

# THE INDUSTRIAL DISPUTES ACT, 1947

(ACT NO. 14 of 1947)<sup>1</sup>

An Act to make provision for the investigation and settlement of industrial disputes, and for certain other purposes.

Whereas it is expedient to make provision for the investigation and settlement of industrial disputes and for certain other purposes hereinafter appearing;

It is hereby enacted as follows:

## STATEMENT OF OBJECTS AND REASONS

(i) Experience of the working of the Trade Disputes Act, 1929, has revealed that its main defect is that while reactants have been imposed on the rights of strike and lockout in public utility services on provision has been made to render the proceeding institutable under the Act for the settlement of an industrial dispute, either by reference to a Board of Conciliation or to a Court of Inquiry, conclusive and binding on the parties to the dispute. This defect was overcome during the war by empowering under Rules 81-A of the Defence of India Rules, the Central Government to refer industrial disputes to adjudicators and to enforce their awards. Rule 81-A, which was to lapse on the 1st October, 1946, is being kept in force by the Emergency Powers (Continuance) Ordinance, 1946, for a further period of six months; and as industrial unrest, in checking which this rule has proved useful, is gaining momentum due to the stress of postwar industrial readjustment, the need of permanent legislation in replacement of this rule, is self-evident. This Bill embodies the essential principles of R.81-A, which have proved generally acceptable to both employers and workmen, retaining intact, for the most part, the provisions of the Trade Disputes Act, 1929.

The two institutions for the prevention for the prevention and settlement of industrial disputes provided for in the Bill are the Works Committees consisting of representatives of employers and workmen, and Industrial Tribunals consisting of one or more members

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1. For Statement of Objects and Reasons see Gazette of India 1946, Pt. V. pp. 239-240; and report of select Committee, see *ibid*, 1947 Pt. V. pp. 33-35.

This Act has been amended in the State of Madras by Madras Act No. 2 of 1949; Uttar Pradesh by U.P. Act No. 25 of 1951 (w.e.f. 26th June, 1951) in Punjab by Punjab Act No. 8 of 1957, in Bihar by Bihar Act No. 8 of 1958 and Act No. 20 of 1959, in West Bengal by West Bengal Act Nos. 17 of 1958, 11 of 1959 and 25 of 1961, in Rajasthan by Rajasthan Act No. 34 of 1958, in Orissa by Orissa Act No. 6 of 1960 and in Kerala by Kerala Act No. 28 of 1961.

possessing qualifications ordinarily required of appointment as Justices of a High Court Power has been given to appropriate Government to require Works Committees to be constituted in every industrial establishment employing 100 workman, or more and their duties will be to remove causes of friction between the employer and workman in the day-to-day working of the establishment and to promote measures for securing amity and good relations between them, Industrial peace will be most enduring where it is founded on voluntary settlement and it is hoped that the Works Committees will render recourse to the remaining machinery provided for in the Bill of the settlement of disputes infrequent. A reference to an Industrial Tribunal will lie where both parties to any industrial dispute apply for such reference, and also where the appropriate Government considers it despondent so to do. An award of a Tribunal may be enforced either wholly or in part by the appropriate Government for a period not exceeding one year. The power to refer disputes to Industrial Tribunals and enforce their awards is an essential corollary to the obligation that lies on the Government to secure conclusive determination of the disputes with a view to redressing the legitimate grievances of the parties thereto, such obligation arising from the imposition of restraints of the right, of strike and lockout, which must remain inviolate, except where considerations of public interest override such rights.

The Bill also seeks to re-orient the administration of the conciliation machinery provided in the Trade Disputes Act. Conciliation will be compulsory in all disputes in public utility services and optional in the case of other Industrial establishments, With a view to expedite conciliation proceedings time limits have been prescribed for conclusion thereof-14 days in the case of conciliation officer and two months in the case of conciliation proceedings will be binding for such a strike. A settlement arrived at in the course of conciliation proceedings will be binding for such period as may be agreed upon by the parties and where no period has been agreed upon, for a period of one year, and will continue to be binding until revoked by a 3 months, notice by either party to the disputes.

Another important new feature of the Bill relates to the prohibition of strikes and lockouts during the pendency of conciliation and adjudication proceedings for settlement reached in the course of conciliation proceeding and of awards of Industrial Tribunal declared binding by the appropriate Government. The underlying argument is that where a dispute has been referred to conciliation for adjudication, a strike or lock-outing furtherance thereof, is both unnecessary and inexpedient, Where on the date of reference to conciliation

or adjudication , a strike or lockout is already in existence, power is given to the appropriate Government to prohibit its continuance lest the chances of settlement or speedy termination of the dispute should be jeopardized.

The Bill also empowers the appropriate Government to declare, if public interest or emergency so requires, by notification in the Official Gazette, any industry to be a public utility service, for such period, if any, as may be specified in the notification”. -[Published in Gazette of India, 1946, Pt. V. p. 348.]

(ii) **Amending Act No. 41 of 1956** - Doubt has been raised whether retrenchment compensation under the Industrial Disputes Act, 1947, becomes payable by reason merely of the fact that there has been a change of employers, even if the service of the workman is continued without interruption and the terms and conditions of his service remain unaltered. This has created difficulty in the transfer, reconstitution and amalgamation of companies and it is proposed to make the intention clear by amending section 25F of the Act.

2. Questions have also been raised whether a workman who is laid-off for more than forty-five days continuously is entitled to layoff compensation for any period beyond the first forty five days. Opportunity has been taken to remove the ambiguity by specifying the circumstances under which such compensation beyond the first forty-five days would be admissible to a workman. - [Published in Gaz. of India, 23-4-1956, Pt. II, S.2, Ext. p. 307.]

(iii) **“Amending Act 36 of 1964** - The Bill seeks to make change in the Industrial Disputes Act, 1947. The important changes in the Act were discussed at various tripartite meetings like the Indian Labour Conference and the Standing Labour Committee and have their approval.

2. Section 7-A of the Act lays down the qualification of appointment as the Presiding Officer of a Tribunal. The State Government have been experiencing difficulty in getting suitable person for appointment as Presiding Officers of Tribunals. Many of the State Governments have accordingly amended this section in its application to their States enabling District and Sessions Judges to be appointed to these posts. It is now proposed to provide for the appointment of a serving or a retired District Judge of additional District Judge of not less than three years , standing as a Presiding Officer of the Tribunal.

3. In order to encourage arbitration, it is proposed to provide (1) for the appointment of umpires in case of difference of opinion between an even number of arbitrators, (2) for prohibition of strikes and lockouts during arbitration proceedings, and (3)

for application of section 33 during the tendency of any arbitration proceedings. Further, and arbitration award is binding at present only on the parties to the arbitration. This position is discouraging employers from agreeing readily to voluntary arbitration as they cannot enforce it on the workers who are not a party to the agreement. It is now being provided in the Bill that the arbitration award shall have the same binding force as an award of a Tribunal provided that the appropriate Government is satisfied that the parties to the agreement represent the majority of each party.

(4) The Supreme Court have held that a notice to terminate an award can be given by a group of workman acting collectively either through their union or otherwise, and it is not necessary that such a group or the union should represent the majority of the workman bound by the award. In order to prevent any irresponsible or dissatisfied group of workman from terminating the settlement or an award without any regard for the effect of such termination on the entire body of the workman., it is proposed to amend the Act so that in future only a majority of workman shall have the right to terminate a settlement of award.

5. Opportunity has been availed of to propose a few other essential amendments which are mainly of a formal or clarification nature.

Notes on clauses explain the important provisions of the Bill-published in Gazette of India - 2 -12-1963, Pt. II, Section 2, Extra, p. 910.

(iv) **Amending Act No. 35 of 1965-** In order to simplify the existing procedure for handling disputes in respect of the Air Corporations. it is considered necessary to bring the Indian Airlines and Air India Corporations within the jurisdiction of the central share as in the case of some other corporations of all India importance such as the Agricultural Refinance Corporation, the Deposit Insurance Corporation etc.

2. In Construing the scope of Industrial disputes, Courts have taken view that a dispute between an employer and an individual workman cannot per se be an industrial disputes, but it may become one if it is taken up by a union or a number of workman making a common cause with the aggrieved individual workman, In view of this, cases of individual dismissals and discharges cannot be taken up for conciliation or arbitration or referred to adjudication under the Industrial Disputes Act, unless they are sponsored by a union or a number of workman. It is now proposed to make the machinery under the Act available in such cases.

3. Section 25 C of the Act provided that a workman (who has completed not less than one year of continuous service) on being laid off, is entitled to receive compensation up to maximum period of forty-five days during the course of any twelve months. Where, however, the period of lay off after the expiry of the first forty-five days comprise continuous periods of one week or more, the workman is to be paid compensation of all the days comprised in every such subsequent period of lay off, unless there is an agreement to the contrary between the workman and the employer. This provision is open to abuse inasmuch as workmen could be denied lay off compensation by being made to work for some days in each week after the first forty-five days to lay off. With a view to prevent such an abuse, it is now considered necessary to make a provision that lay off compensation would become payable for all the days of layoff beyond the first forty-five days. whether the period is continuous for a week or not.

4. Section 29 of the Act provided for the imposition of a penalty for breach of a settlement or an award, which may be imprisonment for a term which may extend to six months, or fine, or both, There is no provision for enhanced penalty in the event of continued breach of settlements or awards with the result that some unscrupulous employers are able to successfully thwart the implementation of settlement or awards by paying a fine once, which may be for less than what the obligation would otherwise entail. Consequently, the workmen are unable to get the benefits flowing from the award though the employer might have been convicted for the breach. Thus, the absence of provisions for deterrent penalties for continued breach of settlements and awards is acting as an impediment in the way of implementation of settlements and awards, and it is therefore, now proposed to make a suitable provision for the Imposition of punishment in case of a continuing breach of a settlements or an award after conviction for the first breach.

5. Many of the above proposals have also received the approval of the Standing Labour Committee at its 21st session.

6. The present Bill seeks to amend the Industrial Disputes Act to give effect to the above proposals and opportunity has also been availed of to make two other amendments of procedural nature - [Published in Gaz. of India, 24-12-1964, Pt. II S. 2, Ext. p. 1022.]

(v) **Amending Act. 45 of 1971.**- In *Indian Iron and Steel Company Limited and another v. Their Workman* (AIR 1958 SC 130 at 138), the Supreme Court, while considering

the Tribunal's power to interfere with the management's decision to dismiss, discharge or terminate the services of a workman, has observed that in case of dismissal on misconduct, the Tribunal does not act as a court of appeal and substitute its own judgment for that of the management and that the Tribunal will interfere only when there is want of good faith, victimisation, unfair labour practice, etc., on the part of the management.

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

3. In accordance with these recommendations, it is considered that the Tribunal's power in an adjudication proceeding relating to discharge or dismissal of a workman should not be limited and that the Tribunal should have the power, in cases wherever necessary, to set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thins 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. For this purpose, a new section 11A proposed to be inserted in the Industrial Disputes Act. 1947.

4. Section 25FFF of the Industrial Disputes Act. 1947. Provides for payment of compensation to workmen in case of closing down of an undertaking and the amount is calculated at the rate of fifteen days' average pay of every completed year of continuous service or any part thereof in excess of six months. But, in the case of closure on account of unavoidable Circumstances beyond the control of the employer, the ceiling limit of compensation is the average pay for three months. A Central Workers' Organisation suggestedan amendment of section 25FFF of the Act to remove the ceiling limit of compensation in case of closure of a mining undertaking by reason of exhaustion of its

reserves. According to its suggestion such closing down should not be deemed to be on account of unavoible circumstances beyond the control of the employers because the employers have definite knowledge of the exhaustion of the area-reserves of mines. The Industrial Committee on Coal Mining, in its ninth session (Calcutta 10th, 11th, August, 1964) and the Industrial Committee on Mines other than Coal in its fourth session (New Delhi 20th, 21st February 1965) have agreed to the suggestion to amend the Act for the aforesaid purpose Accordingly, it is proposed to amend section 25FFF to provide for payment of full compensation to workman in the event of closing down of a mining undertaking due to exhaustion of its reserves subject to the condition that no retrenchment compensation would be payable to workman concerned when and employer provides them with alternative employment with effect from the date to closure at the same remuneration as. They were entitled to receive, an on the same terms and condition of service as were applicable to them immediately before the closure.

5. It is also proposed to make the Central Government as the appropriate Government in relation to the industrial disputes concerning the Industrial Finance Corporation and the Life Insurance Corporation of India. It is also proposed declare service in, or in connection with, the working of major parts and docks as permanent public utility service.

6. The Bill is designed to give effect to above proposals - [Published in See Gaz. of India, 9-8-71, Pt. II S. 2 Ext. p. 564.

**(vi) Amending Act 32 of 1972.-** The problem of closure of Industrial undertakings resulting in loss of production and unemployment of large numbers of workmen has of late become very serious. Employers have declared sudden closures of Industrial establishment without any notice of advance intimation to the Government. Several Factors appear to have led to these closures, amongst which are accumulated losses over a number of years and mismanagement of the affairs of the establishments. The unsatisfactory state of Industrial relations (in the sense of labour unrest making it difficult to sustain regular production) has been pleaded as a precipitating factor. Certain other causes like financial difficulties and non-availability of essential raw material have also been mentioned.

2. Since the problem of closer has been acute in the State of West Bengal, a President's Act - The Industrial Disputes (West Bengal amendment) Act, 1971- was enacted

on the 28th August, 1971. This provided that an employer who intended to close down an undertaking should serve at least sixty days, notice on the state Government stating clearly the reasons for the intended closure of the undertaking. While enacting this legislation for West Bengal, Government considered it desirable to promote central legislation on the subject, since the problem of closure was not limited to West Bengal but was found in varying degrees in other States as well.

3. It was, however, felt that before central legislation was enacted, the matter should be considered by the Indian Labour Conference. The Indian Labour conference which met on the 22nd and 23rd October, 1971 generally endorsed the proposal for Central legislation.

4. The Bill seeks to give effect to the recommendation of the Indian labour conference. It provides for the service of a notice, at least sixty days before the intended closure of an undertaking is to become effective, so that within this period prompt remedial measures could be taken, where the circumstances permit to prevent such closure. No notice will be required to be served in the case of undertakings set up for construction of buildings, roads, canals, dams and other construction works and projects or in the case of small establishments employing less than fifty persons. The Bill also provides for penalty for closing down any undertaking without serving the requisite notice.- [published in Gaz. of India, 6-12-1971, Pt. II S. 2, Ext., P. 893.]

**(vii) Amending Act No. 32. of 1976.** - The Industrial Disputes Act, 1974 does not contain any provision for preventing layoff and retrenchment. Though the Act provides for 60 days. notice by the employer prior to closing down an establishment employing 50 or more persons, it does not provide for any prior scrutiny of the reasons for such closure. The employers have an unfettered right to close down an establishment, subject to the provision of 60 day's notice.

2. There have been many cases of large-scale layoffs, particularly by large companies and undertakings. cases of large-scale retrenchment as well as closure have also been reported time and again. This action on the part of the management has resulted in all-round demoralising effect on the workmen. In order to prevent avoidable hardship to the employees and to maintain higher tempo of production and productivity, it has become now necessary to put some reasonable restrictions on the employer's right to layoff retrenchment and closure. This need has also been felt by different State Governments.



3. This Bill, therefore, seeks to amend the Industrial Disputes Act to make prior approval of the appropriate Government necessary in the case of layoff, retrenchment and closure in industrial establishments where 300 or more workmen are employed, This is sought to be achieved by inserting a new Chapter VB in the Act, In the interests of rehabilitation of workmen and for maintenance of supplies and services essential to the life of the community, there is a provision in the Bill for restarting the undertakings which were already closed down otherwise than on account of unavoidable circumstances beyond the control of the employer.

4. It is also proposed to provide for more stringent penalties for the contravention of the provisions of Chapter VB. for the purposes of this Chapter, it is also proposed to make the central government the appropriate Government in respect of companies in which not less than fifty-one per cent of the paid-up share capital is held by the central Government and of corporations established by or under law made by parliament.

5. The Bill is designed to give effect to the above proposals.- [Published in Gaz. of India, 28-1-1976. Pt. II s.2., Ext., P. 491.]

**(viii) Amending Act 46 of 1982.-** The Industrial Disputes Act, 1947, provides the machinery and procedure for the investigation and settlement of industrial disputes. The provisions of the Act had been amended from time to time in the light of experience gained in its actual working. case laws and industrial relations policy of the Government. The National Commission on Labour (1969) which made an in-depth study of the industrial relations and procedures had identified a number of areas in which the Act needed to be amended to promote industrial harmony. The recommendations of the National commission on Labour were discussed at various forums.

2. The objectives of the Bill are mainly to ensure speedier resolution of industrial disputes by romping procedural delays and to make certain other amendments in the light of some of the recommendations of the National commission on About. The Bill seeks to make the following amendments in the Act, namely :-

(i) Difficulties have in the interpretation of the definition of the expression “appropriate Government” as contained in the Act in respect of certain industrial establishments. It is proposed to remove the difficulties by making the central Government the appropriate Government in respect of those establishments.

(ii) The Supreme court in its decision in the Bangalore water Supply and sewerage board v. Riappa and others. <sup>1</sup> had, while interpreting the definition of “industry” as contained in the act, observed that Government might restructure this definition by suitable legislative measures. It is accordingly proposed to redefine the term “industry”. While doing so, it is proposed to exclude from the scope of this expression, certain institutions like hospitals and dispensaries, education, scientific, research or training institutes, institutions engaged in charitable, social and philanthropic services, etc. in view of the need to maintain in such institutions an atmosphere different from that in industrial and commercial undertakings and to meet the special needs of such organisations. It is also proposed to exclude sovereign functions of Government including activities relating to atomic energy, space and defence research from the purview of the term “industry”. However, keeping in view the special characteristics of these activities and the fact that their workmen also need protection, it is proposed to have a separate law for the settlement of individual grievances as well as collective disputes in respect of the workmen of these institutions. All these have been taken into account and the term “industry” has been made more specific while making the coverage wider. The scope of the term “workman” has also been enlarged to cover the supervisory staff whose wages do not exceed Rs. 1,600 per months.

(iii) A model grievances redressal procedure had been commanded for adoption. But this voluntary arrangement has not proved effective. It is therefore, proposed to make it obligatory for every industrial establishment employing 100 or more workmen to set up a time bound grievance redressal procedure.

(iv) There has been dissatisfaction with delays involved in the adjudication of industrial disputes. It is proposed to fix a time limit for the adjudication of individual and collective disputes, as also for the disposal of claims, applications and other references by the Labour court, the Industrial Tribunal or the National industrial Tribunal with a view to securing speedier justice to workmen. It has also been provided that no case will lapse merely on account of the fact that the time limits specified had expired.

- (v) There have been conflicting decisions about the right of legal heirs of a workman in the event of the death of the latter pending proceedings before the authorities under the Act. Provision is being made to make it clear that pending disputes will not abate in the event of the death of the workman.
- (vi) It is observed that when labour courts pass awards of reinstatement, these are often contested by an employer in supreme court and High courts. The delay in the implementation of the award causes hardship to the workmen commencing, under certain conditions, from the date of the award, till the case is finally decided in the Supreme court or the High courts.
- (vii) It is proposed to provide that workmen in mines could be laid-off for reasons of fire, flood, excess of inflammable gas or explosion without previous permission.
- (viii) Taking into consideration the observations of the supreme court in the Excel water case (AIR 1979 SC 25), it is proposed to recast the provisions relating to closure of industrial establishments as contained in the Act to provide for the following, namely:-
  - (a) The employer will have to government to obtain permission for closure ninety days before he intended date of closure and a copy of such application will have to be served by him on the representatives of the workmen also:
  - (b) On receipt of such application, Government after giving a reasonable opportunity of being heard to the applicant and the representatives of the workmen and after taking into consideration the guidelines laid down in the provision, may grant or refuse to grant the permission asked for, permission shall be deemed to have been granted if no order of the Government granting or refusing to grant permission is communicated within the specified period:
  - (c) The order of the Government granting or refusing to grant permission is being made final subject to a review by the Government or a reference to the industrial Tribunal;
  - (d) Where an undertaking is permitted to be closed down, the workmen shall be entitled to closure compensation equivalent to fifteen days average pay for every completed year of continuous service or part thereof in excess of six months.
- (ix) The special provisions relating to layoff, retrenchment and closure as contained in chapter VB of the act apply at present to establishments employing 300

workmen or above with a view to extending this statutory protection to workmen of smaller establishments also, it is proposed to reduce the existing this statutory protection to workmen of smaller establishments also, it is proposed to reduce the existing employment limit from 300 to 100.

(x) There is at present no central law specifying unfair labour practice on the part of employers, workmen and the trade unions of employers and workmen and for imposing any penalty for resorting to such undesirable practices. certain state laws as well as voluntary codes of Discipline laid down by the Indian Labour conference specify certain practices as unfair labour practices. The National commission on labour which examined this aspect in detail suggested a list of such unfair practices. It is proposed to make suitable provision in the Act to specify certain practices as unfair labour practices on the part of employers, workmen and trade unions and to provide for penalties for those indulging in such practices.

3. The Bill seeks to achieve the above object and to provide for certain other consequential and clarificatory changes in the Act.- [Published in Gaz. of India, 23-4-1982, pt. II S. 2., Ext., P. 298.]

**CHAPTER I**  
**PRELIMINARY**

1. **Short title, extent and commencement.**- (1) This Act may be called the Industrial Disputes Act, 1947.

(2) it extends to the whole of India.

[ \* \* \* ]<sup>1</sup>

(3) It shall come into force on the first day of April, 1947.

2. **Definitions.**- In this Act, unless there is anything repugnant in the subject or context,-

(a) “appropriate Government” means.-

- (i) in relation to any industrial disputes concerning any industry carried on by or under the authority of the central Government or by a railway company [or concerning any such controlled industry as may be specified in this behalf by the central government] of in relation to an Industrial Dispute concerning <sup>1</sup>[ a Dock Labour Board established under section 5-A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), or <sup>2</sup>[the Industrial Finance Corporation of India Limited formed and register under the Companies Act, 1956], or the Employees’ State Insurance Corporation Established under section 3 of the Employees’ State Insurance Act. 1948 (34 of 1948), or the Board of Trustees constituted under section 3-A of the Coal Mines Provided Fund and Miscellaneous Provisions Act, 1948 (46 of 1948), or the Central Board of Trustees and State Boards of Trustees constituted under section 5-A and section 5-B, respectively, of the Employees’ Provident Fund and Miscellaneous Provisions Act 1952 (19 of 1952), [\*\*\*]<sup>4</sup> or the Life Insurance Corporation of India established under section 3 of the Life Insurance Corporation Act 1956 (31 of 1956), or <sup>5</sup>[the Oil and Natural Gas Corporation resisted under the Companies Act, 1956], or the Deposit Insurance and Credit Guarance Corporation established under Section 3 of the Deposit Insurance and Credit Guarantee

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1. Proviso omitted by Act 15 of 1970.

2. The words in brackets Subs. by Act No. 46 of 1982, vide sec. 2 (a), w.e.f. 21-8-1984.

3. Subs by ord. 12 of 1995 Sec. 2 (w.e.f. 11-10-1995).

4. Omitted by Ord. 10 of 1995 Sec. 2 (w.e.f. 11-10-1995).

5. Subs by Ord. 10 of 1995 Sec. 2 (w.e.f. 11-10-1995).

6. Subs by Act No. 62 of 1984, S. 72.

7. Ins by Act. No. 53 of 1987.

Corporation Act 1961 (47 of 1961), or the Central Warehousing Corporation established under section 3 of the Warehousing corporation Act 1962 (58 of 1962), or the unit Trust of India established under section 3 of the unit Trust of India Act, 1963 (52 of 1963) or the Food Corporation of India established under section 3, or a Board of Management established for two or more contiguous States under section 16 of the Food Corporation Act 1964 (37 of 1964), or [the Airports Authority of India constituted under section 3 of the Airports Authority of India Act, 1994, or a Regional Rural Bank established under section 3 of the Regional Rural Banks Act. 1976 (21 of 1976), or the Export Credit and Guarantee Corporation Limited or the <sup>6</sup>[Industrial Reconnections Bank of India] or <sup>7</sup>[the National Housing Bank established under section 3 of the Nation Housing Bank Act, 1987] or <sup>1</sup>[the Banking Service Commission established under section 3 of the Banking service commission Act, 1975 or] a banking or an insurance company, a mine, and oilfield, <sup>2</sup>[a Cantonment Board], or a major port, the Central Government ; and

- (ii) in relation to any other Industrial Dispute the State Government;

## NOTES

**Employees of Central Government Canteen-** A canteen run by a Contractor Suvidha Catering Service in the establishment and premises of the Hindustan Petroleum Corporation Ltd. (a public section Corporation). It was held that in case of a dispute in respect of employees of canteen the Central Government will be the appropriate Government because the corporation maintains the Canteen under the Factories Act and the Appropriate Government in case of Corporation is the Central Government. [General Employees Association v. Union of India and others., (1992) 1 Lab LJ 242 (Bom.).]

**Termination of service -Dispute regarding -** In a case, the services of the respondent were terminated by the Contractor who was her immediate employer. The petitioner was contractor of South Eastern railways and he has engaged labours on the premises of railways at th rates fixed by the railways. The Dispute regarding termination of services was referred by the State Government of adjudication of Labour Court. The award was

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1. Ins by Act. No. 42 of 1975. S. 29.

2. Ins by Act No. 36 of 1964, S. 2 (w.e.f. 19-12-1964).

challenged and it was held that in view of the fact that contract Labour (Regulation and Abolition) Act, 1970 was applicable in the case, the S.E. Railway was the principal employer and the contractor immediate employer of respondent. The award was quashed because in the opinion of the high Court the work was connected with S.E. Railway, the Central Government was the appropriate Government to refer the dispute, [M/s. J.R.Jugele, Railway Contractor v. Smt. Sitabai Atmaram, (1991) 1Lab Lj 233].

**Whether the Central or State Government was the 'Appropriate Government' in respect of the National Laboratory set up by its parent body i.e., Council of Scientific and Industrial Research (CSIR) -** It was held that the Central Electro Chemical Research Institute as well as the CSIR were functioning under the Authority of the Central Government notwithstanding the fact that CSIR was held not an authority under the Central Government within the meaning of Art, 12 of the Constitution. The Courts, conclusion was supported by the notification of the Central Government wherein it has been stated that CSIR is a society owned and controlled by the Central Government. The award was pushed because the reference was made by the State Government. [Administrative Officer, Central Electro Chemical Research Institute, Karaikudi v. State of Tamil Nadu., (1990) Lab LC 1815 (Mad.)].

<sup>1</sup>[(aa) "Arbitrator" includes and umpire;]

<sup>2</sup>[(aaa) "Average pay" means the average of the wages payable to a workman-

- (i) In the case of monthly paid workman, in the three complete calendar months,
- (ii) In the case of weekly paid workman, in the four complete weeks.
- (iii) In the case of daily paid workman, in the twelve full working days. preceding the dat on which the average pay becomes payable if the workman had worked for three complete calendar months or four complete weeks or twelve full working days, as the case may be, and where such a calculation cannot be made, the average pay shall be calculated as the average of the wages payable to a workman during the period the actually worked];

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1. Ins by Act No. 36 of 1964  
2. Cl. (aa) re-lettered as "(aaa)" by Act 36 of 1964 S.2.  
3. Ins by Act No. 28 of 1981.  
4. Ins by Act No. 62 of 1984  
5. Ins by Act No. 18 of 1964, S. 38.  
6. Ins by Act No. 5 of 1970, S. 20 (2).  
7. Ins by Act No. 40 of 1980 S. 20 (2)  
8. Ins by Act No. 46 of 1982, Vide S. 2 (b) (w.e.f. 21-8-1984).

- b) "Award" means an interim or a final determination of any Industrial Disputes or any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and Includes and arbitration award made under section 10-A];
- (bb) "banking Company" means a banking company as defined in section 5 of a Banking Companies Act, 1949 (10 of 1949), having branches or other establishments in more than one State, and includes <sup>3</sup>[the Export-Import Bank of India,] <sup>4</sup>[the Industrial Reconstruction Bank of India], <sup>5</sup>[the Industrial Development Bank of India], [the Small Industries Development Bank of India established under section 3 of the small industries Development Bank of India Act, 1989 (39 of 1989)] The Reserve Bank of India, the State Bank of India <sup>6</sup>[a Corresponding new bank constituted under section 3 of the Banking Companies (acquisition and Transfer of Undertakings) Act, 1970, <sup>7</sup>[ a Corresponding new Bank constituted under section 3 of Banking Companies (Acquiescing and Transfer of Undertaking) Act, 1980, and any Subsidiary bank], as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959);
- (c) "Board" means a Board of Conciliation constituted under this Act;
- <sup>8</sup>[(cc) "Closure" means the permanent closing down of a place of employment or part thereof];
- (d) "Conciliation Officer" means a conciliation Officer appointed under this Act;
- (e) "Conciliation proceeding" means any proceeding held by a conciliation Officer or Board under this act;



(ee) “Controlled Industry” means any industry the control of which by the Union has been declared by any Central act to be expedient in the public interest;

<sup>1</sup>[\*\*\*\*]

(f) “Court” means a Court of Inquiry constituted under this Act ;

(g) “Employer” means -

(i) in relation to an industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in the behalf, or where no authority is prescribed, the head of the department;

(ii) in relation to an industry carried on by or on behalf of local authority; the chief executive officer of that authority;

<sup>2</sup>[(gg) ‘executive’, in relation to a trade union, means the body by whatever name called, to which the management of the affairs of the trade union is entrusted;

(h) [\*\*\*\*]

(i) a person shall be deemed to be “independent” for the purpose of his appointment as the Chairman or other member of a Board, Court or Tribunal, if he is unconnected with the industrial dispute referred to such Board, Court or Tribunal or with any industry directly affected by such dispute:

Provided that no person shall cease to be independent by reason only of the fact that he is shareholder of an incorporated company which is connected with, or likely to be affected by, such Industrial Dispute; but in such a case, he shall disclose to the appropriate Government the nature and extent of the shares held by him in such company;

<sup>3</sup>[(j) “Industry” means any systematic active carried on by cooperation between an employer and his workman (whether such workman are employed by such employer directly or by or through any agency, including a contractor’ for the production, supply or distribution

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1. Cl. (eee) omitted by Act 36 of 1964 S.2.(w.e.f. 19-12-64).  
2. Ins by Act No. 45 of 1971, S. 2(b)  
3. Subs by Act No. 46 of 1982, Vide S. 2(c).

of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), whether or not,-

- (i) any capital has been invested for the purpose of carrying on such activity ; or
- (ii) such activity is carried on with a motive to make any gain or profit and includes-
  - (a) any activity of the Dock Labour Board established under section 5A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1949);
  - (b) any activity relating to the promotion of sales or business or both carried on by an establishment,

but does not include -

- (1) any agricultural operation except where such agricultural operation is carried on in an integrated manner with any other activity (being any such activity as is referred to in the foregoing provisions of this clause) and such other activity is the predominant one.

*Explanation* - For the purposes of this sub-clause, “agricultural operation” does not include any activity carried on in plantation as defined in clause (f) of section 2 the plantations labour Act, 1951; or

- (2) hospitals or dispensaries ; or
- (3) Educational, scientific, research or training institutions; or
- (4) institution owned or managed by organisations wholly or substantially engaged in any charitable social or philanthropic service ; or
- (5) Khadi or Village Industries ; or
- (6) any activity of the Government relating to the sovereign functions of the Government including all the activities carried on by the departments of the central Government dealing with defence research, atomic energy and space; or
- (7) any domestic service ; or
- (8) any activity, being a profession practised by an individual or body or individuals, if the number of persons employed by the individual or body of individuals in relation to such profession is less than ten; or
- (9) any activity, being an activity carried on by a cooperative society or a club or any other like body of individuals, if the number of persons employed by the cooperative society, club or other like body of individuals in relation to such activity is less than ten];

## NOTES

**University is an industry** - University is an industry and carpenter employed in university is “workman”. The Labour court has jurisdiction to decide the dispute relating to the termination of such a person; [Sumer chand v. Labour Court, Ambal and another, (1992) 1 Lab LJ 394 (P & H).]

**‘Place of Worship’** - A place of worship (Mandir) where worship is done by Pujaris on a regular wage basis and where it appears from the balance sheet that there remains a large surplus in the fund after expenses are paid for making prasad, It is clear that the enterprise is of commercial nature and for this reason a Mandir is an industry (workman of M/s Bailuntha Nath debathan Trust v. State of West Bangal & other 1 Lab. LJ 145 (Cal.))

**National Remote Sensing Agency** - The National Remote Sensing Agency was held to be an industry under section 2 (j) of the Industrial Disputes Act, as it doesn’t perform any sovereign function. Some important functions of Agency relate to consultancy services of servery, facilities which are non sovereignfunctions. [R. Sreenivasa Rao v. Labour Court, Hyderabad and Another, (1990) II Lab. LJ 577 (A.P.).]

Appellant Company, a real estate company owning mansions and engaged in the activity of leasing those to tenants, which employed workers for their maintenance was an industry within the meaning of section 2(j). [Karnari Properties Ltd. v. State of West Bengal., (1990) 4 SCC 472]

Where a driver was appointed on daily wages in Tourism Department of the State Government and his services were governed by State Sub ordinate service and in place of the petitioner/daily wages driver, a regular appointed through Public Service Commission was given the appointment, it was held that the daily wages can not seek any remedy under the Act on his termination of service. [State of Kerala v. C. Mohanan. (1995) 70 F.L.R. 1127 (Ker.)]

- (k) “industrial dispute” means any dispute or difference between employers and employers, or between employers and workman, or between workman and workman, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

## NOTES

“Industrial disputes” - A mere demand made to the Government cannot become an industrial dispute without it being raised by the workman with their employer. [Village Papers (Pvt.) Ltd. v. State of H.P., (1983) 83 F J R 412 (H.P.).]

Where a dismissal for service for misconduct was challenged on the ground of being illegal it was held that as there is dispute between employer and workman regarding employment, therefore, such dispute is an industrial dispute. [Chief Executive Officer, Zila Parishad, Chandrapur, V. Dy. Commissioner of Labour, (1995) 70 F. L. R. 354. (Bom.) (N.B.)]

It is settled law that so far as the layoff retrenchment are concerned, it is managerial discretion of an employer to organise his business in manner he considers best and the workman cannot challenge its propriety so long as it is organised in a bona fide manner. [(1995) 70 F.L.R. 443 (Punj.)]

Where a right preexisting in common law is recognised by statute and now statutory remedy is provided for its enforcement without including Civil Courts Jurisdiction expressly, both the common law and statutory remedies would have concurrent remedies. [Virudhunagar Sarvodaya Sangh v. S. Sathiyatheinakeran, (1995) 70 F.L.R. 973 (Mad.)]

“(ka)” industrial establishment or undertaking” means an establishment or undertaking in which any industry is carried on :

Provided that where several activities are carried on in an establishment of undertaking and only one or some of such activities is or are an industry or industries, then,-

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;
- (b) If the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such established or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment of undertaking or, as the case, may be, unit thereof shall be deemed to be an industrial establishment or undertaking;

(kk) “insurance company” means an insurance company as defined in section 2 of the Insurance Act, 1938 (4 of 1938), having branches of other establishments in more one State;

<sup>2</sup>(kka) “Khadi” has the meaning assigned to it in clause (d) of section 2 of the Khadi and Village Industries Commission Act, 1956 (61 of 1956);

<sup>3</sup>(kkb)]”Labour Court” means a Labour Court constituted under section 7;

(kkk) “layoff” (with its grammatical variations and cognate expressions) 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 breakdown of machinery [or natural calamity or for any other Connected reason]<sup>4</sup> to give employment to a workman whose name is borne on the muster-rolls of his industrial establishment and who has not been retrenched ;

*Explanation* - Every workman whose name is borne on the muster rolls of the industrial establishment and who presents himself for work at the establishment 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:

**Provided** that if the workman, instead of being given employment at the commencement of any shift of any day is asked to present himself for the purpose during the second half of the shift for the day and is given employment then, he shall be deemed to have been laid off only for one half of that day;

Provided further that if he is not given any such employment even after so presenting himself, he shall not be deemed to have been laid off for the second half of the shift for the day and shall be entitled to full basic wages and dearness allowance for that part of the day:

## NOTE

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1.Cl (ka) Ins. by Act No. 46 of 1982 vide Sec. 2(d) (w.e.f. 21-8-1984).

2.New Cl. (kka) Ins. by Act No. 46 of 1982 vide Sec. 2(o) (w.e.f. 21-8-1984).

3.Original Cl (kka) reletterd as cl. (kkb) by Act No. 46 of 1982 (w.e.f. 21-8-1984).

4.The words in Italics in cl. (kkk) Subs by Act No. 46 of 1982 vide Sec. 2(f) (w.e.f. 21-8-1984).

Layoff can also take place on account of any other reason not mentioned in Section 2 (kkk) of the Act which may be on account of shortage of coal, power, raw material, accumulation of stocks, breakdown of machinery or for any other reasons, Expression 'any other reason' is to mean reason similar or analogous to reasons specified in Section 2(kkk). [(1995) 70 F.L.R. 443 (Punj.)]

(l) "Lockout" means 1[temporary closing of a place of employment], or the suspension of work, or the refusal by an employer to continue to employ any number of person employed by him :

2[(la) "Mahoru port" means a major port as defined in clause (8) of section 3 of the Indian Ports Act, 1908 (15 of 1952)];

(lb) "mine" means a mine as defined in clauses (j) of subsection (1) of section 2 of the Mines Act, 1952 (35 of 1952)];

(ll) "National Tribunal" means a National Industrial Tribunal constituted under section 7-B;

3[(lll) "Officer bearer", in relation to a trade union, includes any member of the executive thereof, but does not include an auditor];

(m) "prescribed" means prescribed by rules made under this Act;

(n) " public utility service" means-

(i) any railway service or any transport service for the carriage of passengers or goods by air;

4[(ia) any service in, or in connection with the working of, any major port or dock;

(ii) any section of any industrial establishment, on the working of which the safety of the establishment or the workman employed therein depends:

(iii) any postal, telegraph or telephone service;

(iv) any industry which supplies power, light or water to the public;

(v) any system of public conservancy or sanitation;

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1. The words in italics in cl. (1) Subs by Act. No. 46 of 1982, Vide S. 2 (g) for the words [closing of a place employment] (w.e.f.21-8-1984)  
2. Ins by Act No. 36 of 1964, S. 2 (w.e.f. 19-12-1964).  
3. Ins by Act No. 45 of 1971.  
4. Ins by Act No. 36 of 1964, S. 2 (w.e.f. 19-12-1964).  
5. Subs. by *ibid*.

- (vi) any industry specified in the <sup>5</sup>[First Schedule which the appropriate Government may, is satisfied that public emergency of public interest so required. by notification in official Gazette, declare to be a public utility service for the purposes of this Act, for such period as may be specified in the notification;

**Provided** that the period so specified shall not, in the first instance exceed six months but may, be a like notification, be extended from time to time, by any period not exceeding six months, at any one time, if in opinion of the appropriate Government, public emergency or public interest requires such extension;

- (o) “railway company as defined in section 3 of the Indian Railway Act, 1890 (9 of 1890);
- (oo) “retrenchment” means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include
  - (a) Voluntary retirement of the workman ; or
  - (b) retirement of the workman on reaching the age of superannuation of the contract of employment between the employer and the workman concerned contains a stipulation in that behalf ; or
  - <sup>1</sup>[(bb) termination of the service of the workman as a result of the no-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in the behalf contained therein; or]
  - (c) termination of the service of a workman on the ground of continued ill-health;

## NOTES

**Scope of -** (1) When an employee voluntarily tenders his resignation which was accepted by the management, such termination did not fall with in meaning of retrenchment but amounted to voluntary retirement in section 2 (s) of the U.P. Industrial Disputes Act. [M/s J.K. Cotton spinning and weaving Mills v. State of U.P., (1991) 1 Lab LJ 39 (SC).]

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1. Subs- Cl. (bb) inserted by Act. No. 49 of 1984, S. 2 w.e.f. 18-8-1984, vide notification No. S.O. 605 (E) dated 18-8-1984.

(2) In case in retrenchment where the petitioner has rendered 26 years of service and was above 50 years of age and the age and the age of superannuation of the petitioner was 58 years it was held to be a fit case to consider suitable alternative employment for the petitioner or the give compensating. [*Hoshiar Singh v. Management of Delhi Transport Corp. (1995) 70 F.L.R. 80.*]

(3) The termination of service of petitioner on account of medical unfitness is covered by section 2(oo) (c) and would not amount to retrenchment under section 2 (oo) the Industrial Disputes Act. [*Hoshiar Singh v. Management of Delhi Transport Corp. (1995) 70 F.L.R. 80.*]

(4) Where a workman who was employed on daily wages has worked for more than four years without interruption and his services were dispensed with on ground of being a casual employee, the High Court opined that the Labour Court has rightly held that the termination of service amounted to retrenchment and he was been right reinstated in service with benefits. [*State of Rajasthan v. Labour Court., (1995) 70 F.L.R. 463.*]

(5) The order of termination of service was passed due to absence from duty without leave. Such order of termination of service is punishment which could be passed only in conformity with the principles of natural justice are not complied with therefore the order becomes invalid. [*Joginder Chand. v. Punjab State Electricity Board., (1995) 70 F.L.R.529 (Punj).*]

(6) Termination of service by efflux of time and by not renewal of the contract of service would not amount to retrenchment . [*Rejathan State Road, Transport Corpn., v Babulal Sharma, (1995) 70 F.L.R. 241.*]

(7) To bring the case of termination of service under the exception its has to be shown that the termination was (a) as a result of non-renewal of contract of appointment upon its expiry of (b) because of such contract being terminated. [*Zila Parishad, Dhule v. Rajendra Hiranman Kaimar. (1995) 70 F.L.R. 64 (Bom.).*]

(8) Definition of the term "Retrenchment" is inditical in both the Acts but clause (bb) was added by amendment to section 2 (oo) in Central Act by which two more exceptions were insured to definite of retrenchment. Such a clause was no ensured in U.P. Act. [*Puspa Agrawal (Smt.) v. Regional Inspectress of Girls Schools, Meerut, (199r) 70 F.L.R. 20 (All.).*]



(9) Termination of service without complying the provision of Section 25-F would render and order of termination of service illegal and not est. [*Zila Parishad, Dhule v. Rajendra Hiranman*]

(iii) Who is employed mainly in a managerial or administrative or administrative capacity; or

(iv) How, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem of exercises, either by the nature of the duties attached to the office of by reason of the powers vested to him, functions mainly of a managerial nature].

### NOTES

**A priest is no a workman** - A pujari cannot be equated with a mere wage came and his services cannot be treated as manual or clerical etc. There was difference between a mahant, cook or clerk who work around the precincts of the temple or its corridor and office rooms and a priest placed in the sanctum sanatorium and who silently saliently said his prayers , the deity or God he serves cannot be looked upon as a profit producing scheme and the owner of a temple cannot be equated to an industrial or commercial employer. Therefore priest is not a workman.[*Kesava Bhatt v. Shree Ram Anbulam Trust*, (1990) 1 Lab LJ (Ker).]

**Salesman employed** - Section-salesman employed by the respondent company is not a workman because the duties of the appellant require imaginative and creative mind which could not be termend as either manual, skilled, unskilled, or electrical in nature. His supervising work as only incidental. [*T.P. Srivastava v. National Tobacco Co.* (1992) I Lab LJ 86 (SC).]

**Whether a Pound-keeper of village Panchayat is a workman or not.**- It was held that the Panchayat is statutorily required to undertake some of the Governmental functions. The activities in respect of those functions are not industry. The respondent who was employed as Pound Keeper was only a marginal employer hired to attend certain nominal matters, that will not destroy the non-employer character of the organisation. *Gran Panchayat v Presiding Officer labour Court, Nagpur and others*, (1991) II Lab LJ 147 (Bom).]

**'Casual workman'**- A casual Workman is also comprehended by definition of workman in section 2 (i). [*G. Yadi Reddi. V. Brook Bond India Ltd.*, (1994) 1 LLN 282 (A.P).]

**'Probationer'**- Probationer appointed in clerical guard of Bank which is industry and completing 240 days of service is workman. [Syed Azem Hussaini v. Andhara Bank Ltd. AIR 1995 SC 1352.]

**Scope** - While discussing the power of the appropriate Government on the point of reference it was held that where though the reference was rejected on earlier occasion, if other conditions were satisfied an application under section 10 (4-A) can be made, Mere refusal to refer would not put an end to industrial dispute. Neither the power is exhausted as the government in the interest of peace can reconsider it. [Banavasi Vyanasaya v. N.E. Bapat Seva Sahkari Sangh Ltd., (1995) 70 F.L.R. 13 (Knt.) (Sum).]

For the purpose of termination of workman nomenclature or designation of the post is not conclusive. Duties to be performed by person must be examined. [*Reserve Bank of India v. Woman Babu Rao Shinde*, (1995) 70 FLR 10.]

**'Hostel Supervisor'**- A Hostel Supervisor in-charge of the Hostel run by Bank for Officers' Training would not be a workman within the definition under Section 2(s) of the Industrial Disputes Act, 1947, [*Reserve Bank of India v. Women Babu Rao shindy*. (1995) 70 FLR 10.]

**'Security Supervisor'**- Mere description of the petitioner as a 'Security Supervisor' would not convert him into a supervisory officer so as to fall within the exclusory provision by the employee which is determinative. [S.A. Sarang v. W.G. Forage & Allied Industries Ltd. (1995) 70 FLR 967 (Bom.).]

**'Relimnary issue'**- Labour Court should frame an issue as to whether the employees is a workman or not and such an issue should be determined as 'Preliminary Issue' [Hira Sugar Employees' Cooperative Consumers Stores Ltd. v. P.P. Korveka. (1995) 70 FLR 914 (Knt.)]

**1[2A. Dismissal, etc. of an individual workman to be deemed to be an industrial dispute** - 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

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1. ins by Act. No. 35 of 1965, S. 3 w.e.f. 1.12-1965

termination shall be deemed to be an industrial disputes notwithstanding that on other workman nor any union of workman is a party to the dispute].

## CHAPTER II

### AUTHORITIES UNDER THIS ACT

**3. Works committee.-** (1) In the case of any industrial establishment in which one hundred or more workman are employed or have been employed on any day in the preceding twelve months the appropriate Government may by general or special order require the employer to constitute in the prescribed manner a Works Committee consisting of representatives of workman engaged in the establishment to however that the number of representatives of workman on the Committee shall not be less than the number of representatives of the employer. The representatives of the workman engaged in the establishment and in consultation with their trade union, if any, registered under the Indian Trade Unions Act, 1926 (16 of 1926).

(2) It shall be the duty of the Works Committee to promote measures for securing and preserving amity and good relation between the employer and workmen and, to that end, to comment upon matters of their common interest or concern and endeavour to compose any material difference of opinion in respect of such matters.

**4. Conciliation Officers -** (1) The appropriate Government may, by notification in the Official Gazette, appoint such number of persons as it thinks fit to be conciliation officers, charged with the duty of mediating in and promoting the settlement of Industrial disputes.

(2) A conciliation officer may be appointed for a specified area or for specified industries in a specified area or for one or more specified industries and either permanently or for a limited period.

**5. Boards of conciliation -** (1) The appropriate Government may as occasion arises by notification in the Official Gazette constitute a Board of Conciliation for promoting the settlement of an industrial dispute.

(2) A Board shall consist of a Chairman and two or four other members, as the appropriate Government thinks fit.

(3) The chairman shall be an independent person and the other members shall be persons appointed in equal numbers to represent the parties to the dispute and any person appointed to represent a party shall be appointed on the recommendation of that party :

Provided that, if any party fails to make a recommendation as aforesaid within the prescribed time, the appropriate Government shall appoint such persons as it thinks fit to represent that party.

(4) A Board, having the prescribed quorum, may act notwithstanding the absence of the chairman or any of its members or any vacancy in its number :

Provided that if the appropriate Government notifies the Board that the services of the chairman or of any other member has ceased to be available, the Board shall not act until a new chairman or member, as the case may be, has been appointed.

**6. Courts of Inquiry.** - (1) The appropriate Government may as occasion arises by notification in the Official Gazette, constitute a Court of Inquiry of inquiring into any matter appearing to be connected with or relevant to an industrial dispute.

(2) A Court may consist of one independent person or of such number of independent persons as the appropriate Government may think fit and where a Court consists of two or more members, one of them shall be appointed as the Chairman.

(3) A Court, having the prescribed quorum, may act notwithstanding the absence of the chairman or any of its members or any vacancy in its number:

Provided that, if the appropriate Government notifies the Court that the services of the Chairman have ceased to be available, the Court shall not act until a new Chairman has been appointed.

**7. Labour Courts** - (1) The appropriate Government may, by notification in the Official Gazette, constitute one or more Labour Courts for the adjudicating of industrial disputes relating to any matter specified in the Second Schedule and for performing such other functions as may be assigned to them under this Act.

(2) A Labour Court shall consist of one persons only to be appointed by the appropriate Government.

(3) A person shall not be qualified for appointment as the Presiding Officer of a labour Court, unless-

<sup>1</sup>[ (a) he is, or has been, a judge of a High Court ; or]

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1. Ins by Act No. 36 of 1964, vide S.3. w.e.f. 19-12-1964.

2. Cl. (c) omitted by act No. 46 of 1982, vide S.3. w.e.f. 21-8-1984.

3. Clauses (a) and (b) re-lettered as (d) and (e) respectively by S.3. Act No. 36 of 1964 w.e.f. 19-12-1964.

(b) he has, for a period of not less than three years, been a District Judge or and additional District Judge ; or

(c) [\*\*\*\*]<sup>2</sup>

<sup>3</sup>[(d)] he has held any judicial officer in India for not less than seven years; or

<sup>4</sup>[(e) he has been the presiding officer of a labour court constituted under any provincial Act or state Act for not less than five years.

**7-A. Tribunals.-** (1) the appropriate Government may, by notification in the official gazette, constitute one or more industrial Tribunals for the adjudication of industrial disputes relating to any matter, whether specified in the Second schedule or the Third schedule <sup>5</sup>[and for performing such other functions as may be assigned to them under this Act.]

(2) A Tribunal shall consist of one person only to be appointed by the appropriate Government.

(3) A person shall not be qualified for appointment as the presiding officer of a Tribunal unless-

(a) he is or has been, a judge of a High court; or

<sup>1</sup>[(aa) he has, for a period of not less than three years, been a District judge or an Additional District judge ; [ \* \* \* ]<sup>2</sup>

(b) [ \* \* \* ]<sup>3</sup>

(4) The appropriate Government may, if it so thinks fit, appoint two persons as assessors to advise the Tribunal in the proceeding before it.

**7-B. National Tribunals. -** (1) The central Government may, by notification in the adjudication of industrial disputes which, in the opinion of the central Government involve questions of national importance or are of such a nature that industrial establishments situated in more than one state are likely to be interested in, or affected by, such disputes.

(2) A National Tribunal shall consist of one person only to be appointed by the central Government.

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4. Clauses (a) and (b) re-lettered as (d) and (e) respectively by S.3. Act No. 36 of 1964 w.e.f. 19-12-1964.

5. The words in brackets in sub-sec. (1) inserted by Act No. 46 of 1982, vide S.4.

1. Ins. by Act No. 36 of 1964, S. 4 w.e.f. 19-12-1964.

2. The word "or" committed by Act No. 46 of 1982 w.e.f. 21-8-1984.

3. CI. (b) omitted by ibid w.e.f. 21-8- 1984.

4. The words in brackets in sub-sec. (3) subs by Act No.46 of 1982,vide S.5. w.e.f. 21-8-1984.

(3) A person shall not be qualified for appointment as the Presiding Officer of a National Tribunal <sup>4</sup>[unless he is, or has been, a judge of a High Court].

(4) The central government may, if it so thinks fit, appoint two persons as assessors to advise the National Tribunal in the proceeding before it.

**7-c. Disqualifications for the presiding officers of labour court, Tribunals and national tribunals.-** No person shall be appointed to, or continue in the office of the presiding officer of a Labour court, tribunal or National Tribunal, if-

- (a) he is not an independent person ; or
- (b) he has attained the age of sixty-five years.

**8. Filling of vacancies.-** If, for any reason a vacancy (other than a temporary absence) occurs in the officer of the presiding officer of a Labour court, Tribunal or National or in the office of the chairman or another member of a Board or court, then, in the case of a national Tribunal the central Government and in any other case, the appropriate Government, shall appoint another person in accordance with the provisions of this Act to fill the vacancy, and the proceeding may be continue before the Labour court, Tribunal, National Tribunal, Board or court, as the case may be from the stage at which the vacancy is filled.

**9. Finality of orders constituting Boards, etc.-** (1) No order of the appropriate Government or of the central Government appointing any person as the chairman or any other member of a Board or court of as the presiding Officer of a labour court, tribunal or National Tribunal shall be cladding question in any manner ; and no act or proceeding before any Board or court shall be called in question in any manner on the ground merely of the existence of any vacancy in of defect in the constitution of, such Board or court.

(2) No settlement arrived at in the course of a conciliation proceeding shall be invalid by reason only of the fact that such settlement was arrived at after the expiry of the period referred to in subsection (6) of section 12 or subsection (5) of section 13, as the case may be.

(3) Where the report of any settlement arrived at in the course of conciliation proceeding before a Board is signed by the Chairman and all the other members of the Board, no such settlement shall be invalid by reason only of the causal or unforeseen absence of any of the members (including the Chairman) of the Board during any stage of the proceeding.

**CHAPTER II-A**  
**NOTICE OF CHANGE**

**9-A. Notice of change.-** No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the fourth schedule, shall effect such change,-

- (a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or
- (b) within twenty-one days of giving such notice:

**Provided** that no notice shall be required for effecting any such change-

- (a) Where the change is effected in pursuance of any <sup>1</sup>[settlement or award]; or
- (b) Where the workmen likely to be affected by the change are persons to whom the fundamental and supplementary Rules, Civil services (Classification, control and Appeal) Rules, Civil services (Temporary Service) Rules, Revised Leave Rules, civil services Regulations, civilians in Defence services (Classification, control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulation that may be notified in this behalf by the appropriate Government in the official Gazette apply.

**9-B. Power of Government to exempt.-** Where the appropriate Government is of opinion that the application of the provisions of section 9A to any class of industrial establishments or to any class of workmen employed in any industrial establishment affect the employers in relation thereto so prejudicially that such application may cause serious repercussion on the industry concerned and that public interest so requires, the appropriate Government may, by notification in the official apply, subject to such conditions as may be specified in the notification, to that class of industrial establishment or to that class of workmen employed in any industrial establishment.

[CHAPTER II-B]

**REFERENCE OF CERTAIN INDIVIDUAL DISPUTES TO  
GRIEVANCE SETTLEMENT AUTHORITIES**

**9-C. Setting of Grievance settlement Authorities and reference of certain individual disputes to such Authorities.-** (1) The employer in relation to every industrial establishment in which fifty or more workmen are employed or have been employed on any day in the preceding twelve months, shall provide for, in accordance with the rules made in that behalf under this Act, a grievance settlement Authority for the settlement of industrial disputes connected with an individual workman employed in the establishment.

(2) Where an industrial dispute connected with an individual workman arises in an establishment referred to in subsection (1), a workman or any trade union of workmen of which such workman is a member, refer, in such manner as may be prescribed such dispute to the Grievance settlement Authority provided for by the employer under that subsection for settlement.

(3) The Grievance Settlement Authority referred to in subsection (1) shall follow such procedure and complete its proceedings within such period as may be prescribed.

(4) No reference shall be made under Chapter III with respect to any dispute referred to in this section unless such dispute has been referred to the grievance settlement Authority concerned and the decision of the Grievance settlement Authority is not acceptable to any of the parties to the dispute.

CHAPTER III

**REFERENCE OF DISPUTES TO BOARDS,  
COURTS OR TRIBUNALS**

**10. Reference of disputes to Boards, courts or tribunals.-** (1) Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing.-

- (a) refer the dispute to a Board for promoting a settlement thereof; or
- (b) refer any matter appearing to be connected with or relevant to the dispute to a court for inquiry ; or

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1. Chapter II-B together with section 9-c inserted by Act No. 46 of 1982, vide section 7.



- (c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the second schedule, to a Labour court for adjudication ; or
- (d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute relates to any matter specified in the second schedule or the Third schedule, to a Tribunal for adjudication :]

**Provided** that where the dispute relates to any matter specified in the Third schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour court under clause (c) :

**Provided further** that where the dispute relates to a public utility service and a notice under section 22 has been given, the appropriate Government shall, unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make a reference under this subsection notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced:

<sup>1</sup>**Provided also** that where the dispute in relation to which the central Government is the appropriate Government it shall be competent for that government to refer the dispute to a Labour court or an Industrial Tribunal, as the case may be, constituted in the state government].

(1-A) Where the central government is of opinion that any industrial dispute exists or is apprehended and the dispute involves any question of national importance or is of such a nature that industrial establishments situated in more than one state are likely to be interested by a National Tribunal, then, the central Government may, whether or not it is the appropriate Government in relation to that dispute, at any time, by order in writing, refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the second schedule or the Third Schedule, to a National Tribunal for adjudication.

(2) Where the parties to an industrial dispute apply in the prescribed manner, whether jointly or separately, for a reference of the dispute to a Board, court, Labour court, Tribunal or National Tribunal, the appropriate Government, if satisfied that the persons applying represent the majority of each party, shall make the reference accordingly.

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1. Second proviso to sec, 10 (1) inserted by Act No. 46 of 1982, vide s. 8 w.e.f. 21-8-1984.

<sup>2</sup>[(2-A) An order referring an industrial dispute to a Labour court, Tribunal or National Tribunal under this section shall specify the period within which such Labour Court, Tribunal or National Tribunal shall submit its award on such dispute to the appropriate Government :

Provided that there such industrial dispute is connected with an individual workman, no such period shall exceed three months :

**Provided Further** that where the parties to an industrial dispute applying the prescribed manner, whether jointly or separately, the labour Court, Tribunal or National Tribunal for extension of such period, he may for reasons, and the presiding Officer to such Labour Court, Tribunal or National Tribunal considers it necessary or expending to extend such period, he may for reasons to be recorded in writing, extend such period by such further period as he may thinks fit :

Provided also that in computing and period specified in this subsection, the period, if any, for which the proceeding before the labour Court Tribunal or National Tribunal had been stayed by an injunction or order of Civil Court shall be excluded.

**Provided** also that no proceedings before a Labour court, Tribunal or National Tribunal shall lapse merely on the ground that any period specified under this subsection had expired without such proceedings being completed].

(3) Where an industrial dispute has been referred to a Board, Labour court, Tribunal or National Tribunal under this section, the appropriate government may by order prohibit the continuing of any strike or lockout in connection with such dispute which may be in existence on the date of the reference.

(4) Where in an order referring an industrial dispute to a Labour court, Tribunal or National Tribunal under this section or in a subsequent order, the appropriate Government has specified the points of dispute for adjudication, the labour court or the Tribunal or the National Tribunal, as the case may be, shall confine its adjudication to those points and matters incidental thereto.

(5) Where a dispute concerning any establishment or establishments has been, or is to be, referred to a Labour court, Tribunal or national Tribunal under this section and the appropriate Government is of opinion, whether on an application made to it in this behalf or otherwise, that the dispute is of such a nature that any other establishment, group or class of establishments of a similar nature is likely to be interested in or affected by, such dispute, the appropriate government may, at the time of making the reference or at any time thereafter but before the submission of the award, include in that reference such establishment, group, or class of establishments, whether or not at the time of such inclusion any dispute exists or is apprehended in that establishment, group or class of establishments.

(6) Where any reference has been made under subsection (1-A) to a National Tribunal, then notwithstanding anything contained in this Act, no Labour court or Tribunal shall have jurisdiction to adjudicate upon any matter which is under adjudication before the National Tribunal, and accordingly.-

(a) if the matter under adjudication before the National Tribunal is pending in a proceeding before a Labour court or Tribunal, the proceeding before the Labour court, or Tribunal, as the case may be, in so far as it relates to such matter, shall be deemed to have been quashed on such reference to the National Tribunal ;  
and

(b) it shall not be lawful for the appropriate Government to refer the matter under adjudication before the National Tribunal to any labour court or tribunal for adjudication during the pendency of the proceeding in relation to such matter before the National Tribunal.

<sup>1</sup>[Explanation - In this subsection "Labour Court" or "Tribunal" includes any Court or Tribunal or other authority constituted under any law relating to investigation and settlement of industrial disputes in force in any State].

(7) Where any industrial dispute, in relation to which the central Government is not the appropriate Government, is referred to a National Tribunal, then, notwithstanding anything contained in this Act, any reference in section 15, section 17 section 19, section 33-A, section 33-B and section 36-A to the appropriate Government in relation to such dispute shall be construed as a reference to the central Government but, save as aforesaid and as otherwise expressly provided in this Act, any reference in any other provision of this Act to the appropriate Government in relation to that dispute shall mean a reference to the state Government.

<sup>1</sup>[(8) No proceedings pending before a Labour court, Tribunal or National Tribunal in relation to an industrial dispute shall lapse merely by reason of the death of any of the parties to the dispute being a workmen and such Labour court, Tribunal or National Tribunal shall complete such proceedings and submit its award to the appropriate Government].

## NOTES

**Subsection (3)- Scope of.-** Section 10 (3) could not operate in respect of disputes which were not referred for adjudication or conciliation, In its opinion to invoke the power under subsection (3) of section 10 for making an order prohibiting a strike, two conditions are necessary, First, an industrial dispute in existence and second, the second, the dispute must have been already referred for adjudication [State Transport Employees Federation, orissa v. State of orissea (1990) lab LC 675 (cal.)].

**Scope of.-** (1) Where a disciplinary enquiry affects the livelihood and is likely to cast a stigma and it has to be held in accordance with the principles of natural justice, the minimum expectation is that the report must be reasoned one. The court then may not enter into the

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1. *Ins. by Act No. 36 of 1964. S. 5. w.e.f. 19-12-1964.*

1. *Sub-sec. (8) Ins. by Act No. 46 of 1982, vide S. 8 (c) w.e.f. 21-8-1984.*

adequacy or sufficiency of evidence. [N. K. Bansal V.G.S. Kalla, 1993 (67) F L R 176 (Del) ; Anil Kumar v. Presiding officer, 1986 (52) F.L.R. 487.]

(2) The transfer of a workman is a matter of conditions of service and dispute relating to it is an individual dispute which can be raised only by the Union and not by the practitioner. [Jugal Kishore Chonksey v. Pressing officer Labour court. (1995) 70 F.L.R. 796 (M.P.).]

(3) Production of inquiry papers in earlier proceedings under section 33(2)(b) would not debar the labour court from calling upon employer to produce his evidence in view of the powers under section 10 & 11 and Rules 17, 26, 27 & 28 of the rules. Provisions of code of Civil procedure and abstract doctrine of burden of proof are also not applicable. [Exhjay Industries Pvt. Ltd. v. Mahabir Singh Shirubha. (1995) 70 F.L.R. 5 (Guj) (Sum).]

(4) Industrial dispute in respect of items which form the subject matter of the settlement cannot be raised. The same cannot be subject matter of conciliation proceedings or reference. [Ballarpur Industries Ltd. v. Labour court, Ambala, (1995) 70 F.L.R. 650 (Punj)].

(5) On point of reference it was held that the central Government cannot adjudicate on merits. The order of the Government, refusing to refer and stating that the termination was justified, was held unsustainable and the matter was remanded back for disposing afresh. [Sukbir Singh v. Union of India. (1995) 70 F.L.R. 5 (Del.) (Sum.)]

(6) While performing the administrative function under section 10 of the Industrial Disputes Act, 1947 it was held that the Government cannot delve into the merits of the dispute. However the Government is free to form an opinion whether an industrial dispute exists or not. [Rajpal Singh v. State of U.P. (1995) 70 F.L.R. 1141 (All.)]

(7) In the instant case it was held that the rejection of the petitioner's request for reference, on the ground that the particular respondent is not an industry, was held to be not proper, it was further observed that the Government cannot decide whether one is industry or not. The Labour court has the jurisdiction to decide it. [Sumithra K.v. State of Karnataka, (1995) 70 F.L.R. 743 (Knt.)]

**Jurisdiction of.-** Jurisdiction of Civil court in industrial disputes is excluded. [Rajasthan State Road Transport Corporation v. Shri Krishna Kant. (1994) 1 LLN 136 (S.C.).]

**10-A. Voluntary reference of disputes to arbitration.-** (1) Where any industrial dispute exists or is apprehended and the employer and the workmen agree to refer the dispute to

arbitration, they may, at any time before the dispute has been referred under section 10 to a Labour court or Tribunal or National Tribunal, by a written agreement, refer the dispute to arbitration and the reference shall be to such person or persons (including the presiding officer of a Labour court or Tribunal or National Tribunal) as an arbitrator or arbitrators as may be specified in the arbitration agreements.

<sup>1</sup>[(1-A) Where an arbitration agreement provides for a reference of the dispute to an even number of arbitrators, the agreement shall provide for the appointment of another person as umpire who shall enter upon the reference, if the arbitrators are equally divided in their opinion, and the award of the umpire shall prevail and shall be deemed to be the arbitration award for the purposes of this Act].

(2) An arbitration agreement referred to in subsection (1) shall be in such form and shall be signed by the parties thereto in such manner as may be prescribed.

(3) A copy of the arbitration agreement shall be forwarded to the appropriate Government and the conciliation officer and the appropriate Government shall, within <sup>2</sup>[ one month ] from the date of the receipt of such copy. Publish the same in the Official gazette.

<sup>3</sup>[(3-A) Where an industrial dispute has been referred to arbitration and the appropriate Government is satisfied that the persons making the reference represent the majority of each party, the appropriate Government may, within the time referred to in subsection (3), issue a notification in such manner as may be prescribed; and when any such notification is issued, the employers and workmen who are not parties to the arbitration agreement but are concerned in the dispute, shall be given an opportunity of presenting their case before the arbitrator or arbitrators].

(4) The arbitrator or arbitrators shall investigate the dispute and submit to the appropriate Government the arbitration award signed by the arbitrator or all the arbitrators, as the case may be.

<sup>1</sup>[(4-A) Where an industrial dispute has been referred to arbitration and a notification has been issued under subsection (3-A), the appropriate Government may, by order prohibit the continuance of any strike or lock out in connection with such dispute which may be in existence on the date of the reference.]

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1. *Ins. by Act No. 36 of 1964, S. 6 w.e.f. 19-12-1964.*

2. *Subs. by *ibid*, S. 6, for "fourtten days" w.e.f. 19-12-1964.*

3. *Ins. by *ibid* S.6. w.e.f. 19-12-1964.*

1. *Ins. by *ibid* S.6. w.e.f. 19-12-1964.*

(5) Nothing in the Arbitration Act, 1940 (10 of 1940), shall apply to arbitrations under this section.

#### NOTE

Where the parties had agreed to refer the matter to arbitrator, it was held that the Arbitrator can decide the matter provided the appropriate Government is not exercising powers under section 10. [(1995) 70 F.L.R. 651 (Punj.)]

#### CHAPTER IV

### PROCEDURE, POWERS AND DUTIES OF AUTHORITIES

**11. Procedure and powers of conciliation officers, Boards, courts, Tribunals and National Tribunals.-** (1) Subject to any rules that may be made in this behalf, an arbitrator, a Board, court, Labour court, Tribunal or National tribunal shall follow such procedure as the arbitrator or other authority concerned may think fit.

(2) A conciliation officer or a member of a Board, or court or the presiding officer of a Labour court, Tribunal or National Tribunal may for the purpose of inquiry into any existing or apprehended industrial dispute, after giving reasonable notice, enter the premises occupied by any establishment to which the dispute relates.

(3) Every Board, Court, Labour court, Tribunal or National tribunal shall have the same powers as are vested in a Civil Court under the code of civil procedure, 1908 (5 of 1908), when trying a suit, in respect of the following matters, namely-

- (a) enforcing the attendance of any person and examining him on oath;
- (b) Compelling the production of documents and material objects;
- (c) Issuing commissions for the examination of witness;
- (d) in respect of such other matters as may be prescribed;

And every inquiry or investigation by a Board, Court labour Court, Tribunal and National Tribunal, shall be deemed to be a judicial proceeding within the meaning of section 193 and 228 of the Indian Penal Code (45 of 1860).

(4) A conciliation officer [may enforce the attendance of any person for the purpose of examination of such person or call for]<sup>1</sup> and inspect any document which he has ground for considering to be relevant to the Industrial dispute or to be necessary for the purpose of verifying the implementation for any award or carrying out any other duty imposed on him under this Act, and for the aforesaid purposes, the conciliation officer shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908

(5 of 1908, [In respect of enforcing the attendance of any persons and examining him or compelling the production of documents]<sup>2</sup>.

(5) A Court Labour Court, Tribunal and National Tribunal may, if it so thinks fit, appoint one or more persons having special knowledge of the matter under consideration as assessor or assessors to advise it in the proceeding before it.

(6) All conciliation officer, members of a Board of Court and the presiding Officer of a Labour Court, Tribunal and National Tribunal shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code (45 of 1860).

(7) Subject to any rules made under this Act, the costs of, and incident to, any proceeding before a Labour Court, Tribunal and National Tribunal shall be in the discretion of the labour Court, Tribunal and National Tribunal and the Labour Court, Tribunal and National Tribunal, as the case may be shall have full power to determine by an to whom and to what extent and subject to what conditions, if any, such costs are to be paid, and to give all necessary directions for the purposes aforesaid and such costs may, on application made to the appropriate Government by the person entitled, be recovered by the that Government in the same manner as an arrear of land revenue.

(8) Every Labour Court, Tribunal and National Tribunal shall be deemed to be Civil Court for the purposes of [Sections 345, 346 and 348 of the Code of Criminal Procedure, 1973 (2 of 1974)]<sup>3</sup>

## NOTE

With regard to the adjudication of industrial disputes it was held that the Tribunal must be endowed with all powers to adjudicate an industrial dispute. The Tribunal has the power and duty to set aside and ex prate order or award and to direct the matter to be heard afresh. [Hindustan Tobacco Comp. v The last Labour Court, W.B., (1995) 70 F.L.R. 895 (Cal.)]

**<sup>4</sup>[11.A. Powers of Labour Courts, Tribunal and National Tribunal to give appropriate relief in case of Discharge or dismissal of workman.-** Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal and National Tribunal for adjudication proceeding, the Labour Court, Tribunal and National

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1. *The words in brackets Subs. by Act. No. 46 of 1982, vide S. 9(a) w.e.f. 21-8-1984*

2. *The words in brackets Subs. ibid, vide S. 9(a) w.e.f. 21-8-1984*

3. *Subs. by ibid, S. 9 (b) w.e.f. 21-8-1984.*

4. *Ins. by Act No. 45 of 1971.*



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 and National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation on the matter].

## NOTES

**Jurisdiction of Tribunal** - Proviso to section 11-A does not deprive workman to adduce fresh evidence before the tribunal to make out a case of bias, want of good faith, victimization violation of natural justice, malafides or unfair labour practice on the part of the management which if proved would vitiate the domestic inquiry itself. Similarly the management can also adduce fresh evidence to show that the tribunal had no jurisdiction to decide the industrial dispute. [Indian Aluminium co. ltd. V. Labour court, Ranchi and another, (1991) 1 lab LJ 328 (Patna)].

Where a conductor employed in the State Road Transport Corporation was removed from service for his failure to issue tickets to passengers on collection of fare, it was held that the punishment of removal from service is harsh one and, therefore, the order was set aside with direction to reinstate in service. [p. Balachandra Reddy V. Repot Manager, A. P. State Road Transport Corp.. Anapur, (1995) 70 F.L.R. 104 (A.P.)]

While dealing with the dispute relating to dismissal of an employee the Labour court found that the findings are perverse, it was held that, the Labour court consider the entire matter on evidence adduced by both the parties to ascertain the correct facts in a domestic enquiry. [K.G. Vijayan v. District Manager, F.C.I. (1995) 70 F.L.R. 11 (Kar.) (Sum).]

**12. Duties of conciliation officers.**- (1) Where any industrial dispute exists or is apprehended, the conciliation officer may, or where the dispute relates to a public utility service and a notice under section 22 has been given, shall, hold conciliation proceedings in the prescribed manner.

(2) The conciliation officer shall, for the purpose of bringing about a settlement of the dispute, without delay, investigate the dispute and matters affecting the merits and the

right settlement thereof and may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

(3) If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings the conciliation officer shall send a report thereof to the appropriate Government [or an officer authorised in this behalf by the appropriate Government] together with a memorandum of the settlement signed by the parties to the dispute.

(4) If no such settlement is arrived at, the conciliation officer shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement. Thereof, together with a full statement of such facts and circumstances, and the reasons on account of which, in his opinion, a settlement could not be arrived at.

(5) If, on a consideration of the report referred to in subsection (4), the appropriate Government is satisfied that there is a case for reference to a Board, Labour court, Tribunal or National Tribunal, it may make such reference. Where the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reasons therefore.

(6) A report under this section shall be submitted within fourteen days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate Government.

**Provided** that subject to the approval of the conciliation officer, the time for the submission of the report may be extended by such period as may be agreed upon in writing by all the parties to the dispute.

**13. Duties of Board.-** (1) Where a dispute has been referred to a Board under this Act, it shall be the duty of the Board to endeavour to bring about a settlement of the same and for this purpose the Board shall, in such manner as it thinks fit and without delay, investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all such things as it thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

(2) If a settlement of dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceeding the Board shall send a report thereof to the

appropriate Government together with a memorandum of the settlement signed by the parties to the dispute.

(3) If no such settlement is arrived at, the board shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the Proceedings and steps taken by the Board for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, its finding thereon, the reasons on account of which, in its opinion, a settlement could not be arrived at and its recommendations for the determination of the dispute.

(4) If, on the receipt of a report under subsection (3) in respect of a dispute relating to public utility service, the appropriate Government does not make a reference to a Labour court, tribunal or National Tribunal under section 10, it shall record and communicate to the parties concerned its reasons therefore.

(5) The Board shall submit its report under this section within two months of the date, on which the dispute was referred to it, or within such shorter period as may be fixed by the appropriate Government.

**Provided** that the appropriate Government may from time to time extend the submission of the report by such further periods not exceeding two months in the aggregate;

**Provided further** that the time for the submission of the report may be extended by such period as may be agreed on in writing by all the parties to the dispute.

**14. Duties of Courts.-** A court shall inquire into the matters referred to it and report thereon to the appropriate Government ordinarily within a period of six months from the commencement of its inquiry.

**15. Duties of Labour courts, Tribunals and National Tribunals.-** Where an industrial dispute has been referred to a Labour court, Tribunal or National Tribunal for adjudication, it shall hold its proceedings expeditiously and shall, <sup>1</sup>[within the period specified in the order referring such industrial dispute or the further period extended under the second proviso to subsection (2-A) of section 10] submit its award to the appropriate Government.

#### NOTE

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1. *The words in brackets subs. by Act No. 46 of 1982, vide S. 10 w.e.f. 21-8-1984.*

While discussing the scope it was held that where a substantial amount of dues was paid to a workman who was retrenched and dispute regarding the retrenchment was referred to the Tribunal and the workman filed an application for interim relief, merely because he got retrenchment benefit, he will not become disentitled to get interim relief. [Vishan Roy v. Bayer (India) Ltd. (1995) 70 F.L. R. 1031 (Cal.)]

**Decision of Industrial Tribunal.** - Remedy against is to file write petition. [Hindustan Lever Ltd. V. Hindustan Lever Mazddor sabha, Bombay, AIR 1995 SC 817.]

**16. Form of report or award.** - (1) The report of a board or court shall be in writing and shall be signed by all the members of the Board or court, as the case may be:

**Provided** that nothing in this section shall be deemed to prevent any member of the Board or court from recording any minute of dissent from a report for from any recommendation made therein.

(2) The award of a Labour court or Tribunal or National Tribunal shall be in writing and shall be signed by its presiding officer.

**17. Publication of reports and awards.-** (1) Every report of a Board or court together with any minute of dissent recorded therewith, every arbitration award and every award of a Labour court, tribunal or National Tribunal shall, within a period of thirty days from the date of its receipt by the appropriate Government, be published in such manner as the appropriate Government thinks fit.

(2) Subject to the provisions of section 17-A, the award published under subsection (1) shall be final and shall not be called in question by any court in any manner whatsoever.

**17-A. Commencement of the award.-** (1) An award (including an arbitration award) shall become enforceable on the expiry of thirty days from the date of its publication under section 17;

**Provided that-**

- (a) if the appropriate Government is of opinion, in any case where the award has been given by a Labour court or Tribunal in relation to an industrial dispute to which it is a party ; or
- (b) if the central Government is of opinion, in any case where the award has been given by a National Tribunal;

that it will be inexpedient on public grounds affecting national economy or social justice to give effect to the whole or any part of the award, the appropriate Government or as the case may be, the central Government may, by notification in the official Gazette, declare that the award shall not become enforceable on the expiry of the said period of thirty days.

(2) Where any declaration has been made in relation to an award under the proviso to subsection (1) the appropriate Government or the central Government may, within ninety days from the date of publication of the award under section 17, make an order rejecting or modifying the award, and shall, on the first available opportunity, lay the award together with a copy of the order before the legislature of the state, if the order has been made by the central Government.

(3) Where any award as rejected or modified by an order made under subsection (2) is laid before the legislature of a state or before parliament, such award shall become enforceable on the expiry of fifteen days from the date on which it is so laid; and where no order under subsection (2) is made in pursuance enforceable on the expiry of the period of ninety days referred to in subsection (2).

(4) Subject to the provisions of subsection (1) and subsection (3) regarding the enforceability of an award, the award shall come into operation with effect from such date as may be specified therein, but where no date is so specified, it shall come into operation on the date when the award becomes enforceable under subsection (1) or subsection (3), as the case may be.

## NOTES

**Scope of.-** The dispute was heard by one officer but their award was signed by the successor presiding officer of the Tribunal. It was held that the award is illegal and vitiated. This is a material irregularity. An award can be pronounced by the Labour court on the same day without waiting till the date of its publication in the Gazette. [S.M. Mujeeb v. Labour court Anantapur and another, (1990) II Lab. LJ 535 (A.P.)]

**Power of labour court.-** Even an ex parte award should be made on merits of the dispute as if the party is present. No award can be passed straighter without giving a finding on merits of the dispute. [Depot Manager, A.P.; SRTC Bus Depot, Kothagudem Government of A. p. and others, (1991) I lab LJ 535 (A.P.)]

**<sup>1</sup>[17-B.Payment of full wages to workman pending proceedings in higher courts.-** Where in an case a Labour court, Tribunal or National Tribunal by its award directs reinstatement of any workman and the employer prefers any proceedings again such award in a High court or the Supreme court, the employer shall be liable to pay such workman, during the period of pendenny of such proceedings in the High court or the Supreme court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period and an affidavit by such workman had been filed to that effect in such court :

**Provided** that where it is proved to the satisfaction of the High court or the supreme court that such workman had been employed and had been receiving adequate remuneration during any such period or part thereof, the court shall order that no wages shall be payable under this section for such period or part, as the case may be].

#### NOTES

**Scope of -** The proviso to section 17-B becomes operative if the employer satisfies the court that the workman had been employed and had been receiving adequate remuneration during the period he was dismissed and till the award was made in his favour. the court on being satisfied by the employer, must direct that sages shall not be paid by the employer to the workman for the period, In all other cases the payment of full qages at the rate of last drawn must follow on the affidavit of the workman. Once the workman files an affidavit, the burden of proof cast on him is discharged and the burden of proof shifts to the employer to prove that the workman was employed during the pendency of the proceedings. [M/S Hind Plastic Industries, Bangalore v. Labour court, Bangalore, (1990) Lab. I.C. 236 (Karna).]

**Benefit under sec. 17-B.-** The practitoner company has filed a writ petition before the High court against award of the Labour court directing reinstatement. During the pendency of the proceedings in the High court the workman was running tea shop and therefore his claim for wages was contester by the employer on the ground that by virtue of proviso to section 17-B. It was held that in order to fall within the proviso to section 17-B the workman

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1. *Section 17-B insterted by Act No. 46 of 1982, vide s. 11 w.e.f. 21-8-1984.*

should be employed from which he receives adequate remuneration and mere carrying on activity to make both ends meet will not disentitle him to get benefit under section 17-B. Running a tea shop will not amount to being employed. [Management Hindustan Machine tools Ltd. v. Judge, Labour court and another, (1992) 1 Lab LJ 494 (Raj.)]

**Disposal of proceeding.-** The date from which the full wages last drawn to be paid should be from date of award till disposal of proceedings. [Vishweswaraya Iron & Steel Ltd. v. M. Chandrappa (1994) 1 LLJ, 555.]

Where in an appeal against the award of reinstatement and back wages, the award was stayed and a direction was issued to pay wages from date of award but the wages were paid from date of order, it was held that court, under section 17-B, can direct payment of wages for a period when enforcement of award is stayed and not from the date of award. [Bombay Films Laboratories Pvt. Ltd. v. L. G. Vasala, (1995) 70 F.L.R. 8 (Bom).]

The benefit under section 17-B of the Industrial Disputes Act, 1947 is available from the date of institution of petition and not from the date of award. [Ramjee Jaisingh & Company v. R. K. Mestram, (1995) 70 F.L.R. 171 (Bom).]

For a claim of benefit under section 17-B the conditions have to be fulfilled. There must be an award of labour court or Tribunal and it should be challenged in High Court or Supreme Court and, lastly, that the workmen during the pendency of proceedings, should not have been gainfully employed in any establishment [K. Jayaraman v. Quilon Gas Service, (1995) 70 F.L.R. 1028. (Ker.)]

'Full wages last drawn' means full wages which workman is entitled to draw in award and whose implementation is suspended during pendency of proceedings. [Carona Sahu Comp. Ltd. v. Adul Karim Munaf Khan, (1995) 70 F.L.R. 25 (Bom).]

In the instant case an order to reinstate 128 listed employees was passed along with back wages. None was reinstated nor was paid back wages. The High Court issued direction to deposit 50% of Rs. 64 lakhs to absorb them temporarily and that too was not complied with. It was held that it amounted to non-compliance of mandatory provision of section 17-B and therefore the order passed by the Industrial Court was upheld. [Chief Eng. P.W.D. Nagpur v. P.W.D., S.C., S.T. & O.B.C., Employees Council, (1995) 70 F.L.R. 554 (Bom.) (N.B.)]

**18. Persons on whom settlement and awards are binding.-** (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

(2) <sup>1</sup>[Subject to the provisions of subsection (3), an arbitration awards] which has become enforceable shall be binding on the parties to the agreement.

(3) A settlement arrived at in the course of conciliation proceedings under this Act <sup>2</sup>[or an arbitration award in a case where a notification has been issued under subsection (3-A) of section 10-A] or [an award of a Labour Court , Tribunal or national Tribunal] which has become enforceable shall be binding on-

- (a) all parties to the industrial dispute;
- (b) all other parties summoned to appear in the proceeding as parties to the dispute, unless the Board, [Arbitrator, Labour Court , Tribunal or national Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;
- (c) Where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assignees in respect of the establishment to which the disputes relates;
- (d) Where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the disputes and all persons who subsequently become employed in that establishment or part.

## NOTES

Rights of workman against the employer quay his establishment cannot be made to die with the death of employer. [Rasulbhai Pirbhai v. Jasumatiben, 1993 (67) F.L.R. 172 (Guj.); State of U.P. v Dhan Singh and Ors., 1992 (2) Crimes 1093.]

The effect of settlement would be binding on all parties to disputes and on all workman employed on date and subsequent to dispute. The effect would continue to be binding after the expiry of period until replaced by a fresh settlement. [ Ballarpur Industries Ltd. v. Labour Court Ambala, (1995) 70 F.L.R. 650 (Punj.)]

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1. Subs by Act No. 36 of 1964, S.9 for "An arbitraction award" w.e.f. 19-12-1964.  
2. Ins. by ibid, s.9 w.e.f. 19-12-1964.



Where the Company was taken over by Electricity Board and the two employees of company claimed retrenchment compensation from company and the plea was not raised before the Government, The company filed a petition for impleadment of Electricity Board. was held that the Labour Court cannot allow impleadment of Electricity Board v. Labour Court Emakulam, (1995) 70 F.L.R. 1133 (Ker.)]

**Settlement** - The being only one Union, settlement was binding on all workers whether they were members of Union or not. [Ram Pukar Singh and others v. Heavy Engineering Corporation and others, AIR 1995 SC 251.]

**19. Period of operation of settlements and awards.**- (1) A settlement shall come into operation on such date as is agreed upon by the parties to the dispute, and if no date is agreed upon, on the date on which the memorandum of the settlement is signed by the parties to the disputes.

Where there is already in existence a strike or, as the case may be, lockout in the public utility service, but the employer shall send intimation of such lookout or strike on the day on which it is declared, to such authority as may be specified by the appropriate Government either generally or for a particular area or for a particular class of public utility services.

(4) The notice of a strike referred to in subsection (1) shall be given by such number of persons to such person or persons and in such manner as may be prescribed.

(5) The notice of lockout referred to in subsection (2) shall be given in such manner as may be prescribed.

(6) If on any day an employer receives from any person employed by him any such notices as are referred to in subsection (1) or gives to any person employed by him any such notices as are referred to in subsection (2), he shall within five days thereof report to the appropriate Government or to such authority as that Government may prescribe, the number of such notices received or given on that day.

### NOTE

Where a claim of wages for the period of strike was made it was held that the strike commenced in violation of Section 22 (1) (b) and 22 (1) (d) hence the strike was illegal. Strike notice was also not given as required in Rule 71, therefore, the employees were not entitled to any wages for such period of strike [A.N.Z. Grindlays Bank, Bombay v. S.N. Khatri, (1995) 70 F.L.R. 597 (Bom.)]

23. General prohibition of strikes and lockouts- No workman who is employed in any industrial establishment shall go on strike in breach of contract and no employer of any such workman shall declare a lockout -

- (a) during the pendency of conciliation proceedings before a Board and seven days after the conclusion of such proceedings.
- (b) during the pendency of proceedings before a Labour Court, Tribunal or National Tribunal and two months after the conclusion of such proceedings;
- (bb) during the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings, where a notification has been issued under subsection (3-A) of section 10-A; or
- (c) during any period in which a settlement or award is in operation in respect of any of the matters covered by a settlement or award.

24. **Illegal strikes and lockouts.** - (1) A strike or a lockout shall be illegal if-

- (i) It is commenced or declared in contravention of section 22 or section 23, or
- (ii) It is continued in contravention of an order made under subsection (3) of Section 10<sup>1</sup>[or subsection (4-A) of Section 10-A].

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1. Ins. by Act No. 36 of 1964, S. 12 w.e.f. 19-12-1964.

(2) Where a strike or lockout in pursuance of an industrial dispute has already commenced and it exists at the time of the reference of the dispute to a Board, [an arbitrator, a] [Labour Court, Tribunal or National Tribunal] the continuance of such strike or lockout shall not be deemed to be illegal, provided that such strike or lockout was not at its commencement in contravention of the provision of this Act or the continuance thereof was not prohibited under subsection (3) of Section 10 [or subsection (4-A) of Section 10-A].

(3) A lockout declared in consequence of an illegal strike or a strike declared in consequence of an illegal lockout shall not be deemed to be illegal.

**25. Prohibition of financial aid to illegal strikes and lockouts.** - No. person shall knowingly expend or apply any money in direct furtherance or support of any illegal strike or lockout.

#### CHAPTER V-A

### LAYOFF AND RETRENCHMENT

**25.A- Application of section 25-C, to 25-E.** - (1) Section 25-C to 25-E inclusive <sup>1</sup>[shall not apply to industrial establishments to which Chapter V-B applies, or],-

- (a) to industrial establishments in which less than fifty workmen on an average per working days have been employed in the preceding calendar month; or
  - (b) to industrial establishments which are of a seasonal character or in which work is performed only intermittently.
- (2) If a question arises whether an industrial establishment is of a seasonal character or whether work is performed therein only intermittently, the decision of the appropriate Government thereon shall be final.

*Explanation* - In this section and Section 25-C, 25-D, and 25-E, "Industrial establishment" means -

- (i) a factory as defined in clause (m) of Section 2 of the Factories Act, 1948); or
- (ii) a mine as defined in clause (j) of Section 2 of the Mines Act, 1952, (35 of 1952); or
- (iii) a plantation as defined in clause (f) of Section 2 of the Plantations Labour Act, 1951 (69 of 1951).

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1. Subs. by Act. No. 32 of 1976, w.e.f. 5-3-1976.

## NOTE

**Scope of** - Where the contract to standing orders or the service rules/regulations are silent on the issue of workers, entitlement to wages during the strike period, the management has the power to deduct wages of absence from duty when the absence is a congregator action on the part of the employees and the absence is not disputed, irrespective of the fact whether the strike was legal or illegal, [Bank of India v. T.S. Kelewala.I (1990) 4SCC 774.]

<sup>1</sup> **[25-B Definition of continuous service-** For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lockout or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) One hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

(b) for period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) ninety-five days, in the case of a workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case,

*Explanation* - For the purpose of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

(i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing orders) Act, 1946 (20 of 1946),

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1. Subs. by Act No. 36 of 1964, vide S. 13 w.e.f. 19-12-1964.

or under this Act or under any other law applicable to the industrial establishment;

- (ii) he has been on leave with full wages, earned in the previous year;
- (iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- (iv) in the case of a female, she has been on maternity leave; so, however that the total period of such maternity leave does not exceed twelve weeks].

## NOTES

**Scope of -** (i) Sundays and other paid holidays have to be taken into account for the purposes of reckoning the total number of days on which the workman can be said to have actually worked within the 'deemed' meaning of continuous service of one year within the meaning of section 25-B. [Chaggan Lal v. Panchayat Samiti, (1990) Lab. I.C. (1463)].

(ii) **Continuous service-** Only cases not falling under section 25-B (1) are covered by section 25-B (2). [G. Yadi Reddy v. Brook Bond India Ltd., (1994) 1 LLN 282 (AP).]

<sup>1</sup>[**25-C. Right of workmen laid off for compensation-** Whenever a workman (other than a badli workman or a casual workman) whose name is borne on the muster rolls of an industrial establishment and who has completed not less than one year or continuous service under an employer is laid off, whether continuously or intermittently, he shall be paid by the employer for all days during which he is so laid off, except for such weekly holidays as may intervene, compensation which shall be equal to fifty percent of the total of the basic wages and dearness allowance that would have been payable to him had he not been so laid off :

Provided that if during any period of twelve months, a workman is so laid-off for more than forty-five days, on such compensation shall be payable in respect of any period of the lay off after the expiry of the first forty-five days, if there is an agreement to that effect between the workman and the employer:

Provided further that it shall be lawful for the employer in any case falling within the foregoing proviso to retrench the workman in accordance with the provisions contained in section 25-F at any time after the expiry of the first forty-five days of the layoff and when he

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1. Subs by Act No. 35 of 1965.

does so, any compensation paid to the workman for having been laid-off during the preceding twelve months may be set off against the compensation payable for retrenchment.

*Explanation* - "Badli workman" means a workman who is employed in an industrial establishment in the place of another workman whose name is borne on the muster rolls of the establishment, but shall cease to be regarded as such for the purposes of this section, if he has completed one year of continuous service in the establishment.]

**25.D Duty of an employer to maintain muster rolls of workman** - Notwithstanding the workman in any industrial establishment have been laid off, it shall be the duty of every employer to maintain for the purposes of the Chapter a muster roll, and to provide for the making of entries therein by workman who may present themselves for work at the establishment at the appointed time during normal working hours.

**25-E. Workman not entitled to Compensation in certain cases** - No compensation shall be paid to a workman who has been laid off-

- (i) If he refuses to accept any alternative employment in the same establishment from which he has been laid-off, or in any other establishment belonging to the same employer situate in the same town or village or situate within a radius of five miles from the establishment to which he belongs, if, in the opinion of the employer, such alternative employment does not call for any special skill or previous experience and can be done by the workman, provided that the wages which would normally have been paid to the workman are offered for the alternative employment also;
- (ii) if he does not present himself for work at the establishment at the appointed time during normal working hours at least once a day;
- (iii) if such laying-off is due to a strike or slowing-down of production on the part of workman in another part of the establishment.

**25-F. Conditions precedent to retrenchment of workman.**- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenchment by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;



[\*\*\*]

- (b) the workman has been paid, at time of retrenchment, compensation which shall be equivalent to fifteen days's average pay <sup>1</sup>[for ever completed year of continuous service] or any part thereof in excess of six months ; and
- (c) notice in the prescribed manner is served on the appropriate Government <sup>2</sup>[or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

## NOTES

**Scope of** - The contravention of section 25-F renders the order of termination void and inoperative and entitle the workman to the relief or reinstatement with full back wages. If no reasons are given to depart from the normal rule of awarding full back wages, the workman is entitled fro the same. [ Baldev Singh v. Labour Court, Chandigarh and another, (1991) II Lab. LJ 534 (P & H).

(ii) The services of a Director of the Corporation where terminated without paying any compensation under section 25-F of the Act. The function of Corporation is to organise and work is various ways for upliftment of down trodden, help them financially for various purpose, including starting industries and helping them in getting technical training. It was held that is view of the various activities being carried on by the corporation it is an industry within the meaning of the industrial Disputes Act and termination of their services amount to retrenchment which being in violation of section 25-F is illegal. [National Masih v. U.P. Scheduled Caste Finance and Development Corporation Ltd. and others (1991) II Lab LJ 347 (All.)].

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1. Subs by Act No. 36 of 1964, S.14 for "every complete year of service" w.e.f. 19-12-1964.  
2. Ins. by ibid, s.14 w.e.f. 19-12-1964.

**Retrenchment.**- It was held in the case that the definition of workman in section 2 (s) does not make a distinction between a full time employee and a part time employee. The termination of even a part time employee amounts to retrenchment and if revisions of Section 25-F are not followed the retrenchment will not be valid. [Yashwant Singh Yadav v State of Rajasthan and others., (1991) 1 Lab LJ 501 (Raj.)].

**'A Daily wage employee'**- could not be thrown out, without following procedure under section 25-F of the Act, [Govind Singh v. Presiding Officer, Labour Court, 1993 (66) F.L.R. 560 (All.)].

**Condition of.**- Condition for retrenchment or workman under clauses (a) and (b) of Section 25-F are condition, precedent, [Dattatraya Sahankarrao Karde v Executive engineer (1994) 1 LLN 297 (Bom.)].

Where the service of the driver of State Transport Corporation were terminated and he was again reappointed on daily-wages as Driver and his services were again terminated and the work against which the workman are engaged as continuing and there was no closure of the undertaking it was held that the workman has completed 240 days of service in 12 months and the Tribunal has rightly held the termination as retrenchment. [Rajasthan State Road, Transport Corporation. v Babulal Sharma. (1995) 70 FLR. 241 (Raj).]

**25.FF. Compensation to workman in case of transfer of undertaking**- where the ownership or management of an undertaking is transferred, whether by agreement or by operation of law, from the employer in relation of that undertaking to a new employer, every workman who has been in continuous service for not less than one year in that undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of Section 25-F, as if the workman had been retrenched;

Provided that nothing in this section shall apply to a workman in any case where there has been a change of employers by reason of the transfer if-

- (a) the service of the workman has not been interrupted by such transfer;
- (b) the terms and conditions of service applicable to the workman after such transfer are not in any way less favourable to the workman than those applicable to him immediately before the transfer; and
- (c) the new employer is under the terms of such transfer of otherwise, legally liable to pay to the workman, in the event of his retrenchment, compensation on the

basis that his service has been continuous and has not been interrupted by the transfer.

## NOTE

**Transfer of ownership** - In case of transfer of ownership or management of an undertaking, the employees can only make a claim for compensation against their employers. No claim can be made against the transferee concern. The Court cannot give direction to transferee Company to absorb and continue in service the workman. [Workman of Karnataka Agro proteins Ltd. v. Karnataka Agro Proteins Ltd. & another, (1992) 1 Lab LJ 712 (Karn.)]

**1[25-FFA. Sixty days' notice to be given of intention to close down any undertaking.-** (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intend closure of the undertaking

Provided that nothing in this section shall apply to -

- (a) an undertaking in which -
  - (i) less than fifty workmen are employed, or
  - (ii) less than fifty workmen were employed, on an average per working day in the preceding twelve months,
- (b) an undertaking set up for the construction of building, bridges, roads, canals, dams or for other construction work of project.

(2) Notwithstanding anything contained in subsection (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the Undertaking or death of the employer or the like it is necessary so to do, by order, direct that provision of subsection (1) shall not apply in relation to such undertaking for such period as may be specified in the order].

**25. FFF. Compensation to workmen in case of closing down of undertaking - (1)** Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before

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1. Ins. by Act No. 32 of 1972.  
2. Subs. by Act No. 45 of 1971.  
3. Ins. by Act No. 45 of 1971.

such closure shall, subject to the provisions of subsection (2), be entitled to notice and compensation in accordance with the provisions of Section 25-F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of Section 25-F shall not exceed his average pay for three months.

<sup>2</sup>*Explanation* - An Undertaking which is closed down by reason merely of

- (i) Financial difficulties (including Financial losses) ; or
- (ii) Accumulation of undisposed stocks; or
- (iii) the expiry of the period of the lease or licence granted to it; or
- (iv) In a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on;

shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this subsection].

<sup>3</sup> [(1-A) Notwithstanding anything contained in subsection (1), where an undertaking engaged in mining operations is closed down by reason merely of exhaustion of the minerals in the area in which such operations are carried on, no compensation in accordance with the provisions of Section 25-F, if-

- (a) the employer provides the workman with alternative employment with effect from the date of closure at the same remuneration as he was entitled to receive, and on the same terms and conditions of service as were applicable to him, immediately before the closure ;
- (b) the service of the workman has not been interrupted by such alternative employment ; and
- (c) the employer is, under the terms of such alternative employment or otherwise, legally liable to pay to the workman, in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by such alternative employment.

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1. Subs by Section 15 Act No. 36 of 1964, for “complete year of service” w.e.f. 19-12-1964.

(1-B) For the purpose of subsection (1) and (1-A), the expressions “minerals” and “mining operations” shall have the meaning respectively assigned to them in clause (a) and (d) of Section 3 of the Mines and Minerals (Regulation and Development) Act, 1957 (67 of 1957)].

(2) Where any undertaking set up for the construction of buildings, bridges, roads, canals, dams or other construction work is closed down on account of the completion of the work within two years from the date on which the undertaking compensation under clause (b) of section 25-F, but if the construction work is not so completed within two years, he shall be entitle to notice and compensation under that section for every <sup>1</sup>[completed year of continuous service] or any part thereof in excess of six months.

**25-G. Procedure for retrenchment.-** Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.

#### NOTE

**Scope of.-**Terms and conditions of service regulated by this section form implied terms of individual contract of employment of each workmen. [*Dattatraya Shankarrao v. Executive Engineer*, (1994) 1 LLN 297 (Bom).]

**25-H. Re-employment of retrenched workmen.-** Where any workmen are retrenched, and the employer proposes to take into his employment any persons, he shall, in such manner as may be prescribed, give an opportunity [ to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen] who offer themselves for re-employment shall have preference over other persons.

#### NOTE

**Scope of.-** Industrial workers with than 240 days service at their credit have no industrial rights under the Act. [*Korwal Central Cooperative Bank. v. Industrial tribunal* 1994 (1) LLN 233 (P & H.).]

**25-I. [Recovery of moneys due from employers under this Chapter.]**-*[Repealed by the Industrial Disputes (Amendment and Miscellaneous Provisions) Act 1956, Section 19 (w.e.f. 10-3-1957)]*

**25-J. Effect of laws inconsistent with this Chapter.**- (1) The provisions of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in any other law [including standing orders made under the Industrial Employment (Standing Orders) Act 1946 (20 of 1946)]:

<sup>1</sup>**[Provided** that where under the provisions of any other Act or rules, orders or notifications issued thereunder or under any standing orders or under any award, contract of service or otherwise, a workman is entitled to benefits in respect of any matter which are more favourable to him than those to which he would be entitled under this Act, the workman shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that he receives benefits in respect of other matters under this Act.]

(2) For the removal of doubts, it is hereby declared that nothing contained in this Chapter shall be deemed to affect the provisions of any other law for the time being in force in any state in so far as that law provides for the settlement of industrial disputes, but the rights and liabilities of employers and workmen in so far as they relate to layoff and retrenchment shall be determined in accordance with the provisions of this Chapter.

## <sup>2</sup>[CHAPTER V-B]

### **SPECIAL PROVISIONS RELATING TO Layoff, RETRENCHMENT AND CLOSURE IN CERTAIN ESTABLISHMENTS**

**25-K Application of Chapter V-B.**- (1) The provisions of this Chapter shall apply 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 <sup>3</sup>[one hundred] workmen were employed on an average per working day for the preceding twelve months.

(2) If a question arises whether an industrial establishment is of a seasonal character or whether work is performed therein only intermittently, the decision of the appropriate Government thereon shall be final.

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1. Subs by Act No. 36 of 1964, S. 17, w.e.f. 19-12-1964.

2. Ins. by Act. 32 of 1976, w.e.f. 5-3-1976.

3. Subs by Act No. 46 of 1982 of [three hundred] vide s.12, w.e.f. 21-8-1984.

**25-L. Definitions.-** For the purposes of this Chapter,-

- (a) 'Industrial establishment' means-
- (i) a factory as defined in clause (m) of Section 2 of the Factories Act, 1948 (63 of 1948) ;
  - (ii) a mine as defined in clause (j) of subsection (1) of Section 2 of the Mines, Act 1952 (35 of 1952) ;or
  - (iii) a plantation as defined in clause (f) of Section 2 of the Plantations Labour Act, 1951 (69 of 1951) ;
- (b) notwithstanding anything contained in sub-clause (ii) of clause (a) of Section 2,-
- (i) in relation to any company in which not less than fifty-one per cent of the paidup share capital is held by the Central government, or
  - (ii) in relation to any corporation [not being a corporation referred to in sub-clause (i) of clause (a) of Section 2] established by or under any law made by Parliament,

the Central Government shall be the appropriate Government.

#### **NOTE**

**Scope of.-**The repentant Corporation is an industrial undertaking within the meaning of section 25-L, The Corporation has its workshops for repairs and servicing the transport buses, plants for retarding tyres, printing press to produce ticket books and other materials, such as , forms and registers to be maintained in the officer, without these units, the transport business cannot be carried on. The factories may be located in different stations and zone but they constitute an integrated whole and form specific units of the Corporation so as to make it an industrial undertaking and therefore, the orders of the retrenchment without compliance of the mandatory provisions of section 25-N are illegal, [State Transport Accounts Associations v. Orissa State Road, Transport Corporation (1990) Lab I.C. 1378 (Orissa).]

**25-M. Prohibition of layoff.-** (1) No workman (other than a badli workman or an workman) whose name is borne on the muster roll of an industrial establishment to which the Chapter applies shall be laid off by his employer except <sup>1</sup>[with the prior permission of the appropriate Government or such authority as may be specified by the Government by notification in the Official Gazette (hereinafter in this section referred to as the specified

authority), obtained on an application made in this behalf, unless such layoff is due to shortage of power or to natural calamity, and in the case of mine, such layoff is due also to fire, flood, excess of inflammable gas or explosion].

<sup>2</sup> [(2) An application for permission under subsection (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended layoff and a copy of such application shall also be served simultaneously on the workman concerned in the prescribed manner.

(3) Where the workman (other than badli workmen or casual workman) of an industrial establishment, being a mine, have been laid-off under subsection (1) for reasons of fire-flood or excess of inflammable gas or explosion, the employer, in relation of such establishment, shall within a period of thirty days from the date of commencement of such layoff, apply in the prescribed manner, to the appropriate Government or the specified authority for permission to continue the layoff.

(4) Where an application for permission under subsection (1) or subsection (3) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workman concerned and the persons interested in such layoff, may, having regard to the genuineness and adequacy of the reasons for such layoff, the interests of the workman and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(5) Where an application for permission under subsection (1) or subsection (3) has been made and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period for sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

(6) An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of subsection (7), be final and

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1. The words in brackets Subs by Act No. 49 of 1984, Vide S. 4, (a) w.e.f. 18-8-1984.

2. Subsections (2) to (9) Subs. for original Subsections (2) to (5) by Act No. 49 of 1984, Vide S. 4, (a) w.e.f. 18-8-1984.



binding on all the parties concerned and shall remain in force for one year from the date of such order.

(7) The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under subsection (4) or refer the matter, or, as the case may be, cause it to be referred, to a Tribunal for adjudication:

(8) Where no application for permission under subsection (1) is made, or where no application for permission under subsection (3) is made within the period specified therein, or where the permission for any layoff has been refused, such layoff shall be deemed to be illegal from the date on which the workman had been laid off and the workman shall be entitled to all the benefits under any law for the time being in force as if they had not been laidoff.

(9) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct that the provisions of subsection (1), or as the case may be subsection (3) shall not apply in relation to such establishment for such period as may be specified in the order.]

<sup>1</sup>[(10)] The provisions section 25-C (other than the second proviso thereto) shall apply to cases of layoff referred to in this section.

*Explanation-* For the purposes of this section, a workman shall not be deemed to be laidoff by an employer if such employer offers and alternative employment (which is the opinion of the employer does not call for any special skill or previous experience and can be done by the workman) in the same establishment from which he has been laildoff or in any other establishment belonging to the same employer, situate in the same town or village, or situate within such distance from the establishment to which he belongs that the transfer will not involve under hardship to the workman having regard to the facts and circumstances of his case, provided that the wages which would normally have been paid to the workman are offered for the alternative appointment also.]

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1. Original Subsection (6) renumbered as subsection (10) by Act No. 49 of 1984. w.e.f. 18-8-1984.
  2. Section 25-N subs by *ibid*, vide S.5, w.e.f. 18-8-1984

## NOTES

Restrictions imposed under Section 25-M appear necessary in public interest and to protect the interest of workman. [Papanasam Labour Union v. Madura Coats Ltd. (1995) 70 F.L.R. 319 (S.C.).]

Upholding the virus of Section 25-M as amended in 1976, the Supreme Court held that the restriction imposed under section 25-M of the Industrial Disputes Act 1947 cannot be held to be arbitrary or unreasonable. [Papanasam Labour Union v. Madura Coats Ltd. (1995) 70 F.L.R. 319 (S.C.).]

Where the varies of the Sections 25-M & 25-Q was upheld in the Madura Coats Case prosecution for it violation would be maintained. However in case of special circumstances when the Company became sick beyond revival and company was not in management of factories and productive units, enquiry need not be made and criminal cases would not be further pursued. Hence the Criminal cases were quashed under section 482, Cr. P.C. (Ashok Kumar Jain v. State of Bihar, (1995) 70 F.L.R. 288 (S.C.).]

**2[ 25-N. Conditions precedent to retrenchment of workman -** (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by the employer until,-

- (a) the workman has been given three months ' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by the Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority has been obtained on an application made in this behalf.

(2) An application for permission under subsection (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workman concerned in the prescribed manner.

(3) Where an application for permission under subsection (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workman

concerned and the persons interested in such retrenchment, may, having regards to the genuineness and adequacy of the reasons stated by the employer, the interests of the workman and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workman.

(4) Where an application for permission has been made under subsection (1) and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

(5) An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of subsection (6), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order.

(6) The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under subsection (3) or refer the matter or, as the case may be, cause it to be referred, to a Tribunal for adjudication :

Provided that where a reference has been made to a Tribunal under this subsection, it shall pass an award within a period of thirty days from the date of such reference.

(7) Where no application for permission under subsection (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice has been given to him.

(8) Notwithstanding anything contained in the foregoing provision of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct that the provisions of subsection (1) shall not apply in relation to such establishment for such period as may be specified in the order.

(9) Where permission for retrenchment has been granted under subsection (3) or where permission for retrenchment is deemed to be granted under subsection (4), every workman who is employed in the establishment immediately before the date of application for permission under this section shall be entitled to receive, at the time of retrenchment, compensation which shall be equivalent to fifteen days average pay for every completed year of continuous service or any part thereof in excess of six months.]

#### NOTE

**Scope of -** The Supreme Court has held section 25 N of the Act as constitutionally valid on the ground that the restrictions imposed on the right of employer to retrench workmen is in the interest of general public. It does not infer Article 19 (1) (g) or the Constitution and duty to pass a speaking order and affording opportunity to the parties concerned is sufficient safeguard against arbitrary action. Authority is not invested with judicial power while functioning under subsection (2) of section 25-N and hence no appeal lies to supreme Court against an order passed under subsection (2) of section 25-N. [Workmen of Meenakshi Mills Ltd. etc., v. Meenakshi Mills Ltd. and another., (1992 ) II Lab. LJ 294 (SC).]

**<sup>1</sup>[25-O. Procedure for closing down an undertaking.-** (1) an employer who intends to close down an undertaking of an industrial establishment to which the Chapter applies shall, in the prescribed manner, apply, for prior permission at least thirty days before the date on which the intended closure is to become effective, to the appropriate Government, stating clearly the reasons for the intended closure of the undertaking and a copy of such application shall also be served simultaneously on the representatives of the workman in the prescribed manner:

Provided that nothing in this subsection shall apply to an undertaking set up for the construction of building, bridges, road, canals, dams or for other construction work.

(2) Where an application for permission has been made under subsection (1), the appropriate Government, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workman and the persons interested in such closure may, having regard to the genuineness and adequacy of the

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1. Section 25-N substituted by Act No. 46. of 1982, vide S.14, w.e.f. 18-8-1984

reasons stated by the employer, the interest of the general public and all other relevant factors, by order and for reasons to be recorded in writing grant or refuse to grant such permission and a copy of such order shall be communicated to be employer and the workmen.

(3) Where an application has been made under subsection (1) and the appropriate Government does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period, of sixty days.

(4) An order of the appropriate Government granting or refusing to grant permission shall, subject to the provision of subsection (5), be final and binding on all the parties and shall remain in force for one here from the date of such order.

(5) The appropriate Government may, either on its motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under subsection (2) or refer the matter to a Tribunal for adjudication :

Provided that where a reference has been made to a Tribunal under this subsection, it shall pass an award within a period of thirty days from the date of such reference.

(6) Where no application for permission under subsection (1) is made within the period specified therein, or where the permission for closure has been refused, the closure of the undertaking shall be deemed to be illegal from the date of closure and the workmen shall be entitled to all the benefits under any law for the time being in force as if the undertaking had not been closed down.

(7) Notwithstanding anything contained in the foregoing provision of this section, the appropriate Government may, if it satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that the provisions of subsection (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

(8) Where an undertaking is permitted to be closed down under subsection (2) or where permission for closure is deemed to be granted under subsection (3), every workman who is employed in that undertaking immediately before the date of application for permission under this section, shall be entitled to receive of application which shall be

equivalent to fifteen to day's average pay for every completed year of continuous service or any part thereof in excess of six months].

### NOTES

where the point invoked was the constitutional validity of section 25-O of the Industrial Disputes Act 1947, it was held that the right to close down the business is an integral part of right to carry on business and the provisions of section 25-o as amended. do not violate the fundamental right guaranteed under Article 19 (1) (g) of the constitution. hence the same is not ultra virus. [orissa Textile and steel Ltd. v. state of orissa, (1995) 70 F.L.R. 199 (ori).]

Where the application for permission to close the undertaking under section 25-0 was rejected and a review application under section 25-0 (5) was filed, it was held that the Government has no power to review the order after one year. [Maharashtra gen. Kamgar union v. state of Maharashtra. (1995) 70 F.L.R. 248 (Bom.)]

**25-p. Special provisions as to restarting of undertakings closed down before commencement of the Industrial Disputes (Amendment) Act, 1976.-** If the appropriate Government is of opinion in respect of any undertaking of an industrial establishment to which this chapter applies and which was closed down before the commencement of the Industrial Disputes (Amendment) Act, 1976 (32 of 1976),-

- (a) That such undertaking was closed down otherwise than on account of unavoidable circumstances beyond the control of the employer;
- (b) That there are possibilities of restarting the undertaking;
- (c) That it is necessary for the rehabilitation of the workmen employed in such undertaking before its closure or for the maintenance of supplies and services essential to the life of the community to restart the undertaking or both ; and
- (d) that the restarting of the undertaking will not result in hardship to the employer in relation to the undertaking.

it may, after giving an opportunity to such employer and workmen, direct, by order published in the Official gazette, that the undertaking shall be restarted within such time (not being less than one month from the date of the order) as may be specified in the order.

**25.Q- Penalty for layoff and retrenchment without previous permission.-** Any employer who contrivances the provisions of section 25-M or of [ \* \* \* ] section 25-N shall be punishable with imprisoned for a term which may extend to one month, or with fine which may extend to one thousand rupees, or with both.

**25.-R. Penalty for closure.-** (1) Any employer who closes down an undertaking without complying with the provision of subsection (1) of section 25-0 shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

(2) Any employer who contravenes <sup>2</sup>[an order refusing to grant permission to close down an undertaking under subsection (2) of section 25-0 or a direction given under section 25-P], shall, be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both, and where the contravention is a continuing one, with a further fine which may extend to two thousand rupees for every day during which the contravention continues after the conviction.

(3) [\*\*]<sup>3</sup>

**25.S- Certain provisions of Chapter V-A to apply to an industrial establishment to which this Chapter applies.-** The provisions of section 25-B, 25-D, 25-ff, 25-G, 25-H and 25-J in chapter V-A shall, so far as may be, apply also in relation to an industrial establishment to which the provisions of this chapter apply.

#### [CHAPTER V-C]

#### UNFAIR LABOUR PRACTICES

**25-T. Prohibition of unfair labour practice.-** No employer or workman or a trade union, whether registered under the Trade Union Act, 1926 (16 of 1926), or not, shall commit any unfair labour practice.

**25-U. Penalty for committing unfair labour practices.-** Any person who commits any unfair labour practice shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both].

#### CHAPTER VI

#### PENALTIES

**26. Penalty for illegal strikes and lockouts.-** (1) Any workman who commences, continues or otherwise acts in furtherance of, a strike which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees, or with both.

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1. Certain words omitted by Act no. 49 of 1984, vide S.6, w.e.f., 18-8-1984.  
2. The words in brackets sub. by Act No. 46 of 1982, vide S.15 (a), w.e.f. 21-8-1984.  
3. subsection (3) omitted by act no. 46 of 1982, vide s. 15 (b), w.e.f. 21-8-1984.  
4. Chap. V-C together with section 25-T, 25-U inserted by Act No. 46 of 1982, vide S.16, w.e.f. 21-8-1984.



(2) Any employer who commences, continues, or otherwise acts in furtherance of a lockout which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to one thousand rupees, or with both.

**27. Penalty for instigation, etc.-** Any person who instigates or incites others to take part in, or otherwise acts in furtherance of, a strike or lockout which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to six months. or with fine which may extend to one thousand rupees, or with both.

**28. Penalty for giving financial aid to illegal strikes and lockouts.-** Any person who knowingly expends or applies any money in direct furtherance or support of any illegal strike or lockout shall be punishable with imprisonment for a term which may extend to six months, or which fine which may extend to one thousand rupees, or with both.

**29. Penalty for breach of settlement or award.-** Any person who commits a breach of any term of any term of any settlement or award, which is binding on him under this Act, shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both, <sup>2[and</sup> where the breach is a continuing one, with a further fine which may extend to two hundred rupees for every day during which the breach continues after the conviction for the first] and the Court trying the offence, if it fines the offender, may direct that the whole or any part of the fine realised from him shall be paid, by way of compensation, to any person who, in its opinion, has been injured by such breach.

**30. Penalty for dissuasion confidential information.-** Any person who wilfully discloses any such information as is referred to in section 21 in contravention of the provisions of that section shall, on complaint made by or on behalf of the trade union or individual business

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1. Chap. V-C together with section 25-T, 25-U inserted by Act No. 46 of 1982, vide S.16, w.e.f.21-8-1984.

2. Ins. by Act No. 35 of 1965.

affected, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

**<sup>1</sup>[30-A. Penalty for closure without notice.-** Any employer who closes down any undertaking without complying with the provisions of section 25-FFA shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees. or with both].

**31. Penalty for other offences.-** (1) Any employer who contravenes the provisions of section 33 shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(2) Whoever contravenes any of the provisions of this Act or any rule made thereunder shall, if no other penalty is elsewhere provided by or under this Act for such contravention, be punishable with fine may extend to one hundred rupees.

## CHAPTER VII

### MISCELLANEOUS

**32. Offence by companies, etc.-** Where a person committing a offence under this Act is a company, or other body corporate, or an association of persons (whether incorporated or not), every director, manager, secretary, agent or other officer or person concerned with the management thereof shall unless he proves that the offence was committed without his knowledge or consent, be deemed to be guilty of such offence.

**33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.-** (1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before <sup>2</sup>[an arbitrator or] a Labour court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall,-

- (a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen immediately before the commencement of such proceeding ; or
- (b) For any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workman concerned in such dispute, save with the

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1. Ins. by Act No. 32 of 1972, S.3.

2. Ins. by Act No "36 of 1964, s. 18, w.e.f. 19-12-1964.

3. Ins. by Act No. 36 of 1964, S. 18, w.e.f. 19-12-1964.

express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute, <sup>3</sup>[ or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman,-

- (a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding ; or
- (b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman:

**Provided** that no such workman shall be discharged be discharged or dismissed, unless he has been paid wages for one month and a application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

(3) Notwithstanding anything contained in subsection (2), no employer shall, during the pendency of any such proceeding in respect of an Industrial, dispute, take any action against any protected workman concerned in such dispute-

- (a) by altering, to the prejudice of such protected workman, the conditions of service applicable to him immediately before the commencement of such proceedings ;  
or
- (b) by discharging or punishing, whether by dismissal or otherwise, such protected workman.

save with the express permission in writing of the authority before which the proceeding is pending.

*Explanation-* For the purposes of this subsection a “protected workman”, in (relation to an establishment, means a workman who, being <sup>1</sup>[a member of the executive or other office bearer] or a registered trade union connected with the establishment, is recognised as such in accordance with rules made in this behalf.

(4) In every establishment, the number of workmen to be recognised as protected workmen for the purposes of such subsection (3) shall be one per cent of the total number of workmen employed therein subject to a minimum number of five protected workmen and

a maximum number of one hundred protected workmen and for the aforesaid purpose, the appropriate Government may make rules providing for the distribution of such protected workmen among various trade unions, if any, connected with the establishment and the manner in which the workmen may be chosen and recognised as protected workmen.

(5) Where an employer make an application to a conciliation officer, Board, an arbitrator, a Labour court, Tribunal or National Tribunal under the proviso to subsection (2) for approval of the action taken by him, the authority concerned shall, without delay, hear such application and pass, <sup>2</sup>[within a period of three months from the date of receipt of such application], such order in relation thereto as it deems fit :

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1. Subs. by Act No. 44 of 1971. S. 5, for “an officer” (w.e.f. 15-12-1971).  
2. The words, in brackets subs. by Act No. 46 of 1982, vide S. 17 (a), w.e.f. 21-8-1984.

[provided that where any such authority considers it necessary or expedient so to do, it may, for reasons to be recorded in writing. extend such period by such further period as it may think fit :

**Provided further** That no proceedings before any such authority shall lapse merely on the ground that any period specified in this subsection had expired without such proceedings being completed].

## NOTES

**Scope of.-** (i) Although the impugned order of dismissal may be unsustainable owing to some infirmity in the order, yet it will not be expedient to order reinstatement of the workman. In such cases the court should compensate the workman monetarily by awarding him compensation in lieu of reinstatement, In view of this the order of the Bombay High court ordering reinstatement of a group of employees was held not to be sustainable. The court ordered payment of compensation for losses of back wages and future employment in lieu of reinstatement. (Workmen of Bharat Fritz Warner (P) Ltd. (1990) Lab I.C. 844 (S.C).]

(ii) The Management did not include night shift allowance earned in the previous month in the one month's wages paid to a dismissed workman. The workman claimed that Management has violated the mandate under proviso to section 33 (2) (b). It was held that the requirement under that said proviso that the Management must pay one month's wages to the workman is intended to soften the rigour of unemployment that will face him against whom an order of discharge or dismissal has been passed. One month's wages as provided are conceptually for the month to follow the dismissal or discharge and, therefore, the conclusion is inescapable that the night shift allowance which is contingent upon reporting to duty and the workman being put to that shift cannot be included or form part of one month's wages under the proviso. [Bhara Electronics Ltd. v. Industrial Tribunal Bangalore, (1990) 11 Lab. LJ 32 (SC).]

(iii) It is primarily a matter for appropriate authority to consider and not a matter to be decided by high court. [v.k. Verma v. Hindustan Machine Tools Ltd, 1994 (1) LLN. 237 (P & H).]

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1. Proviso inserted by ibid S. 17 (b), w.e.f. 21-8-1984.  
2. Subs. by ibid S. 17 (b), w.e.f. 21-8-1984.  
3. Ibid.

**33.-A. Special provision for adjudication as to whether conditions of service, etc., changed during pendency of proceedings.-** Where an employer contravenes the provisions of section 33 during the pendency of proceedings [before a Conciliation Officer, Board, an arbitrator, a Labour Court, Tribunal or National Tribunal]<sup>2</sup> and employee aggrieved by such contravention, may make a complaint in writing <sup>3</sup>[In the prescribed manner-

- (a) to such Conciliations officer or Board, and the conciliation officer Board shall take such complaint into account in mediating in, and promoting the settlement of, such industrial disputes, and
- (b) to such arbitrator, Labour Court Tribunal or National Tribunal and receipt of such complaint, the arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, shall adjudicate upon the complaint as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act and shall submit his or its award to the appropriate Government and the provisions of this Act shall apply accordingly]

**33.B Power to transfer certain Proceedings -** (1) The appropriate Government may, by order in writing and for reasons to be stated therein, withdraw any proceeding under this Act pending before a Labour Court, Tribunal or National Tribunal and transfer the same to another Labour Court, Tribunal or National Tribunal as the case may be, for the disposal of the proceeding and the Labour Court, Tribunal or National Tribunal to which the proceeding is so transferred may, subject to special directions in the order of transfer, proceed either de novo or from the stage at which it was so transferred

**Provided** that where proceeding under Section 33 or Section 33-A is pending before a Tribunal or National Tribunal, the proceeding may also be transferred to a Labour Court.

(2) Without prejudice to the provisions of subsection (1) : any Tribunal or National Tribunal, if so authorized by the appropriate Government, may transfer any proceeding under section 33 or section 33-A pending before it to any one of the Labour Courts specified for the disposal of such proceeding by the appropriate Government by notification in the official Gazette and the Labour Court to which the proceeding is so transferred shall dispose of the same.

**<sup>1</sup>[33.C- Recovery of money due from and employer :** (1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of

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1. Subs. by Act No. 36 of 1964, Sec. 19, w.e.f. 19-12-1964.

<sup>2</sup>[Chapter V-A Chapter V-B], 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 heir may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue:

**Provided** the every such application shall be made within one year from the date on which the money became due to the workman from the employer:

**Provided further** that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant has sufficient cause for not making the application within the said period.

(2) Where any workman is entitled to receive for the employer any money of any benefit which is capable of being computer in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government <sup>1</sup>[within a period not exceeding three months.]:

<sup>2</sup>**Provided** that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit).

(3) For the purposes of computing the money value of a benefit, the Labour court may, if it so thinks fit, appoint a commissioner who shall, after taking such evidence as may be necessary, submit a report to the labour court and the Labour court shall determine the amount after considering the report of the commissioner and other circumstances of the case.

(4) The decision of the Labour court shall be forwarded by it to the appropriate Government and any amount found due by the labour court may be recovered in the manner provided for in subsection (1).

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2. Subs by Act No. 32 of 1976 w.e.f. 5-3-1976.

1. The words, in brackets subs. by Act No. 46 of 1982, vide S. 17 (a), w.e.f. 21-8-1984.

2. Proviso to subsection (2) inserted by *ibid*, w.e.f. 21-8-1984.

(5) Where workmen employed under the same employer are entitled to receive from him any money or any benefit capable of being computed in terms of money, then, subject to such rules as may be made in this behalf, a single application for the recovery of the amount due may be made on behalf of or in respect of any number of such workmen.

*Explanation-* In this section "Labour court" includes any court constituted under any law relating to investigation and settlement of industrial disputes in force in any state.

### NOTES

**Subsection (2)- Scope of.-** (i) Recovery applications under section 33-C (2) for dues under the Minimum wages Act are maintainable. Even though the Minimum Wages Act, may have separate enforcement machinery, but in the absence of any express or implied exclusion of the jurisdiction of the Labour court under section 33-C (2) application for recovery of dues under the Act are maintainable under section 33-C (2). In this connection it cannot be said that the Minimum wages Act is such a complete code that it excludes jurisdiction of the Labour court under section 33-C (2), [M/s. R. L. Kalathia & Co. v. state of Gujrat, (1990) Lab I.C. 1818 (Guj.)]

(ii) Labour court has got jurisdiction to award interest at the rate of 18 per cent of the amount unlawfully withheld, no period of limitation is prescribed for making an application under section 33-C (2), High court cannot interfere with the award of interest under Art.226 of constitution of India. [Union of India and another v.s.b. Agnihotri and another, (1991) II Lab. LJ 60-3 (All).]

An order under section 33-C of the Industrial Disputes Act, 1947 was passed directing recovery of sum without giving reasonable opportunity of hearing, it was held that such an order is clear violation of principles of natural justice and suffers from vice of arbitrariness hence was set aside. [Dayal Laminates pvt. Ltd. v. L. K. pandey, Dy. Labour commissioner Indore, (1995) 70 F.L.R. 197 (M.P.) (I.B.)]



Where the daily rated sweepers claimed for equal pay to that of regular sweepers, it was held that a claim can be made under section 33-C (2) and the Labour court can go into the question of as incidental question. [Municipal council Latur v. shivaji vaijnath Kamble, (1995) 70 F.L.R. 608 (Bom.) (Aurangabad Branch).]

Where the reasoning of the Labour court in rejection a claim of amount of monthly wages notice pay and compensation was totally perverse and un sustainable as there was positive proof of nonpayment on record. However, the claim for leave wages was disallowed as there was no leave to his credit. Minimum Bonus of 8.33 per cent in both the years was also allowed. [Balwant Dinkar Kadam v. proprietor MCGay industries, (1995) 70 F.L.R. 1064 (Bom).]

Where the question involved was that of jurisdiction it was held that as there was no dispute regarding the rates of wages payable to a chowkidar fixed by the State Government which have been denied to the person concerned (The respondent) on extraneous considerations, therefore the remedy does not lie under section 20 of the Minimum wages act. 1948 and the Labour court has the jurisdiction under section 33-C (2) of the Industrial Disputes Act, 1947. [State of M.P. v. Presiding officer, Labour court sagar (1995) 70 F.L.R. 809 (M. P.)]

A dispute involving the entitlement to get the money or benefit from the employer complete with the question whether they are entitled to such benefits is a case in which the action under section 33-C (2) of the Industrial Disputes Act, 1947 may not be competent, the dispute is covered by section 19 and other provisions of chapter III of the Act, [Thank acclaim v. presiding officer. 1st Add. Labour court, Madras, (1995) 70 F.L.R. 215 (Med).]

Discussing the scope of section 33(c) (2) of the Industrial Dispute Act 1947, it was held that the question of discharging similar duties and functions of a chowkidar could not be determined in an application under section 33-C (2) of the Act. this can be adjudicated by the Labour court on a reference under section 10 (1) of the Act. [State of M.P.v. presiding officer. Labour court, sagar (1995) 70 F.L.R. 809 (M.P.)]

(iii) Question whether petitioners were employees or not can not be decided in petition under section 33-C (2) of the Act. [Jaganath Bhagwandas v. Haris 1994 LLJ 15 (Bom).]

**34. Cognizance of offences.-** (1) No court shall take cognizance of any offence punishable under this Act or of the abetment of any such offence, save on complaint made by or under the authority of the appropriate Government.

(2) No Court inferior in that of 1[a Metropolitan Magistrate or a judicial Magistrate of the first Class] shall try and offence punishable under his Act.

**35. Protection of persons. -** (1) No person refusing to take part or to continue to take part in any strike or lockout which is illegal under this Act shall, by reason of such refusal or by reason of any action taken by him under this section, be subject to expulsion from any trade union or society, or to any fine or penalty, or to deprivation or any right or benefit to which he or his legal representatives would otherwise be entitled, or be liable to be placed in any respect, either directly or indirectly, under any disability or at any disadvantage as compared with other members of the union or society, anything to the contrary in the rules of a trade union or society notwithstanding.

(2) Nothing in the rules of a trade union or society requiring the settlement of disputes in any manner shall apply to any proceeding for enforcing and right or exception secured by this section, and in any such proceeding the Civil Court may, in lieu ordering a person who has been expelled from membership of a trade union or society to be restored to membership, order that he be paid out of the funds of the trade union or society such sum by way of compensation or damages as that Court thinks just.

**36. Representation of parties.-** (1) A workman who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by-

- (a) any member of the executive or other office bearer of a registered trade union of which he is a member;
- (b) any member of the executive or other office bearer of a federation of trade unions to which the trade union referred to in clause (a) is affiliated.
- (c) Where the worker is not a member of any trade union, by <sup>2</sup>[any member of the executive or other office bearer] of any trade union connected with, or by any other workman employed in, the industry in which the worker is employed and authorized in such manner as may be prescribed.

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1. Subs. by Act No. 46 of 1982, vide S. 20 (a), w.e.f. 21-8-1984.

2. Subs. by Act No. 45 of 197

(2) An employer who is a party to a dispute shall be entitled to be represented in an proceeding under this Act by -

- (a) an officer of an association of employers of which he is a member;
- (b) an officer of a federation of associations of employer to which the association referred to in clause (a) is affiliated ;
- (c) where the employer is not a member of any association of employers, by an officer of any association of employers connected with, or by any other employer engaged in, the industry in which the employer is engaged the authorised in such manner as may be prescribed.

(3) No party to a dispute shall be entitled to be represented by a legal practitioner in any conciliation proceedings under this Act or in any proceedings before Court.

(4) In any proceeding [before a Labour Court, Tribunal or National Tribunal], a party to a dispute may be represented by a legal practitioner with the consent of the other parties to the proceeding and [with the leave of the Labour Court, Tribunal or National Tribunal, as the case may be].

**36.A. Power to remove difficulties** - (1) If, in the opinion of the appropriate Government any difficulty or doubt arises as to the interpretation of any provision of an award or settlement, it may refer the question to such Labour Court, Tribunal or National Tribunal as it may think fit.

(2) The Labour Court, Tribunal or National Tribunal to which such question is referred shall, after giving the parties an opportunity of being heard, decide such question and its decision shall be final and binding on all such parties.

[ **36.B- Power to exempt** - Where the appropriate Government is satisfied in relation to any industrial establishment or undertaking or any class of Industrial establishments or undertakings carried on by a department of that Government that adequate provisions exist for the investigation and settlement of industrial disputes in respect of workman employed in such establishment or undertaking or class of establishments or undertakings, it may, by notification in the official Gazette, exempt, conditionally or unconditionally such establishment or undertakings or class of establishments or undertakings from all or any of the provisions of this Act].

**37. Protection of action taken under the Act.** - No suit, prosecution or other legal proceeding shall lie against any person for anything which is done in good faith and intended to be done in pursuance of this Act or any rules made thereunder.

**38. Power to make rules.**- (1) The appropriate Government may, subject to the condition of previous publication, make rules for the purpose of giving effect to the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely-

- (a) the powers and procedure of conciliation officers, Boards, Courts, [Labour Court, Tribunal or National Tribunal] including rules as to the summoning of witness, the production of documents relevant to the subject-matter of an inquiry or

investigation, the number of members necessary to form a quorum and the manner of submission of reports and awards;

(aa) the form of arbitration agreement, the manner in which it may be signed by the parties, the manner in which a notification may be issued under subsection (3-A) of section 10-A, the powers of the arbitrator named in the arbitration agreement and their procedure to be followed by him;

(aaa) the appointment of assessors in proceeding under this Act;

<sup>1</sup>[(ab) the constitution of grievance Settlement Authorities referred to in Section 9-C, the manner in which industrial disputes may be referred to such authorities for settlement, the procedure to be followed by such authorities in the proceedings in relation to disputes referred to them and the period within which such proceedings shall be completed].

(b) The constitution and functions of and the filling of vacancies in Works Committees, and the procedure to be followed by such committees in the discharge of their duties;

(c) the allowances admissible to members of Courts [and Boards and Presiding Officers of Labour Court, Tribunal or National Tribunals] and to assessors and witnesses;

(d) the ministerial establishment which may be allowed to a Court, Board, Labour Court, Tribunal or National Tribunal and the salaries and allowances payable to members of such establishments;

(e) the manner in which and the persons by and to whom notice of strike or lockout may be given and the manner in which such notices shall be communicated;

(f) the conditions subject to which parties may be represented by legal practitioners in proceedings under this Act before a Court, Labour Court, Tribunal or National Tribunal;

(g) any other matter which is to be or may be prescribed.

(3) Rules made under this section may provide that a contravention thereof shall be punishable with fine not exceeding fifty rupees.

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1. Cl. (ab) Inserted by Act No. 46 of 1982, vide S. 22, w.e.f. 21-8-1984.  
2. Ins. by Act No. 36 of 1964, S. 20, w.e.f. 19-12-1964.

(4) All rules made under this section shall, as soon as possible after they are made, be laid before the State Legislature or, where the appropriate Government is the Central Government, before both houses of Parliament.

<sup>2</sup>[(5) Every rule made by Central Government under this section shall be laid ,as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in on session or in <sup>3</sup>[two or more successive sessions and if before the expiry of the session immediately following the session or the session aforesaid] both Houses agree in making any modification in the rule, or both Houses agree that the rule should be of no effect, as the case may be; so, however, that any modification or annulment shall be without prejudice to the validity of anything previously done under the rule].

**39. Delegation of power.** - The appropriate Government may; by notification in the Official Gazette, direct that any power exercisable by it under this Act or rules made thereunder shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also,-

(a) where the appropriate Government is the Central Government, by such officer or authority subordinate to the Central Government or by the State Government or by such officer or authority subordinate to the State Government, as may be specified in the notification; and

(b) Where the appropriate Government is a Sate Government by such officer or authority subordinate to the State Government as may be specified in the notification.

**1[40. Power of amend Schedules.-** (1) The appropriate Government may if it is of opinion that it is expedient or necessary in the public interest of to do, by notification in the Official Gazette, and to the First Schedule any industry, and on any such notification being issued, the First Schedule shall be deemed to be amended accordingly.

(2) The Central Government may, be notification in the Official Gazette add to or alter or amend the Second Schedule or the Third Schedule and on any such notification being issued, the Second Schedule or the Third Schedule, as the case may be, shall be deemed to be amended accordingly.

(3) Every such notification shall, as soon as possible after is issued, be laid before the Legislature of the State, if the notification has been issued by the Central Government.

## THE FIRST SCHEDULE

[See section 2 (n) (vi)]

### INDUSTRIES WHICH MAY BE DECLARED TO BE PUBLIC UTILITY SERVICE UNDER SUB-CLAUSE (vi) OF CLAUSE (n) OF SECTION 2

1. Transport (other than railways) for the carriage of passengers of goods.  
<sup>2</sup>[ by land or water];
2. Banking;
3. Cement;
4. Coal;
5. Cotton textiles;
6. Foodstuffs;
7. Iron and steel;
8. Defence establishments;
9. Service in hospitals and dispensaries;
10. Fire Brigade Service;
- <sup>3</sup>[11. India Government Mints ;
12. India Security Press;]
- <sup>4</sup>[13. Copper Mining;
14. Lead Mining;
15. Zinc Mining;
- <sup>1</sup>[16. Iron Ore Mining;]

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1. Subs. by Act No. 36 of 1964, S. 21 for S. 40, w.e.f. 19-12-1964.
  2. Subs. by Act No. 36 of 1964, S. 22 for “by land, water or air”, w.e.f. 19-12-1964.
  3. Ins. by Noti. No. S.O. 2193, dated 30-6-1965.
  4. Items 13 to 15 added by Noti. No. 1440, dated 3-5-1966.
  
  1. Ins. by Noti. No. S.O. 726, pub. in Gaz. of India, Pt. II S. 3(ii), dated 4-3-1967.
  2. Ins. by Noti. No. S.O. 1776, dated 10-5-1967.
  3. Deleted by Act. No. 45 of 1971, S. 7.
  4. Ins. by No. S.O. 1471, Pub. in Gaz. India. Pt. II. S.3 (ii), dated 27-4-1968.
  5. Ins. by No. S.O. 2061, Pub. in Gaz. India. Pt. II. S.3 (ii), dated 6-6-1970
  6. Ins. by No. S.O. 4697, Pub. in Gaz. India. Pt. II. S.3 (ii), dated 11-12-1976

<sup>2</sup>17. Service in any oilfield;]

<sup>3</sup>[18. \* \* \* \* \*]

<sup>4</sup>[19. Service in Uranium Industry;]

<sup>5</sup>[20. Pyrites Mining Industry;]

21. Security Paper Mill, Hishangabad;

<sup>6</sup>[22. Services in Bank Note, Press, Dewas;]

<sup>7</sup>[23. Phosphorite Mining;]

<sup>8</sup>[24. Magnesite Mining;]

<sup>9</sup>[25. Currency Note press]

<sup>10</sup>[ 26. Manufacture or production of mineral oil (Crude Oil), motor and aviation spirit, diesel oil, kerosene oil, fuel oil, divers hydrocarbon oils and their blends including synthetic fuels, lubrication oils and the like.]

<sup>11</sup>[27. Serve in the International Airports Authority of India.]

## **THE SECOND SCHEDULE**

[See section 7]

### **MATTERS WITHIN THE JURISDICTION OF LABOUR COURT**

1. The propriety or legality of an order passed by an employer under the standing orders;
2. The application and interpretation of Standing Orders;
3. Discharge or dismissal of workman including reinstatement of, or grant of relief to workmen wrongfully dismissed;
4. Withdrawal of any customary concession or privilege;
5. Illegality or otherwise of a strike or lockout; and
6. All matters other than those specified in the Third Schedule.

## **THE THIRD SCHEDULE**

[See section 7-A]

### **MATTERS WITHIN THE JURISDICTION OF INDUSTRIAL TRIBUNALS**

1. Wages, including the period and mode of payment;
2. Compensatory and other allowances;

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7. Ins. by No. S.O. 47, Pub. in Gaz. India. Pt. II. S.3 (ii), dated 1-1-1977

8. Ins. by S.O. 2474, Pub. in Gaz. India. Pt. II. S.3 (ii), dated 20-9-1980

9. Ins. by Noti. No. S.O. 946 dated 73-1981

10. Ins. by Noti. No. S.O. 4207 dated 20-11-1984.

11. Ins. by Noti. No. S.O. 1919 dated 8-7-1987



3. Hours of work and rest intervals;
4. Leave with wages and holidays;
5. Bonus, profit sharing, provident fund and gratuity;
6. Shift working otherwise than in accordance with Standing Orders;
7. Classification by grades;
8. Rules of discipline;
9. Rationalisation;
10. Retrenchment of workman and closure of establishment; and
11. Any other matter that be prescribed.

## **THE FOURTH SCHEDULE**

[See section 9-A]

### **CONDITIONS OF SERVICE FOR CHANGE OF WHICH NOTICE IS TO BE GIVEN**

1. Wages, including the period and mode of payment;
2. Contribution paid, or payable, by the employer to any provident fund or pension funded or for the benefit of the workman under any law for the time being in force;
3. Compensatory and other allowances;
4. Hours of work and rest intervals;
5. Leave with wages and holidays;
6. Starting, alteration or discontinuance of Shift working otherwise than in accordance with Standing Orders;
7. Classification by grades;
8. Withdrawal of any customary concession or privilege or change in usage,
9. Introduction of new rules of discipline, or alternation of existing rules, except in so far as they are provided in standing Orders;
10. Rationalisation, standardisation or improvement of plant or technique which is likely to lead to retrenchment of workman;
11. Any increase or reduction (other than casual) in the number of persons employed or to be employed in any occupation or process or department or shift not occasioned by circumstances over which the employer has no central].

## 2<sup>2</sup>THE FIFTH SCHEDULE

[See section 2 (ra)]

### UNFAIR LABOUR PRACTICES

*1. On the part of employees and trade unions of employers.*

1. To interfere with, restrain from, or coerce workman is the exercise of their right to organise, form, join to assist a trade union or to engage to concerted activities for the purposes of collective bargaining or other mutual aid or protection, at is the say.-

- (a) threatening workman with discharge or dismissal, if they join a trade union;
- (b) threatening a lockout or closure, if a trade union of organised; and
- (c) granting wage increase to workman at crucial period of trade union organisation, with a view to undermining the efforts of the trade union at organisation.

2. To dominate, interfere with or contribute support, financial or otherwise any trade union, that is to say,-

- (a) an employer taking an active interest in organising a trade union of his workman; and
- (b) an employer showing partiality or granting favour to one so several trade unions attempting to organise his workman or to its members, where such a trade union is not a recognised trade union.

3. To establish employer-sponsored trade unions of workman.

4. To encourage or discourage membership in any trade union by disorientating against any workman, that is to say.-

- (a) discharging or punishing workman, because he urged other workmen to join or organise a trade union;
- (b) discharging or dismissing a workman for taking part in any strike (not being a strike which it deemed to be an illegal strike under this Act.);
- (c) Changing seniority rating of workmen because of trade union activities.

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1. Subs. Act No. 36 of 1964, S. 23. w.e.f. 19-12-1964.

2. The Fifth Schedule inserted by Act No. 46 of 1982, vide S. 23. w.e.f. 21-8-1984.

- (d) refusing to promote workman to higher posts on account of their trade union activities;
  - (e) Giving unmerited promotions to certain workman with a view to creating discord amongst other workmen, or to undermine the strength of their trade union;
  - (f) Discharging officer bearers or active members of the trade union on account of their trade union activities.
5. To discharge or dismiss workmen-
    - (a) by way of victimisation.
    - (b) not in good faith, but in the colourable exercise of the employer's rights;
    - (c) by falsely implicating a workman in a criminal case on false evidence or an concocted evidence;
    - (d) for patently false reasons;
    - (e) on untrue or trumped-up allegations of absence without leave;
    - (f) in utter disregard of the principles of natural justice in the conduct or domestic enquiry or with under haste;
    - (g) for misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record of service of the workman, thereby leading to a disproportionate punishment.
  6. the abolish the work of a regular nature being done by workmen, and to give such work to contractors as a measure of breaking a strike.
  7. To transfer a workman mala fide from one place to another, under the guise of following management policy.
  8. To insist upon individual workman, who are on a legal strike to sign a good conduct bond, as a precondition to allowing them to resume work.
  9. To show favouritism or partiality to one set of workers regardless of merit.
  10. To employ workmen as "ladies" casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen.
  11. To discharge or discriminate against any workman for filing charges of testifying against an employer in any enquiry or proceeding relating to any industrial dispute.
  12. To recruit workmen during a strike which is not as illegal strike.

13. Failure to implement award, settlement award, settlement or agreement.
14. To indulge in acts of force or violence.
15. to refuse to bargain collectively, in good faith with the recognised Trade unions.
16. proposing or continuing a lockout deemed to be illegal under this Act.

*II- On the part of workmen and trade unions of workmen*

1. To advice or actively support or instigate any strike deemed to be illegal under this Act.
2. To coerce workmen in the exercise of their right of self-organisation or to join a trade union or refrain from joining any trade unions, that is to say-
  - (a) for a trade union or its members to picketing in such a manner that non-striking workmen are physically debarred from entering the work places;
  - (b) to indulge in acts of force or violence or to hold out threats of intimidation in connection with a strike against non-striking workmen or against managerial staff.
3. For a recognised union to refuse to bargain collectively in good faith with the employer;
4. the indulge in coercive activities against certification of a bargaining representative.
5. To stage, encourage or instigate such forms of coercive actions as wilful 'go slow' squatting on the work premises after working hours or "gherao" of any of the members of the managerial of other staff.
6. To stage demonstrations at the residences of the employers or the managerial staff members.
7. To incite or indulge in wilful damage to employer's property connected with the industry.
8. To indulge in acts of force or violence or to hold our threats of intimidation against any workman with a view to prevent him from attending work].