial dispute on the same matter under the provisions of this Act.

(6) The Grievance Redressal Committee may complete its proceedings within forty-five days on receipt of a written application by or on behalf of the aggrieved party.

(7) The workman who is aggrieved of the decision of the Grievance Redressal Committee may prefer an appeal to the employer against the decision of Grievance Redressal Committee and the employer shall, within one month from the date of receipt of such appeal, dispose off the same and send a copy of his decision to the workman concerned.

(8) Nothing contained in this section shall apply to the workmen for whom there is an established Grievance Redressal Mechanism in the establishment concerned.”

7. In section 11 of the principal Act, after sub-section (8), the following sub-sections shall be inserted, namely:-

"(9) Every award made, order issued or settlement arrived at by or before Labour Court or Tribunal or National Tribunal shall be executed in accordance with the procedure laid down for execution of orders and decree of a Civil Court under order 21 of the Code of Civil Procedure, 1908.

(10) The Labour Court or Tribunal or National Tribunal, as the case may be, shall transmit any award, order or settlement to a Civil Court having jurisdiction and such Civil Court shall execute the award, order or settlement as if it were a decree passed by it."

8. In section 38 of the principal Act, in sub-section (2),-
(i) clause (ab) shall be omitted;
(ii) for clause (c), the following clause shall be substituted, namely:-
"(c) the salaries and allowances and the terms and conditions for appointment of the presiding officers of the Labour Court, Tribunal and the National Tribunal including the allowances admissible to members of Courts, Boards and to assessors and witnesses;".

V.K. BHASIN
Secy. to the Govt. of India

Press Information Bureau
Government of India
Ministry of Labour & Employment
28-December-2014 15:28 IST

Achievements and Initiatives of Ministry of Labour and Employment

Year End Review 2014

The Ministry of Labour & Employment is committed towards good governance by bringing transparency and accountability in enforcement of labour laws. Below mentioned are initiatives by the Ministry in this direction.

Governance reforms through use of Technology:

Shram Suvidha Portal: The Ministry of Labour & Employment has developed a unified Web Portal 'Shram Suvidha Portal'. There are 4 main features of this Portal:

(i) Unique labour identification number (LIN) will be allotted to Units to facilitate**online registration.**

(ii) Filing of **self-certified and simplified Single Online Return** by the industry instead of filing 16 separate Returns. Amendments to 10 Rules has been taken up.

(iii) **Computerized inspection Reports within 72 hours** by the Labour inspectors.

(iv) Timely redressal of grievances.

The unique Labour Identification Number (LIN) has been issued to 7,40,850 Units as on23.12.2014.

Transparent Labour Inspection Scheme in Central Sphere for random selection of Units for Inspection:

(i) A computerized list of inspections to be generated randomly based on **risk based algorithm**.

(ii) Complaints based inspections to be determined centrally after examination based on data and evidence.

(iii) 19,389 inspections have been generated as on 23.12.2014 since the launch of the Labour Inspection Scheme of which 15,892 have already been uploaded on Shram Suvidha Portal.

Initiatives in Progress:

(i) Common Registration between PAN/CIN/LIN**.**

(ii) Common Registration and Reporting between 5 acts namely The EPF & MP Act, 1952, The ESIC Act, 1948, The BOCW(RECS) Act, 1996, The CL(R&A) Act, 1970, and The Inter-State Migrant Workmen(RECS) Act, 1979.

(iii) 10 states have shown interest in joining the portal.

Portability through Universal Account Number (UAN) for Employees Provident Fund:

(i) Digitization of complete database of 4,22,99,883 EPF subscribers and allotment of UAN to each of them.

(ii) UAN is being seeded with Bank account and Aadhar Card and other KYC details for financial inclusion.

(iii) EPF account of employee to be updated monthly and at the same time he will be informed through SMS.

(iv) Direct access to their EPF accounts and will also enable them to consolidate all their previous accounts.

Initiatives in Progress:

(i) Special drive is being taken up for enrolling contract and construction workers. This will bring this huge **Unorganized Workforce into mainstream** by bringing them under the formal social security cover. Details of contract workers will also be linked to Shram Suvidha Portal.

(ii) ESIC is to seed UAN mandatorily.

New Initiatives in Demand Responsive Vocational Training, Career Servies and Quality Apprenticeship:

India is one of the youngest countries in the world. 58% our population is below 29 years of age. That is why job creation particularly youth employment is focus area of our employment policy. The generation of the quality jobs means better skill alignment of workforce through Demand Responsive Vocation Training and quality apprenticeship so that the employment and employability of our workforce could be enhanced. It will also act as a bridge to realize the vision of the **PM** on **Make In India, Skill India** etc. Below mentioned are initiatives by the Ministry in this direction:

1. **Amendments in Apprentices Act**:

(i) A comprehensive Amendment Bill to the Apprentices Act, 1961 that has been passed by the parliament by Lok Sabha and Rajya Sabha.

(ii) Trade-wise regulation of seats is to be replaced by a minimum and maximum percentage the total strength of the workers. Within this band, apprentices can be engaged in any trade.

(iii) Industry can also engage apprentices in optional trades which are not designated, with the discretion of entry level qualification and syllabus.

(iv) Scope being extended also to non-engineering occupations at diploma and degree level.

(v) Penalties in the form of fine only.

(vi) Permission to outsource basic training in an institute of their choice.

(vii) Apprentices could also be from other states.

2. Launch of Apprentice Protsahan Yojna

(i) Launched on 16th October, 2014.

(ii) With an outlay of Rs.346 crores, Government will support one lakh apprentices in next two and a half years by sharing the 50 % of the stipend.

(iii) A vision to have more than 20 lakh apprentices in next few years against present number of 2.9 lakh.

(iv) Enhanced rates of stipend have been notified for trade apprentices. The minimum rate of stipend per month payable has been indexed to minimum wage of semi-skilled worker.

3. Model Career Centres:

(i) Outlay of the National Career Service (NCS) Project enhanced from Rs.148 crore to Rs.292 crores.
(ii) NCS portal to be launched by March, 2015.
(iii) 100 Model Career Centres to be developed.
(iv) To provide training in **Last Mile Employability** skills, a module has been finalized by **Maruti.**

4. Recognition of Prior Learning (RPL) for construction sector:

(i) More than 4.2 crore workers with low skill level.
(ii) RPL Scheme started to give 15 day gap training at site for NCVT certificate.
(iii) To be funded from Cess funds collected from Construction projects.
(iv) Provision of wage compensation to worker at Rs.35 per hour.
5. Revamp of training curricula on industry recommendations:

(i) Sector-wise Mentor Councils under the leadership of industry.
(ii) Revised curricula implemented from August, 2014 session in manufacturing as well as services sectors.
(iii) Integral component of soft skills included.

6. Training of ITI instructors through distance learning technology:

(i) Model ITIs to be set up in every state to set benchmark for quality vocational training and to establish demand centres for industries.
(ii) 1000 government Principals given training in leadership skills.
(iii) To prepare trainers according to revised curricula.
(iv) So far 8000 instructors trained.
(v) Taking inputs from Germany.

7. National Brand Ambassadors of Vocational Training:

(i) First time initiative to enhance dignity of vocational training.
(ii) 25 successful professional and entrepreneurs honoured by the Prime Minister on 16thOctober, 2014.
(iii) Their success stories are being disseminated through TV and Radio.

8. Incubation Centres and Chairs in IITs to promote innovation and excellence:

(i) Academia experts in Indian Institute of Technology being selected for chair position to guide Mentor Councils and innovators.
(ii) ITI students/pass outs to work with IIT students in incubation centres.

9. Eight new RVTIs for Women Training:

(i) Outlay of Rs.200 crores for additional annual capacity of 3840 women.
(ii) To be set up in 8 states which are un-served so far Punjab, Jammu & Kashmir, Uttarakhand, Himachal Pradesh, Bihar, Tripura, Goa and Tamil Nadu.
(iii) Depending upon the land availability from the state, to be functional by 2017.

10. Flexi MoU with industry:

(i) Policy to encourage industry customized high potential NCVT training courses.
(ii) Several MoUs signed including Maruti Suzuki, TATA Motors, Flipkart, Raymonds and several more proposed such as ILFS, Apparel Training and Development Centre.

11. New Advanced Training Institutes for training of trainers:

(i) To address the shortage of trainers.
(ii) 12 institutes in PPP mode with capacity of 9200 with investment of Rs.20 crores.
(iii) RFQ issued.

12. NCVT-MIS Portal:

(i) To enforce academic calendar in vocational training institutions
(ii) Portal to go live from December 2014.
(iii) Facility of E-certification to pass outs for eliminating delays and seamless verification.

13. Revamped SDI portal:

(i) Provision of biometric attendance and tracking of placement to be launched by January 2015.
(ii) Several other user friendly facilities by March 2015.

Legislative initiatives:

Amendment to Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain Establishments) Act

The Principal Act of 1988 provides for simplified procedure for returns and registers under 9 Labour Acts for the establishments employing upto 19 workers. The Amendment Bill, 2011 has been passed by Rajya Sabha on 25.11.2014 and Lok Sabha on 28.11.2014. The Amendment Bill now provides to include 7 more Labour Acts under the purview of the Principal Act. Also, the coverage of Principal Act has been expanded from the establishments employing upto 19 workers to 40 workers. The Amendment Bill also gives an option to maintain the registers electronically and to file the returns electronically. These amendments will extend the benefit of simplified procedure to more number of establishments for larger number of labour acts. Further, it will reduce the tendency of establishments to restrict the number of workers to 19. It will also lead to ease of compliance as well as better enforcement of the labour laws.

SESSION XIV

NEED FOR UNIFICATION OF LABOUR LAWS: ISSUES AND CONCERNS

Labour policy reforms in India are due for a long time, as the context in which they were framed has changed drastically. The Laws framed mainly to cater the manufacturing sector, do not address the problems of the service sector, which today, accounts for 55 per cent of our GDP. The outdated and inflexible nature of labour laws protects a handful of say 6-7 percent of the workforce, seriously hampering employment generation capacity of the organised sector and most of the 10-12 million youth joining labour force every year, are forced to join informal economy, where the working conditions are pathetic and earnings are also abysmally.

Multiplicity of labour laws – 44 central and about 100 state laws – present operational problems in implementation and compliances that need to be looked into. Besides, using different terminologies like – employee, workman, worker to denote a worker or wages, basic wages, salary referring to the compensation, yet covering different components in each legislation, have made compliance very cumbersome multiplying litigations.

Currently, there are 44 labour laws under the purview of Central Government and more than 100 under State Governments, which deal with a host of labour issues. Unfortunately, these labour laws protect only 7-8 percent of the organised sector workers employed at the cost of 93 per cent unorganised sector workers. The entire gamut of the labour laws should therefore be simplified, clubbed together wherever possible and made less cumbersome to make the environment more employment friendly.

AD-HOCISM IN THE DECISIONS TO MODIFY LABOUR LAWS

By: Justice K. Chandru

Beginning with Rajasthan, labour legislations are being modifi ed and it seems to have the blessings of the new dispensation at the centre. The Government of India too has announced its decision to amend important legislations and has called for public comments. But ad hoc changes as planned do little for the working class, while ensuring that employers do not attract the ire of the law. There seems to be little understanding of the historic background of labour legislations in India, and even less about what needs to be done to make them more effective.

The Vasundhara Raje-led government in Rajasthan has taken the lead in bringing about drastic changes to central labour laws. It has introduced far-reaching amendments to crucial labour legislations, which no state government has ever chosen to do. The history of Indian labour legislations shows that most of them were made due to strong demands by the working class from the Bengal, Bombay, and Madras presidencies. For a state that has very few industries to come up with such proposals shows that the newly elected Bharatiya Janata Party (BJP) government wants to use Rajasthan as a potential laboratory for tinkering with labour laws before extending them on a national scale.

The state has made amendments to three central government labour legislations – the Industrial Disputes Act (IDA), 1947, Contract Labour (Regulation and Abolition) Act (CLRA), 1970, and the Factories Act, 1948 – in an attempt to liberate the corporate sector from the stringent requirements of the law.

IDA Changes

According to the changes proposed to the IDA, the government's prior permission will not be required for effecting retrenchments in establishments engaging up to 300 workers. When the Act was amended in 1976, it had stipulated that firms employing 300 or more

workers had to obtain permission from the competent authority for retrenchments, lay-offs, and closures. By an amendment in 1982, it was expanded, and establishments engaging not less than 100 workers were brought within its purview. These provisions were challenged by employers as being arbitrary and unconstitutional, and they were repelled by the Supreme Court of India in the Meenakshi Mills case (1992), Madura Coats case (1994), and Orissa Textiles case (1994). The Rajasthan amendments represent an attempt to take history backwards.

The amendments made by the state government have also increased the percentage of workers needed for registration as a representative union from 15% to 30%. Today many states do not have a law obliging employers to compulsorily recognise any trade union for the purpose of collective bargaining.

The amendments to the CLRA raise the applicability of the Act to establishments having more than 50 workers from the current 20. Raising the strength for the application of the Act to larger establishments has no significant effect in the present scenario. The engagement of contract workmen is larger in ratio than permanent workmen in not only the private sector, but also public sector undertakings. Without following the provisions of the Act, the Supreme Court in the Steel Authority of India's case (2001) rejected the claims of workers and virtually legalised outsourcing of labour. It ruled that the

CLRA Act do not provide automatic absorption of contract labour on issuing a notification prohibiting employment of contract labour and the principal employer cannot be required to absorb those contract labour.

Hence no trade union seeks a government notification on abolishing contract labour as it will eliminate the workforce in question by providing it no employment.

The Factories Act is applicable to premises with more than 10 workers with power and 20 without power, and the amendments raise these numbers to 20 and 40, respectively. The increase in maximum overtime work to 100 hours will make the eight-hour-day norm a mirage. It is a retrograde step in a law that is to take care of the safety, health, and welfare of

workers. For the last six decades, employers have evaded the Act by having less than nine or 19 workers as the case may be. In Tamil Nadu, power-loom owners have divided looms in the same shed among their family members and registered each loom separately, thereby avoiding the provisions of the legislation. The proposed amendments only legalise the ingenious methods used by factory owners, still leaving out a large section of workers.

Night Shifts and Women Workers

The removal of the ban on night shifts for women workers also raises considerable concerns, even among women workers. The Factories Act prohibition on employing women for work at night was struck down by the Madras High Court in R Vasantha's case (2001). The state did not effectively challenge the judgement. The net result is that female workers are employed in three shifts in Tamil Nadu, and have in a sense become camp coolies, contrary to the International Labour Organisation (ILO) norms.

By the amendments proposed to the Apprentices Act, 1961,the state government will be sharing the cost of apprenticeship. If a company having less than 250 workers hires apprentices, the state will absorb half the cost, and if it has above this number, the state government will absorb a fourth of the cost. Under the Act, in no case have employers absorbed trained apprentices as regular workmen. After the successful completion of training, apprentices are left high and dry.

Since labour legislations come under the concurrent list under Schedule VII of the Constitution of India, it is open to both the central and state governments to enact labour laws and also to make the necessary amendments to the law made by the central government provided they gain the assent of the President of India. As soon as the Rajasthan government proposed the amendments, senior BJP leader and former minister Arun Shourie claimed

should Narendra Modi become the Prime Minister, he could bring about genuine federalism by allowing more progressive states to change their laws. As the Gujarat Chief Minister, Modi himself complained in the past that the central government was sitting on many of the changes proposed by his state.

He further claimed that "such changes to laws can be brought about in a variety of issues and this will 'unfreeze' policy environment."

Central Follow-up

The Rajasthan proposals have evoked strong reactions among all the trade unions, including the Bharatiya Mazdoor Sangh (BMS), an affiliate of the BJP. Having sounded the bugle from Rajasthan, the Modi government followed it up with its own proposals to amend labour laws. Its first attempt will be to revamp the Factories Act. Minister of State for Mines, Steel, and Labour Vishnu Deo told the Lok Sabha in a written reply that the proposed major amendments will include relaxing restrictions on night duty for women in factories, subject to certain conditions, and increasing the limit of overtime to 100 hours (now 50 hours) in a quarter. He further told Parliament that the process of amending the Factories Act had been initiated in 2011 with the government setting up an expert panel headed by Planning Commission member Narendra Jadhav. In recent times, it has become routine for spokespersons of the BJP government to attribute any unpopular move to decisions taken by the United Progressive Alliance (UPA) government. The Modi government, on 5 June and 17 June, introduced the proposed amendments to the Factories Act, 1948 and the Minimum Wages Act, 1948. (The Ministry of Labour has posted the proposals on the website and has sought comments.)

National Labour Commission

India undoubtedly has the lengthiest labour legislations in the world. There are as many as 50 central laws, besides each state having umpteen local labour legislations. From time to time, there have been demands from many quarters to consolidate and simplify labour legislations. There have been demands from trade unions and employers to make the necessary changes to the laws, and they were raised before the first National Labour Commission (NLC) presided over by Justice P B Gajendragadkar. In its 1969 report, the NLC suggested cosmetic changes, such as that the name of the IDA should be changed to Industrial Relations Act so that it would not sound a discordant note and encourage smooth industrial relations. The report also recommended the consolidation of the Trade Unions Act

(1923), the Industrial Employment (Standing Orders) Act (1946), and the Industrial Disputes Act (1947).

Prime Minister Indira Gandhi took advantage of the Emergency to woo working-class parties, and brought amendments to the IDA. A new chapter, V-B, was brought in making the approval of the government mandatory before declaring lay-offs, retrenchments, and closure of industrial establishments. If at all employers have any grievance today, it is against these provisions of the IDA. Foreign investors, Indian business houses, and chambers of commerce mounted a strong campaign since their legal challenges had failed.

After the first NLC report, no worthwhile steps were taken to consolidate and simplify laws. A decade later, the Janata Party government introduced the Industrial Relations Bill (IR Bill) (1978) in Parliament, but it was later dropped. In 1982, the Congress government introduced another IRBill. Since there was no clarity on the attendant legislations to be brought in for the categories excluded from the IDA, that move also failed.

After a few years, another NLCwas constituted under former Union Labour Minister Ravindra Verma. That commission in its 2,700-page report(1989) stressed bilateral agreements, collective bargaining, identifying the parties to a bargain, and reviewing the provisions in the Trade Union Act on the recognition/registration of trade unions. It was recommended that the existing labour laws be grouped into laws pertaining to industrial relations, wages, social security, safety, welfare, working conditions, and so on. The NLC was of the view that the coverage as well as the definition of the term “worker” should be the same, and that social security benefits must be available to all employees, including administrative, managerial, supervisory, and other excluded categories. It recommended a separate law for small establishments. It also held that contract labour should not be engaged for core production/service activities. Contract labour was to be remunerated at the same rate as regular workers in the same organisation doing work of a comparable nature. The NLC observed that the unionisation was low, and that it was time to reverse this and encourage collective negotiations.

Far from implementing the second NLC report, the central government dragged its feet, only making some changes to the Trade Union Act (2002) and the IDA (1984 and 2010). It was around this time that the central government's policy turned towards privatisation, liberalisation, and globalisation of the economy. Many public sector units were privatised and foreign companies were encouraged to shift their units to India. State governments created special economic zones (SEZs) to attract investments and entrepreneurs were promised exemption from labour laws.

Judiciary's Support

The government's policy of privatisation received strong support from the higher judiciary. Challenges made to the disinvestment of public sector units were rejected and judicial reviews were prohibited in the Balco Employees Union case (2002) and the Devans Modern Breweries case (2004). The Supreme Court also observed in the Uttar Pradesh State Brassware Corporation case (2006),

Socialism might have been a catchword from our history. It may be present in the preamble of our Constitution. However, due to the liberalisation policy adopted by the Central Government from the early nineties, this view that the Indian society is essentially wedded to socialism is definitely withering away.

The Court also ruled,

Globalisation has brought a radical change in the economic and social landscape of the country. Its impact on the Constitution and constitutionalism is significant. …Often the economic changes in the country relating to regulation of markets brought about by competition law leading to substantial erosion of administrative law by private law are matters which eventually would fall for our decision. The Court will have to take a realistic view in interpretation of the Constitution having regard to the changing economic scenario.

Today, vast sections of unorganised labour are not covered by any labour legislation. Even where legislation operates, large numbers of casual workers are unable to get legal protection. While trade unions seek a comprehensive labour legislation, employers seek

more and more deregulations or exemptions from the law. SEZs that have allowed industries to be set up with special incentives to improve the export of goods are hardly regulated by labour laws. This has resulted in demoralisation of the workforce. These developments have also sometimes led to individual violence against officers/managers (for example, at Maruti Suzuki's plant on the outskirts of Gurgaon). The enforcement machinery has become utterly corrupt and enforcement officers look the other way when serious breaches of labour legislations take place. The multi-tier appeals system allows litigation to start from labour courts/industrial tribunals, proceed to high courts (single bench and division bench), and end up in the Supreme Court. Normally, a contested industrial dispute takes a minimum of 20 years to reach the finality of a conclusion. A survey of the disputes that come up for adjudication before labour courts shows that 90% of them had to do with the dismissal of individual workers. Gone are the days when adjudicating forums dealt with collective disputes related to workers, wages, bonuses, and work norms. No trade union worth its name now wants to go for adjudication and would rather settle matters around the negotiating table. The trade unions operating in large units hardly go to court for adjudication. The existing labour laws have largely failed to deliver and they require revamping – but not in the sense understood by the Modi government.

Before tinkering with the existing labour laws, one must know their history. The colonial government never wanted to extend labour legislations that existed in the UK in the early years of the 20th century. After the first world war, colonial India was dubiously made a member of the ILO. After lot of hue and cry, a Royal Commission of Labour, which came to India, observed in its report (1929),

Everything that we have seen in India has forced upon the conviction that the need of organisation among Indian workmen is great. ...Nothing but a strong trade union movement will give the Indian workman adequate protection. ...It is in the power to combine that labour has the only effective safeguard against exploitation, and the only lasting security against inhumane conditions.

Its opinion was that the unionisation of workers alone would improve their economic conditions. Therefore, the first phase of labour legislations introduced (1923-45) were

merely regulatory. In the second phase, after the second world war, a nationalist government began making laws that affected the relationship between capital and labour (1946-51). After the Constitution of India was enacted and the state was obliged to make laws in terms of the directive principles of state policy, a number of welfare legislations were enacted in the third phase (1952-86). The legislations made during the second phase show that most of them were as a result of unionisation in a particular sector. They covered an identifiable group. The government made sector-wise and segment-oriented laws relating to plantation labour, mine workers, beedi and cigar workers, motor transport workers, and so on. Each of them had their own peculiarity and the service conditions for each industry were unique.

Motives of Amendments

Against this background, any attempt made to consolidate and simplify labour laws is welcome. However, attempts to universalise the law should not result in workers in unique segments losing their hard-earned rights. The present attempts by the Rajasthan government and the central government do not indicate that they were motivated by the desire to bring any comprehensive laws to the sector. On the other hand, they are only an attempt to deregulate the sector. Without conducting any worthwhile studies on the issue, ad-hocism seems to be ruling the roost.

Stories are published in the media on the need for revamping so-called outdated labour legislations that were brought in without conducting any scientific studies. *The Times of India* in 1928 had said in an editorial:

So far we have seen repeated in India almost the whole of the blunders that attended the beginnings of the industrial era elsewhere, in the failure to realise the needs of the workers as human beings. The process of transferring millions from agriculture to industry calls for a large statesmanship, if irretrievable blunders are to be avoided.

It did not have any qualms about saying in 2010,

Successive governments haven't had the stomach for labour reform, the key to generating organised sector jobs. Thanks to restrictive labour laws, relics of colonial times, such

employment has remained near-stagnant in port-reforms India…There's also little scope for flexibility in contracts reflecting the diversity of jobs on offer across different sectors…Besides overhauling antiquated labour laws, we must create opportunities by dismantling hurdles to private investment in infrastructure and retail…State paternalism is no surrogate for these tasks.

The economic reforms and the dilution of labour legislations have brought unprecedented misery to the working masses in our country. Ever rising prices have eroded the real value of their wages, which have put their health in jeopardy. Fast shrinking public health services and the lack of medical insurance for the poor have added to their problems. There are no jobs that provide a sustainable income for workers. Whatever is on offer is contractual or casual in nature with long hours, terrible work conditions, and no security. To top it all, the fundamental right to organise and agitate for better wages, better working conditions, and a better life is being crushed systematically. The working class certainly did not bargain for this *parivartan* (change) from the new government.