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T.k. Rangarajan verses government of tamil nadu

(there is no fundamental, legal/statutory, moral or equitable right to go on strike by government employees.)

Facts

The tamil nadu government terminated the services of all the employees 1, 70,241 who have resorted to strike for their demands. Out of 1, 70,241 employees and teachers 1, 56,106 were reinstated before this judgement.

Issue

Whether the government employee has fundamental, statutory or equitable/ moral right to strike?

Decision the supreme court

The supreme court held that government employees don't have fundamental, statutory or equitable/moral right to strike.

The court said:

"law on this subject is well settled and it has been repeatedly held by this court that the employees have no fundamental right to strike. In *kameshwar prasad verses state of bihar* this court (c.b.) Held that the rule is so far as it prohibited *strikes was valid since there is no fundamental right to resort to strike"*

In all india bank employees, association verses national industrial tribunal, wherein the constitution bench of the supreme court held that even very liberal interpretation of sub-clause (c) of clause (1) of article 19 "cannot lead to the conclusion that trade unions have a guaranteed right to an effective collective bargaining or to strike either as part of the collective bargaining or otherwise."

Law on the subject is well settled and it has been repeatedly held by the supreme court that the employees have no fundamental right to resort to strike. "take strike in any field, it can be easily realized that the weapon does more harm than any justice. Sufferer is the society-—the public at large."

The court further said that there is prohibition to go on strike under the tamil nadu government servants conduct rules, 1973. Rule 22 provides that "no government servant shall engage himself in strike or in incitements thereto in similar activities." thus it was held that there is no statutory provision empowering the employees to go on strike.

It was further held there is no moral or equitable justification to go on strike. Government employees cannot claim that they can take the society at ransom by going on strike. Even if there is injustice to some extent, as presumed by some employees, in a democratic welfare state, they have to resort to machinery provided under different statutory provisions for redressal of their grievances. Strike as a weapon is mostly misused which results in chaos and total maladministration. Strike affects the society as a whole and particularly when two lakh employees go on strike en masse the entire administration comes to grinding halt in the case of strike by a teacher, entire educational system suffers; many students are prevented from appearing in their exams which ultimately affect their whole career. In case of strike by doctors, innocent patients suffer in case of strike by employees of transport services, entire movement of the society comes to a standstill; business is adversely affected and number of persons find it difficult to attend to their work, to move from one place to another or one city to another. On occasion public properties are destroyed or damaged and finally this creates bitterness among public against those who are on strike.

The court further held that in a society where there is large seals unemployment and number of qualified persons eagerly waiting for employment in government departments or in public sector undertakings, strikes cannot be justified on any equitable ground. In the prevailing situation apart from being conscious of rights, there has to be full awareness of duties, responsibilities and effective methods for discharging the same. For redressing their grievances, instead of going on strike, if employees were to do some more work honestly, diligently and efficiently, such gesture would not only be appreciated by the authority but by the people at large. The reason being, in a democracy even though they are government employees, they are part and parcel of the governing body and owe duty to the society.

Out of 14, 135 employees and teachers, the court ordered the reinstatement of 8063 on their tendering unconditional apology for resorting to strike and also an undertaking to abide by rule 22 of conduct rules in future. Remaining 6072 employees and teachers could not be reinstated. They were as follows:

(a) government servants arrested. 2,211

(b) secretariat staff for certain specified reasons. 2,215

(c) officers holding higher position. 534

(d) government servants (other than the secretariat staff) involved in offences under section 5 or section 5 read with section 4 of tesma 1,112

Total number of person who could claim a right to be reinstead 6,072

The court said:

"finally, it is made clear the employees who are re-instead in service would take care in future in maintaining discipline as there is no question of having any fundamental, legal or equitable right to go on strike. The employees have to adopt other alternative methods for redressal of their grievances. For those employees who are not reinstated in service on the ground that firs are lodged against them or after holding any departmental enquiry penalty is imposed^ it would be open to them to challenge the same before the administrative tribunal and the tribunal would pass appropriate order including interim order within a period of two weeks from the date of filing of such application before it. It is unfortunate that the concerned authorities are not making the administrative tribunals under the administrative tribunal, act, 1985, functional and effective by appointing men of caliber. It is for the high court to see that if the administrative tribunals are not functioning, justice should not be denied to the affected persons. In case, if the administrative tribunal is not functioning, it would be open to the employees to approach the high court."



B.r. Singh verses union of india

(the right to strike is not a fundamental right.)

facts

Workers, without any oblique motive, resorted to strike to press long outstanding demands for revision of wages, regularization and housing facilities shortly before scheduled visit of the president and foreign dignitaries to the trade fair authority of india (tfai). Management worried and terminated services of large number of workmen and denying reinstatement to one of the suspended workmen.

Decision of the supreme court

In the circumstances, keeping in view the interest of the employer-institution as well as economic hardship of the labour the supreme court, instead of determining the faults of the parties, proceeded to resolve the crisis. The court directed that the terminated workmen and suspended workmen be reinstated. Termination of services of union representatives without enquiry held, not warranted by the circumstances. Hence termination orders were quashed tfa1 does not fall within the expression 'public utility service'.

The court further held that right to strike though not a fundamental of grievances of workers. But the right to strike is not absolute and restrictions have been placed on it under sections 10(3), 10-a (4-a), 22 and 23 of the id act.

The court further held that the right to form associations or unions is a fundamental right under article 19(l)(c) of the constitution. Section 8 of the trade union act provides for registration of a trade union if all the requirements of the said enactment are fulfilled. The right to form associations and unions is obviously for voicing the demands of and grievances of labour. Trade unionists act as mouthpieces of labour. The strength of a trade union depends on its membership. Therefore, trade unions with sufficient membership strength are able to bargain more effectively with managements. This bargaining power would be considerably reduced if it is not permitted to demonstrate. Strike in a given situation is only a form of demonstrations. There are different modes of demonstration, e.g., go-slow, sit-in, work-to-rule, absenteeism etc., and strike is one such mode of demonstration by workers for their rights. The right to demonstrate and, therefore the right to strike is an important weapon in the armoury of the workers. This right has been recognised by almost all democratic countries. Though the right to strike is not a fundamental right, it is recognised as a mode of redress for resolving the grievances of workers. But the right to strike is not

Rangaswami verses registrar of trade unions

(the order of the registrar of trade unions refusing to register the union of employees of the madras raj bhawan as a trade union under the a ct was upheld.)

Facts

A number of persons were employed at madras raj bhawan at guindy in various capacities. There were two categories of employees, viz., (a) those whose services were more or less of a domestic nature and (b) those who formed part of work charge establishment consisting of maistries and gardners. The number of first category was 102 and that of the second 33. The persons were employed for doing domestic and other services and for the maintenance of the governor's household and to attend to the needs of the governor, the members of his family, staff and state guests. In 1959 the employees formed themselves into a union and seven of them applied to the registrar of trade unions, madras, for registration of their union as a trade union under the trade unions act, 1926. The registrar refused to register the union on the ground that, its member were not connected with a trade or industry or business of the employer. The employees appealed to the high court for setting aside the order of the registrar.

Issue

Whether the union of employees was entitled to get itself registered under the trade unions act, 1962?

Decision of the high court

The madras high court held that the order of the registrar of trade unions rejecting the application was correct. The court said: "even apart from the circumstances that a large section of employees at raj bhawan are government servants who could not form themselves in a trade union it cannot be stated that the workers are employed in a trade or business carried on by the employer. The services rendered by them are purely of a personal nature. The union of such workers would not come within the scope of the act as to entitle it to registration there under".

Section 4 of the trade unions act which deals with the mode of registration of a trade union provides, *inter alia,* that any seven or more members of a trade union may apply for registration of the trade union. Therefore, it is necessary to consider what would be trade union. Section 2 (h) of the trade unions act defines a trade union. It says: "trade union means any combination whether temporary or permanent formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more trade unions." the term "workmen" is defined in the latter part of s. 2 (g) of the trade unions act. It says: "workmen means all persons employed in *trade or industry* whether or not in the employment of the employer with whom the trade dispute arises."

After specifying the above provision the court observed that the trade unions act contemplates the existence of the employer and the employees engaged in the conduct of a trade or business. The court said although the definition of the term "workmen" in s. 2(g) *primafacie* indicates that it was intended only for interpreting the term "trade dispute" and even after assuming that the definition could be used for interpreting the meaning and scope of the term "trade union" in s. 2(h) it is obvious that the industry should be one as would amount to a trade or business, i.e., a commercial undertaking.

The definition of "industry" in the industrial disputes act is of wider significance. It includes an undertaking which is not of a commercial nature. The court had doubts on the question of the definition of industry as given in the industrial disputes act for interpreting the term "workmen" and "trade union" in the trade unions act. And even after assuming that the definition of the term industry in s. 2(j) of the industrial disputes act will

apply to the trade unions act the court came to the conclusion that authorities of the raj bhawan could not be held to be employers engaged with the workmen in an undertaking within the meaning of the term "industry" in the industrial disputes act as the services rendered by the employers were purely of a personal nature.

The tamil nad non-gazetted government officers' union verses. The registrar of trade union

(government servants engaged in sovereign activities of the government cannot be permitted trade dispute and thus form a trade union.)

facts the tamil nad non-gazetted government officers' union is a service association which has been recognised by the government and membership is open as per its constitution to all non-gazetted government officers employed under the government of madras (now tamil nadu) except the executive officers of the police and prisons department and the last grade government servants. The associations was formed for promoting the welfare of its members in multiple directions. The association represented by ten of its members applied on 23.12.1957 to the registrar of trade unions, madras, for registration as a trade union, madras, for registration as a trade union under s. 5 of the trade union act, 1926. The registrar rejected the application after a reference to the definition of "trade dispute" and "trade union" of the act. An appeal was duly preferred but the learned judge held against the appellant union. Therefore, the appeal was made to the division bench of the madras high court.

issue

Whether the decision of the registration of trade unions refusing to register the association as the trade unions was correct?

Decision of the high court

The high court held that the very terms of s. 8 are that the registrar has to register the union "on being satisfied that the trade union has complied with all the requirements of this act"; this shows that where the definitions under sections 2(g) and 2(h) are themselves inapplicable to the so-called union, the registrar has every power to decline the registration. It is for the specified purpose of granting redress against the erroneous exercise of such power that the appeal is provided for under section 11.

The court said: "we think it is clear that there are two broad grounds upon which the claim of the appellant union to registration as trade union could be properly resisted. The first ground. Is inherent to the very constitution of the union, and the admitted facts of its structure, in relation to a basic principle stressed by the supreme court; we do not see how this ground of objection can in any manner be negatived. The second ground is more open to controversy, but even here we are inclined to the view that at least as relative to the core of the civil services entrusted with the implementation of the essential and sovereign function of government, the ground of objection is valid. But the first ground alone is really sufficient to dispose of the present appeal."

The question before the court was whether such persons as sub-magistrate in the judiciary, tahsildars, officers of the treasuries and home department of government, who were all members of the appellant union according to its constitution, could, by any stretch of imagination, be regarded as "workmen employed" in "trade" or "industry". The court said: "however wide the term "trade" might be, in all the authorities cited before us, the supreme court has approved of the dictum that those activities of the government which should be properly described as regal or sovereign activities were outside the scope of "industry". The supreme court in *state of bombay verses hospital mazdoor sabha,* air 1960 sc 610, quoted with approval the dicta of issacs, j., in *federated state school teachers' association of australia verses state of victoria,* (1929) 41 clr 569, namely. "regal functions are inescapable, and inalienable. Such are the legislative power, the administration of laws, the exercise of judicial power."

The supreme court added—

"it could not have been, therefore, in the contemplation of the legislature to bring in the legal functions of the state within the definition of "industry" and thus confer jurisdiction on industrial courts to decide disputes in respect thereof."

The high court said: "the appellant union purports to include among its members sub-magistrates of the judiciary, tahsildars entrusted with the powers of enforcement of the tax-machinery (revenue recovery act etc.), officers in charge of treasuries and sub-tereasurey officers of civil court establishment, and of the home department of government. It is impossible to contend that these are not civil servants engaged in the tasks of the sovereign and legal aspect of the government, which are its inalienable functions; they cannot be included in the definition of "workmen" in an "industry" to whom either section 2(g) or 2(h) of the trade unions act can apply." the persons who are not "workman" in an "industry" cannot form a trade union.

The high court further held that "collective bargaining" is a right conceded to labour organisations within the contractual field of the employer and employee relationship. It would become a grotesque anomaly that if civil services, for instance, % were permitted to raise a "trade dispute" with regard to the dismissal of a civil servant it may be for activities against the state itself, and at the same breath to claim that the constitutional safeguards under article 311, which are wholly irrelevant to the field to contract and to the employer-labour nexus, should be maintained intact for the benefit of the civil services.

Thus the appeal was dismissed.



Registrar of trade unions verses government press employees union

(workmen employed in the government press, pondicherry are entitled to the benefits of the trade unions act, 1926.)

Facts

The employees of the pondicherry government press constituted themselves into the government press employees union and under section 5 of the trade union act, applied to the registrar of trade unions. Pondicherry for registration of the registrar of trade unions sent a communication to the secretary of the government press employees union on 1.7.91 regarding his inability to register the trade union under trade unions act, 1926. The ground given by the registrar for refusing to register the application was "the present functions of the government press pondicherry do not come within the meaning of trade or business." aggrieved by this order, the secretary of the government press employees trade union filed an appeal with the district judge, pondicherry in c.m.a. 45 of 1971, impugning the order of the registrar. It was argued before the learned district judge that the government press had been printing challans, gazettes and calendars, which were being sold to the public for a price and that the government press was also printing budget papers and papers for the various departments of the government thereby rendering service either to the public or at least to a section of the public. The description of the functions of the government press, pondicherry was not disputed by the counsel appearing for the registrar of trade unions. But, it was contended on the basis of certain decisions that the employees in the government press being government servants were disentitled to form a trade union and therefore, their association was ineligible for registration under the trade unions act. The learned district judge, upon a consideration of the provisions of the trade unions act, came to the conclusion, having regard to the nature of the activities of the government press, that it partook of the character of business and industry and that the workers employed in this industry were entitled to have their union registered under the trade unions act, 1926. Consequently, the learned district judge set aside the order of the registrar of trade unions and allowed the appeal with cost. It is against this judgement that the registrar of trade unions, pondicherry has preferred this petition. The trade union act, 1926, as can be gathered from the preamble thereto, was intended to provide for the registration of trade unions and in certain respects, to define the law relating to registered trade unions. Under the pondicherry laws regulation, 1963, this act was extended to pondicherry with effect from 1.10.1963t issue

Whether the workmen represented by the government press employees union, pondicherry, are persons employed in "trade" or "industry"? Decision of the high court

Mahajan, j. Said:

"the trade unions act was passed in 1926 and i think it rather artificial and unrealistic to give to the word used in an act of 1926 the extremely wide ranging meaning, which parliament has chosen to assign to the word 'industry[1] in the industrial disputes act, which was passed 21 years later in 1947. No doubt, in section 2(j) of the industrial disputes act, "industry' has been defined to mean 'any business, trade, undertaking, manufacture, or calling of employees and includes any calling, service, employment, handicraft, or industrial occupation and avocation of workmen.' but then, this sweeping definition which it was open to parliament to adopt for the specific purpose of the industrial disputes act. I think it; therefore, wrong to interpret the word 'industry', this is a definition which it was open to parliament to adopt for the specific purposes of the industrial disputes act. I think it, therefore, wrong to interpret the word 'industry' used in the act of 1926 in the light of the widely extended

meaning given to it by a statute of 1947. What, then does the word 'industry[1] under the act of 1926 connote? According to the concise oxford dictionary, 'industry' means — (1) diligence, (2) habitual employment in useful works; (3) branch of trade or 'manufacture'. 'Manufacture' according to the same dictionary means 'making of articles by physical labour or machinery especially on large scales; branch of such industry as woolen etc." it would be clear from this dictionary meaning of the words 'industry' and 'manufacture' that no profit motive is necessarily involved in an industry. There can be little doubt that the government press has been manufacturing with the aid of the printing press, as well as by physical labour, and on a large scale, such articles as challans, gazettes and calendars, budget papers, etc. It would therefore, undoubtedly be an 'industry' within the meaning of the trade union act and the respondents, being persons employed in such an industry must be rightly regarded as 'workmen' within the meaning of clause (h) of section 2 of the act."

His lordship further held that "the only reasonable construction to put upon the several provisions of the trade unions act 1926 is that all workmen employed in any trade or industry, regardless of the fact whether the trade or industry is being conducted by a government or by a private agency are entitled to combine themselves into a trade union and to get their trade union registered under section 6 of the act. This conclusion, which can be independently arrived at, is reinforced by the amending act of 1947." [it may be noted that indian trade unions amendment act, 1947 was passed by the parliament, which received the assent of the governor-general on 20.12.1947. However, this amendment has not come into force as the central government has not since 1947 made any notification in the official gazette in this respect. In section 3 of the amending act, the word 'employer' has been defined to mean—"in relation to the industry carried on by or under the authority of any department of the central government or a provincial government the authority prescribed in this behalf or where no authority is prescribed the head of the department." this amendment reflects the undoubted intention of parliament to bring an industry carried on by or under the authority of the central government or provincial government within the provisions of the trade unions act, 1926].

His lordship concluded: "i am clear in my mind that the workmen employed in an industrial undertaking like the government press, pondicherry, are 'workmen' entitled to the benefits of the trade union act, 1926."

Registration and cancellation of registration



Triumala tirpuati devasthanam verses commissioner of labour

(registration of union of employees working in power and water wings of devasthanam could not be cancelled at the devasthanam's instance.)

Facts

The employees working in power and water works wings of the appellant-devasthanam had applied for registration of their association under the trade union act, 1926 (hereinafter referred to as the 'act') which application was allowed. However, the appellant-devasthanam thereafter made an application under section 10 of the act for cancellation of the registration of the said union. The registrar rejected the application. In appeal, the high court went into the question as to whether the two wings, viz., the water and power wings of the appellant-devasthanam were an 'industry' and came to the conclusion that they were an 'industry[7], and therefore, held that the certificate granted to the union was not liable to be cancelled. Aggrieved by the decision of the high court, the appellant has come in appeal before us.

Issue

Whether the workmen concerned are entitled to get their association registered under the trade union act, 1926?

Decision of the supreme court

Registration of union of employees working in power and water wings of devasthanam instance could not be cancelled merely on the ground that its said wings were not an industry. The question as to whether the said wings were or were not an industry, left open.

Rejecting the appellant-devasthanarms contention that since its water and power wings were not an industry no union of its employees working in the said wings could be registered under the trade unions act, the court held that none of the ground mentioned in sub-section (a) or (b) of section 10 of the trade union act was available to the appellant-devasthanam. It cannot be disputed that the relationship between the appellant and the workmen in question is that of employer and employee. The registration of the association of the said workmen as a trade union under the act has nothing to do with industry or not. The high court went into the said issue, although the same had not arisen before it. Since the findings recorded by the high court on the said issue, were not germane to the question that fell for consideration in the instant case the question as to whether the said wings are in industry or not was left open. It was further held that the workmen concerned were entitled to get their association registered under the act.



In *re inland* steam navigation workers' union

(it *is the duty of the registrar to register the union if all requirements of the act are satisfied.)*

facts

A union named as r.s.n. And i.g.n. And ry. Workers union was formed and registered in 1934 but was soon declared an unlawful association under s. 16 criminal law (amendment) act by the government of bengal. A new union under the name of inland steam navigation workers union was formed and an application was filed to the registrar of trade union in 1935 for registration of inland steam navigation worker's union. The registrar refused to register the union on the ground that the application was an attempt to have the r.s.n. And i.g.n. And ry. Workers union which was declared an unlawful association registered under a new name. While passing the order the registrar relied upon a letter written by the general secretary of the inland steam navigation workers union to the government of bengal, wherein it was stated that he had been directed by the general body of the r.s.n. And i.g.n. And ry. Workers' union to approach the government and request that the notification under s. 16, criminal law (amendment) act, declaring the r.s.n. And i.g.n. And ry. Workers'. Union as unlawful association be withdrawn.

The registrar seemed to have acted on the basis of that letter without bringing it to the notice of the union or without giving an opportunity to the union or expressing its views on the contents of the letter. An appeal was made under s. 11 of the trade unions act for setting aside the order of the registrar. Decision of the high court

The calcutta high court held that attitude of the registrar was wrong. The functions of the registrar are prescribed in s. 8 of the trade unions act. 1926. According to this section the registrar on being satisfied that the trade union has complied with all the requirements of the trade unions act in regard to registration must register the trade union.

In the course of his judgement derbyshire, c.j., said:

"the new union may or may not be a continuation of the other union or its successor. Whether the new union is or is not the same as, or successor to the old union, depends upon evidence. Until further evidence is forthcoming in my view it is impossible to say whether the new union is or is not the same as the old union or the successor of the old union. In my view, the duties of the registrar were to examine the application and to look at the objects for which the union was formed. If those objects were objects set out in the act and if these objects did not go outside the objects prescribed in the act and if all the requirements of the act and regulations made there under had been complied with, it was his duty to register the union. The registrar was not at that stage entitled to go into the question whether the union was another trade union which was registered and which was seeking the registration under a different name. The registrar when he relied on the letter to the bengal government ought to have brought it to the notice of union before he acted on it and given it an opportunity to say anything that it had to say with regard to it."

Chairman, state bank of india verses all orissa state bank officers association

(section 8 and 2(e)—an unrecognized union is not a superfluous entity.)

facts

All orissa state bank officers association (a non-recognised association but registered association—respondent 1) represented through its general secretary, filed the writ petition raising grievances against unjust, unfair and hostel treatment at par with office-bearers of the recognised association, and prayed that the norms for guidance in matters relating to a non-recognized association may be laid down by the court, ft did not appear to have been disputed before the high court and it was also not disputed in the supreme court that a non-recognized association is a registered association under the trade union act. The association does not satisfy the criteria laid down by the verification of membership and recognition of trade unions rules, 1994 framed by the government of orissa. The non-recognized association pleaded that in 1982 the association submitted a list of its members and claimed recognition, but in spite of recommendation of the office-in-charge of the local head office, the central office at bombay did not take any decision and started adopting unfair labour practice to encourage defection from the petitioner's association to the recognized association. The non-recognized association also alleged that members of the recognized association are being shown illegal and undue favour in the matter of posting, transfer, entertainment or representations whereas systematic and calculated manner. Certain instances were stated in the writ application in support of the allegation of hostile discrimination and unfair treatment.

The chief general manager in the local head office at bhubaneswar respondent no. 2 herein, in his counter affidavit denied the allegations of discrimination, arbitrary treatment and unfair practice. However he referred to certain rights and privileges allowed to members of recognized association and asserted that only such rights and privileges were not being extended to the office-bearers of the non-recognized association. He refuted the claim of the non-recognized association for parity of treatment with members and office bearers of the recognized association.

Issue

Whether the respondent association has the right to espouse the case of the officers of the bank with the management of the bank or the rights are vested only in a recognised association, the all india state bank officers federation/ association?

Decision of the supreme court

The supreme court held that an unrecognized union is not a superfluous entity. It is entitled to meet and discuss with the management/employer about grievances of any individual member relating to his service conditions and to represent an individual member in domestic or departmental inquiry and proceedings before conciliation officer or labour court or industrial tribunal. The management/employer cannot out rightly refuse to have such discussions with an unrecognized trade union. However, whether in certain matters concerning individual workmen discussion and negotiation with the unrecognized union, of which they were members would be useful has to be decided by the management or its representatives at the spot. Hence, provision in state bank of india circular restraining its

functionaries from entering into any dialogue or accepting any representation from the office-bearers of an unrecognized association, rightly set aside by the high court.

The supreme court said:

"with growth of industrialization in the country and progress made in the field of trade union activities the necessity for having multiple unions in an industry has been felt very often. Taking note of this position power has been vested in the management to recognize one of the trade unions for the purpose of having discussion and negotiations in labour related matters. This arrangement is in recognition of the right of collective bargaining of workmen/employees in an industry. To avoid arbitrariness', bias and favoritism in the matter of recognition of a trade union rules have been framed laying down the procedure for ascertaining which of the trade unions commands support of majority of workmen/employees. Such procedure is for the benefit of the workmen/employees as well as the management/employer since collective barganing with a trade union having the support of majority of workmen will help in maintaining industrial peace and will help smooth functioning of the establishment. Taking note of the possibility of multiple trade unions coining into existence in the industry, provisions have been made in the rules conceding certain rights to non-recognized unions. Though such non-recognized union may not have the right to participate in the process of collective bargaining with the management/employer over issues concerning the workmen in general. They have the right to meet and discuss with the employer or any person appointed by him on issues relating>to grievances of any individual member regarding of his service conditions and to appear on behalf of the members in any domestic or departmental enquiry held by the employer or before the conciliation officer or labour court or industrial tribunal. *In essence, the distinction between the two categories of trade unions is that while the recognized union has the right to participate in the discussions/negotiations regarding general issues affecting all workmen/employees and settlement if any arrived at as a result of such discussion/negotiations is binding on all workmen/employees. Whereas a non-recognized union cannot claim such a right. But it has the right to meet and discuss with the management/employer about the grievances of any individual member relating to his service conditions and to represent and individual member in domestic inquiry or departmental inquiry and proceedings before the conciliation officer and adjudicator. The very fact that certain rights are vested in a non-recognized union shows that the trade union act and the rules framed there under acknowledge the existence of a non-recognized union. Such a union is not superfluous entity and it has relevance in specific matter relating to administration of the establishment. It follows, therefore, that the management/employer cannot out rightly refuse to have any discussion with a non-recognized union in matters relating to service conditions of individual members and other matters incidental thereto. It is relevant to note here that the right of the citizens of this country to form an association or union is recognized under tl constitution in article i9(l)(c).* It is also to be kept in mind that for the sake 01 industrial peace and proper administration of the industry it is necessary for the management to seek cooperation of the entire work force. The management by its conduct should not give an impression as if it favours a certain sections of its employees to the exclusion of others which, to say the least, will not be conducive to industrial peace and smooth management. Whether negotiation relating to a particular issue is necessary to be made with representatives of the recognized union alone or relating to certain matters concerning individual workmen it will be fruitful to have discussion/negotiations with a non-recognized union of which those individual workmen/employees are members it is for the management or its representative at the spot to decide. At the cost of repetition we may state that it has to be kept in mind that the arrangement is intended to help in resolving the issue raised on behalf of the workmen and will assist the management in avoiding industrial unrest. The management should act in manner which helps in uniting its workmen-employees and not give an impression of divisive force out to create differences and distrust amongst workmen and employees. Judged in this light the contents of paragraph 2 of the staff circular no. 91 of 1987 clearly give an impression that the management has decided at the threshold raised that its representation should have no discussion at all with office bearers of the non-recognized association. Such a circular is not contrary to the express provision in rule 24 also runs counter to the scheme of the trade union act and rules."

Right to go on strike and place of demonstration

R.s. Ruikar verses emperor

(trade union is not liable criminally for conspiracy to do certain acts in furtherance of trade dispute.)

Facts

The nagpur textile union of which the appellant was the president called for a strike of textile workers in nagpur on the ground that certain terms of the settlement had not been honored by the empress mills in nagpur. The strike was not a success in the beginning. The union decided on picketing and the president of the union accordingly made speeches asking the workers to do picketing. This too did not produce the desired results as the police had driven away the workmen picketers. At last the president of the union brought his wife to one of the mill gates and posted her there with instructions to beat with her slippers anyone who interfered with her. The president of the union was arrested, prosecuted and convicted for abetment of picketing under s. 7 of the criminal law amendment act, 1932. The main contention of the appellant was that on the facts found against him no offence has been committed as s. 7 of the criminal law amendment act can have no application to purely industrial disputes. It was contended that the valuable. Right given to trade unions to declare a strike and their immunity from liability for criminal conspiracy or to civil suits in connection with furtherance of a strike is taken away if s. 7 of the criminal law amendment act is held to be applicable to trade disputes.

Decision of the high court

The nagpur high court rejected the arguments of the appellant. It held that trade unions have the right to declare strikes and to do certain acts in furtherance of trade disputes. They are not liable civilly for such acts or criminally for conspiracy in the furtherance of such acts as trade unions act permits; but there is nothing in that act which apart from immunity from criminal conspiracy allows immunity from any criminal offences. Indeed any agreement to commit an offence would under s. 17 of the trade unions acts make them liable for criminal conspiracy. Section 7 of the criminal law amendment act as part of the criminal law of the land and an offence committed as defined in that section is an offence to which the concluding sentence of s. 1 of the trade unions act applies as much as it would do to an agreement to commit murder.

Immunity from civil suits in certain case

Rohtas industries limited and another verses rohtas industries staff union and others

(workers cannot be asked to make good the loss suffered by the employer because of the illegal strike.)

Facts

The employers had a running industrial dispute with their workers who were represented by two rival trade unions enjoying recognition. There was a strike in the industry due to inter-union rivalry. The strike came to end by virtue of a memorandum of agreement between the management and the trade unions. The agreement provided *inter alia* that workers' claim for wages and salaries for the period of strike and the company's claim for compensation for losses due to strike shall be submitted to arbitration. Consequently the dispute was referred for adjudication to a board of arbitrators. The arbitrators held that the workmen participating in the strike were not entitled to wages and salaries for the period of the strike as the strike was illegal. The arbitrators also awarded damages to the management payable by the workmen to the tune of rs. 6,90,000 in one case and rs. 80,000 in other for the loss of profits suffered by the management. On appeal the high court quashed that part of the award which directed payment of compensation by the* workers to the management. The management challenged the decision of the high court.

Issue

Whether the industrial workers who had gone on strike could be asked to make good the loss suffered by the employer because of the illegal strike?

Decision of the supreme court

The supreme court held that the workers could not be asked to make good the loss suffered by the employer because of the illegal strike in the instant base, the court said the although the strike was illegal under s. 24 of the industrial disputes act, the object of the strike was inter-union rivalry and not to inflict damage or destruction on the employers. In case of illegal strike the only remedy is prosecution under s. 26 of the industrial disputes act.

In the course of its judgment krishna iyer. J., said:

"it is absolutely plain that the tort of conspiracy necessarily involves advertence to and affirmation of the object of the combination being the infliction of damage or destruction on the plaintiff."



Standard chartered bank verses chartered bank employees union

(*workers cannot have demonstration, dharnas or sticking of posters and tying of banners within the premises of the employer.)*

facts

Defendant no. 1, standard chartered bank employees union is the union of the employees of the plaintiff bank whereas defendants 2 to 5 are its office-bearers. Out of these office-bearers defendant no. 4 was working in the loan centre unit of the plaintiff's branch at 17, parliament street, new delhi and by letter dated 1.11.1995 he has been transferred to darya ganj branch and the said order was served on the defendant no. 4 on 2.11.1995. It is the case of the plaintiff that on 3.11.1995 the defendants and its members started shouting pitched slogans against the management using filthy language for its officers and created unruly scenes, thumped the tables and caused hindrance to the officers in discharging their duties and also obstructing the customers. Plaintiff further alleged that the defendants have also extended threats of physical violence to the officers of the plaintiff bank and they have resorted to illegal strike. They had also made it known to the plaintiff that they would intensify and would instigate and resort to more violent activities and hold demonstrations, gheraos, dharnas, strike and obstruct ingress and egress of the plaintiff officers, willing employees as well as the customers. All these things were being committed in order to put pressure on the plaintiff and to coerce the plaintiff to withdraw the transfer order. Plaintiff, therefore, filed the present suit to get a decree of perpetual injunction to restrain defendants and its employees from instigating and abetting other employees and to resort to strike, holding of demonstrations, shouting slogans, resorting to dharnas, gheraos and putting up loudspeakers within the radius of 500 metres on all sides of the plaintiff's branch at 17, parliament street, new delhi.

Along with the suit plaintiff has filed interim application seeking *ad interim* injunction and the court passed *ex-parte* order of *ad-interim* injunction with a show-cause notice as to why the *ad-interim* injunction issued against them should not be made absolute.

In pursuance of the said show-cause notice the defendants have put in appearance. They filed their objections to the interim application. They also filed written statement to the main suit and they have filed another application under order xxxix rule 4 to vacate the order *of ad-interim* injunction.

It was contended by the defendants that the transfer of defendant no. 4 by the plaintiff was contrary to the provisions of sastri award, which was binding against the plaintiff. They farther contended that they have never given any threats of causing physical violence and they had only done peaceful demonstration and that too out of the bank building. They contended that the plaintiff has misled the court by making false allegations against them and has obtained *ex-parte* order *of ad-interim* injunction. They further contended that it is their fundamental right to go on strike and that there cannot be any order of injunction against them from proceeding on strike. They contended that

they never intended to obstruct the working of the plaintiff bank when they themselves are the employees of the same. They had never tried to instigate any worker or had threatened any officer of the plaintiff or had obstructed any customer coming to the bank. Therefore, in these circumstances, they seek the vacation of the *ex-parte* order *of ad-interim* injunction.

Defendants relied on the following observations of the sastry award:

"(1) every registered bank employees union from time-to-time, shall furnish the bank with the names of the president, vice-president and the secretaries of the union;

(2) except in very special cases, whenever the transfer of any of the above-mentioned office-bearer is contemplated, at least five clear working days' notice should be put up on the notice boards of the bank of such contemplated action;

(3) any representations, written or oral, made by the union shall be considered by the bank;

(4) if any order of transfer is ultimately made, a record shall be made by the bank of such representations and the bank's reasons for regarding them as inadequate; and

(5) the decision shall be communicated to the union as well as to employee concerned."

Issue

Whether the defendants have got the right to go on strike and whether there could be any order of injunction against the defendants?

Decision

The court allowed the appeal partly modifying the *ad-interim* injunction and said:

"section 22 of the industrial disputes act, 1947 lays down that no person employed in public utility service shall go on strike in breach of contract without giving the employer a notice within six weeks before striking and within 14 days of gh ing of such notice. The central government had issued a notification under section 2(nxvi) by which the banking institutes are mentioned as one of the specified industries of public utility.

Apart from this, even assuming that they are entitled to go on strike they cannot exercise the said right so as to cause nuisance to the employer. Their right to go on strike is not unlimited. As the indian citizens when they want to exercise the fundamental right to form a union and to have demonstrations for the redressal of their grievances, they have got to remember that they have also got a reciprocal duty so as not to cause nuisance or mental or physical danger to their employers and others. As the employer can move the government and the government can refer the disputes to the industrial court, it is equally open for defendant no. 4 to approach the labour court to challenge his transfer. He as well as defendant no. 1, cannot take the law in their hands and behave and act in such a manner so as to cause nuisance to others. No doubt it is their contention that the transfer of defendant no. 4 is illegal and, therefore, they are entitled to go on strike but for that purpose they must follow the procedure laid down by section 22 of the industrial disputes act and after following the said procedure they can exercise their right to go on strike by bearing in mind that they cannot cause nuisance to the plaintiff or others."

The court further said:

"but they cannot have the demonstrations, dharnas or sticking of posters and tying of banners within the premises of their employer. They can have peaceful demonstrations out of the premises of the employer. They can, after following the procedure under section 22 of the industrial disputes act, use black strips or other modes

of showing their displeasure and for being on strike. They can put up banners or posters which are not obscene or obnoxious but that too not within the building of their employer."

It has been observed by the supreme court in *b.r. Singh verses union of india,* 1989 supp 1 scr 257, that strike is a form of demonstration against the activities of the employer and go-slow, sit-in, work-to-rule, absentism are the modes of demonstrations and the workers have got the right to make demonstrations.

The court, in the instant case, did not allow the claim made by the plaintiff absolutely. The prayer of the plaintiff to restrain the defendants, its employees, members, office-bearers or cards on their clothes or wearing cap was rejected. Notes

In *b.r. Singh verses union of india,* the supreme court held as follows:

"the right to form associations or unions is a fundamental right under article 19(l) (c) of the constitution. Section 8 of the trade unions act provides for registration of a trade union if all the requirements or the said enactment are fulfilled. The right to form associations and unions and provide for their registration was recognised obviously for conferring certain rights on trade unions. The necessity to form unions is obviously for voicing the demands and grievances of labour. Trade unionists act is mouthpieces of labour. The strength of a trade union depends on its membership. Therefore, trade unions with sufficient membership strength are able to bargain more effectively with the managements. This bargaining power would be considered reduced if it is not permitted to demonstrate. Strike in a given situation is only a form of demonstration. There are different modes of demonstrations, e.g., go-slow, sit-in, work-to-rule, absentism, etc., and strike is one such mode of demonstration by workers for their rights. The right to demonstrate and, therefore, the right to strike is an important weapon in the armoury of the workers. This right has been recognised by almost all democratic countries. *Though not raised to the high pedestal of fundamental rights, it is recognised as a mode of redress for resolving the grievances of workers"*

In *tk. Rangarajan verses government of tamil nadu,* 2, the supreme court held that "the employees have no fundamental right to resort to strike". In this case the tamil nadu government terminated the services of all employees who have resorted to strike for their demands. This unprecedented action of the tamil nadu government was challenged. Their lordships of the apex court held: "now coming to the question of right to strike-whether fundamental, statutory or equitable/moral right—in our view, no such right exists with the government employees."



In ***common cause verses union of india & others,*** national consumer disputes redressal commission, new delhi, a complaint was filed by the well known consumer organisation common cause seeking redressal of the grievance of air passengers who were put to great amount of inconvenience and hardship on account of disruption of large number of flights of air india caused by reason of a sudden strike resorted to by members of the indian flight engineers association (respondent no. 3) in february, 1993. It was stated in the petition that nearly 200 flights normally operated by air india (respondent no. 2) had to be cancelled due to the strike by the flight engineers who are members of the indian flight engineers association and as a result thereof many persons who had booked their journeys by air india flights were put to great hardship and loss and the image of the airline which the national flag carrier of this country had severally suffered within the country as well as abroad. In addition, huge loss had been caused by reason of the strike to air india which is public sector enterprise and such loss is ultimately loss to be general public. The government of india, ministry of labour had by its order dated april 6, 1993 declared the strike to be illegal and prohibited its continuance in public interest. The flight engineers did not resume work in spite of this fact. The loss suffered by the passengers due to the strike was estimated by the appellant to be rs. 30 crores. The purpose of the instant petition was to establish the accountability of both air india and the members of the association under the consumer protection act, 1986 for deficiency of service and prayed for the nominal compensation of rs. 10 lakhs to be paid by air india and rs. 5 lakhs by the association.

It was held that the provisions of s. 18 of the trade unions act do not operate as a bar to the filing of a complaint against a trade union under the consumer protection act, 1986. It was found by the commission that the strike launched by the indian flight engineer's association was illegal and therefore, the commission held that it could not be regarded as legitimate trade union activity. The third respondent and its members were responsible for causing disruption of flights resulting in great inconvenience hardship and loss to the passengers who had booked their journeys by air-india flights during the period of disruption caused by the strike. The commission issued a direction to air india [OD the terms similar to what was issued by the commission to the indian banks association in the case of *consumer unity and trust society, calcutta verses chairman and managing director, bank of baroda,* that henceforth whenever a strike notice is served by any section of employees or their trade union on air india (equally applicable to airlines similarly situated) and the strike appears to be imminent, the airlines should insert a publication in the leading newspapers of the country informing the public about the possibility of there being a strike so that consumer may not be taken by surprise by the strike but may be enabled to make such alternative arrangements as are possible so as to mitigate the hardship that is otherwise bound to be caused to them.

In *western india cine employees verses filmalaya private limited,* , it was held that a trade union is entitled to carry out its legitimate trade union activities peacefully and, therefore, *per se* slogan shouting or demonstrations cannot be termed unlawful and a blanket injunction cannot be granted. It was further held that the acts of a trade union such a using abusive language towards the employers, their staff and visitors are subject to other laws of the land. In *ahmadabad textile research association verses a.t.lr.a. Employees union and another,*

(gujarat), it was held that *dharnas* and demonstrations, though they may cause inconvenience to the management, are permissible even inside the industrial establishment within the working hours so long as they do not turn out to be unlawful, tortious or violent. In *standard chartered bank verses hindustan engineering and general mazdoor union and others,* , the defendant union was restrained from holding demonstrations etc. Within a radius of 100 metres from the bank building. It was further observed that the freedom of speech and right to form associations granted by the constitution did not confer a right to hold meetings and shout slogans at premises, legally occupied by another.

In banglore water supply and sewerage board *verses* a. Rajappa, (1978) a seven judge bench of the supreme court exhaustively considered the scope of industry. The supreme court in this case by a majority of five with two dissenting overruled *safdarjung solicitors'* case , *gymkhana* , *delhi university* , *dhanrajgiri hospital* and *cricket club of india* . It rehabilitated *hospital mazdoor shabha* and affirmed *indian standards institution* . The court followed *banerji* and *corporation of city of nagpur* cases.

There are four judgements: one by krishna lyer, j for himself, bhagwati and desai, jj; the second by the former chief justice beg; the third by chief justice chandrachud and the fourth by jaswant singh. J., for himself and tulzapurkar, j.

The following is the summary of the majority view in the words of krishna lyer, j., who gave the leading judgement:

"i. Industry as defined in s. 2(j) and explained in *banerji* has a wide import.

(a) where (1) systematic activity, (2) organised by co-operation between employer and employee (the direct and substantial element is chimerical), (3) for production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geard to celestial bliss, i.e., making on a large scale prasad or food), *primafacie,* there is "industry" in that enterprise.

(b) absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.

(c) the true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

(d) if the organisation is the trade or business it does not cease to be one because of philanthrophy animating the undertaking.

Ii. Although section 2(j) uses words of the widest amplitude in its two limbs, their meaning cannot be magnified to overreach itself.

(a) 'undertaking' must suffer a contextual and associational shrinkage as explained in *benerji* and in this judgement; so also service, calling and the like. This yields the inference that all organised activity possessing the triple elements in i *(supra)* although not trade or business, may still be 'industry' provided the nature of the activity viz., the employer-employee basis, bears resemblance to

what we find in trade or business. This takes into the fold 'industry' undertakings, callings and services, adventures "analogous to the carrying on the trade or business." all features other than the methodology of carrying on the activity viz. In organising the cooperation between employer and employee, may be dissimilar, if on the employment terms there is analogy.

Iii. Applications of these guidelines should not stop short of their logical reach by invocation of creeds, cults or inner sense of incongruity or outer sense of motivation for or resultant of the economic operations. The ideology of the act being industrial peace, regulation and resolution of industrial disputes between employer and workmen, the range of this statutory ideology must inform the reach of the statutory definition. Nothing less, nothing more.

(a) the consequences are: (1) professions, (2) clubs, (3) educational institutions, (4) co-operatives, (5) research institutes, (6) charitable projects and (7) other kindred adventures, if they fulfil the triple tests listed in i *(supra)* cannot be exempted from the scope of section 2(j),

(b) a restricted category of professions, clubs, co-operatives and even *gurukulas* and little research clubs may qualify for the exemption if the simple ventures, substantively, and going by the dominant nature criterion, substantially, no employees are entertained but in minimal matters, marginal employees are hired without destroying the non-employee character of the unit.

(c) if, in a pious or altruistic mission many employ themselves, free or for small honoraria or like return, mainly drawn by sharing in the purpose or cause, such as lawyers, volunteering to run a free legal service clinic or doctors serving in their spare hours in a free medical centre or ashramites working at the bidding of the holiness, divinity or like central personality, and the services are supplied free or at nominal cost and those who serve are not engaged for remuneration or on the basis of master and servant relationship, then the institution is not an industry even if stray servants, manual or technical, are hired. Such elementary or like undertakings alone are exempt not other generosity, compassion, developmental passion or project.

4. *The dominant nature test:*

(a) where a complex of activities, some of which qualify for exemption, others not, involves employees on the total undertaking, some of whom are not "workmen" as in the *university of delhi* or some departments are not productive of goods and services is isolated, even then the predominant nature of the services and the integrated nature of the departments as explained in the *corporation of nagpur* will be the true test. The whole undertaking will be 'industry' although those who are not 'workmen' by definition may not benefit by the status.

(b) notwithstanding the previous clauses, sovereign functions, strictly understood, (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by government or statutory bodies.

(c) even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, they can be considered to come within s. 2(j).

(d) constitutional and competently enacted legislative provisions may remove from the scope of the act categories which otherwise may be covered thereby.

5. We overrule *safdarjung* , *solicitors' case* , *gymkhana delhi university* , *dhanrajgiri hospital* and other rulings whose ratio runs counter to the principles enunciated above, and *hospital mazdoor sabha* is hereby rehabilitated."

Thus in *banglore water supply and sewer age boardy rajappa,* the supreme court laid down the following test which is practically reiteration of the test laid down in *hospital mazdoor sabha* case:

Triple test. Where there is a (1) systematic activity; (2) organised by cooperation, between employer and employee and (3) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes, *prima facie* there is an industry in the enterprise. This is known as triple test,

The following points were also emphasised in this case:

1. Industry does not include spiritual or religious services geared to celestial bliss, e.g., making on large scale *prasad* or food,

2. Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.

3. The true test is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

4. If the organisation is a trade or business, it does not cease to be one because of philanthropy animating the undertaking.

5. Although s. 2(j) uses words of the widest amplitude in its two limbs, their meaning cannot be magnified to over-reach each other. The word "undertaking" must suffer a contextual and assocsational shrinkage, so also "service", "calling" and the like. The inference is that all organised activity possessing the triple elements although not trade or business may still be industry provided the employer-employee basis, bears resemblance to what we find in trade or business.

The consequences are:

(1) professions,

(2) clubs,

(3) educational institutions,

(4) co-operatives,

(5) research institutions,

(6) charitable projects, and

(7) other kindered adventures,

If they fulfil the triple test, cannot be exempted from scope of definition of industry under section 2(j) of the act.

Dominant nature test. Where a complex of activities some of which qualify for exemption, others not, involve employees on the total undertaking some of whom are not "workmen" or some departments are not productive of goods and services if isolated, even then the predominant nature of the services and the integrated nature of the departments will be the true test, the whole undertaking will be "industry" although those who are not workmen by definition may not benefit by the status.

Exceptions. A restricted category of professions, clubs, co-operatives and even *gurukulas* and little research labs, may qualify for exemption if in simple ventures, substantially and, going by the dominant nature criterion substantively, no employees are entertained but in minimal matters, marginal employees are hired without destroying the non-employee character of the unit.

If in pious or altruistic mission, many employ themselves, free or for small honorarium or like return, mainly drawn by sharing in the purpose or cause, such as lawyers volunteering to run a free legal services clinic or doctors serving in their spare hours in a free medical centre or ashramites working at the bidding of the holiness, divinity or like central

personality, and the services are supplied free or at nominal cost and those who serve are not engaged for remuneration or on the basis of master and servant relationship, then, the institution is not an industry even if stray servants, manual or technical are hired. Such elementary or like undertakings alone are exempt, not other generosity, compassion, developmental passion or project.

Sovereign functions, strictly understood, (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by governmental or statutory bodies. Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within section 2(j).

In *coir board, ernakulam* verses *indira devai ps (i)* , the two-judge bench of the supreme court said:

"the definition of industry under the industrial disputes act was held to cover all professions, clubs, educational institutions, cooperatives, research institutions, charitable projects and anything else which could be looked upon as organised activity where there was a relationship of employer and employee and goods were produced or service was rendered. Even in the case of local bodies and administrative organisations the court evolved a 'predominant activity' test so that whenever the predominant activity could be covered by the wide scope of the definition as propounded by the court, the local body or the organisation would be considered as an industry. Even in those cases where the predominant activity could not be so classified, the court included in the definition all those activities of the organisation which could be so included as industry, departing from its own earlier test that one had to go by the predominant nature of the activity. In fact, chandrachud, j. (as he then was) observed that even a defence establishment or a mint or a security press could, in a given case, be considered as an industry. Very restricted exemptions were given from the all embracing scope of the definition so propounded. For example, pious or religious missions were considered exempt even if a few servants were hired to help the devotees. Where normally no employees were hired but the employment was marginal the organisation would not qualify as an industry. Sovereign functions of the state as traditionally understood would also not be classified as industry though government departments which could be served and labelled as industry would not escape the industrial disputes act.

The majority laid down the 'dominant nature test for deciding of whether the establishment is an industry or not."

Suggestion. Constitutional and competently enacted legislative provisions may well remove from the scope of industrial disputes act categories which otherwise may be covered thereby. The parliament must step in and legislate in a manner which will leave no doubt as to its intention.

However, doubting the correctness of the tests laid down in *banglore water supply & sewerage board verses rajappa* and pointing out the damaging effects of the extended meaning given to " industry" is this case, a two-judge bench of the supreme court in *coir board* verses *indira devai rs.*, observed that a larger bench should be constituted to reconsider *banglore water supply & sewerage board M. Rajappa* decision. It was further observed that since the notification bring into effect the 1982 amendment to s. 2(j) of the industrustial disputes act has not been issued by the executive so far the matter should be judicially re-examined. Hence matter referred to larger bench to reconsider the decision in that case. In *coir board*v. *Indira devai rs.,* the larger bench of the supreme court held that the *banglore water supply and sewerage board* v. *Rajappa* decision "does not require reconsideration".

Difficulty in defining "industry". The supreme court observed, "industry, therefore, cannot be strictly defined but only be described. Such a rule, however, leaves too wide a door open for speculation and subjective notions as to what is describable as an industry. It is best to look for a rough rule of guidance by considering what the concept of industry must exclude."

New **definition of "industry" but not yet given effect till date**

The definition of "industry" was amended in 1982 and is reproduced below. It shall stand substituted w.e.f. The date to be notified.

(j) "industry" means any systematic activity carried on by co-operation between an employer and his workmen (whether such workmen are employed by such employer directly or by or through any agency including a contractor) for the production, supply or distribution 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—

(1) *any capital has been invested for the purpose of carrying on such activity;*

Or

(2) *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 5-a of the dock workers (regulation of employment) act, 1948;*

(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 operations' 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 purpose of this sub-clause "agricultural operation " does not include any activity carried on in a plant at ion as defined in clause (f) of sect ion 2 the plantation labour act, 1951, or

(2) *hospital or dispensaries, or*

(3) *educational, scientific, research or training institutions; or*

(4) *institutions owned or managed by organisation wholly or substantially engaged in any charitable, social or philanthropic service; or*

(5) *khadi or village industries; or*

(6) *any activity of the government relatble 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 of individuals, if the number of persons employed by the individual or body of individuals in relation to such profession is less than ten; or*

(a) *any activity, being an activity carried on by a co-operative society or a club or any other like body of individuals, if the number of persons employed by the co-operative society, club or other like body of individual in relating to such activity is less than ten.*

It may be noted that the amendment has not yet been brought into force. The earlier definition of 'industry' still continues to be valid and effective.

This definition has incorporated the triple test laid down in *banglore water supply* case, but has excluded many activities like hospitals, educational institutions, etc.

In *des raj* v. *State of punjab,* air 1988 sc 1182, the irrigation department of the state of punjab was held to bean "industry" within the meaning of s. 2(j) of the industrial disputes act as it stands at present. The supreme court applied the tests laid in various decisions of the supreme court and particularly the dominant nature test evolved by krishna lyer, j. In **bangalore water supply and sewerage board** case. The supreme court further stated in the above case that though by s. 2(c) of the amending act 46 of 1982, the definition of industry had been amended but the amendment has not yet been brought into force even after a lapse of six years. "it is appropriate that the same should be brought in force as such or with such further alterations as may be considered necessary, and the legislative view of the matter is made known and the confusion in the field is cleared up. In the event of the definition of industry being changed either by enforcement of the new definition of industry or by any other legislative change, it would always be open to the aggrieved irrigation department to raise the issue again and the present decision would not stand in the way of such an attempt in view of the altered situation."

In *karmani properties ltd.* Verses *state of west bengal,* the appellant company owned several mansion houses. There were about 300 flats in those mansions which had been let out to tenants. The appellant provided various facilities to its tenants in these flats, e.g., free supply of electricity, washing and cleaning of floors and lavatories, lift service, electric repairs and replacing, etc. And for that purpose the company employed 50 liftman, durwans, pumpmen, electric and other mistries, bill collectors and bearers etc. In connection with those properties. A dispute arose between the employees of the company and the company with regard to wages, scales of pay. Held that the activities carried on by the company fell within the ambit of the expression "industry" defined in s. 2(j) of the industrial disputes act as constructed by the supreme court in **bangalore water supply and sewerage board** case.

In *gurmail singh* verses *state of punjab,* it was held that running of tubewells by government or government owned corporation constitutes "industry".

In *all india radio* verses *santosh kumar,* it was held that "all india radio" and "doordarshan" are covered by the definition of "industry" within the meaning of s. 2(j) of the act. The functions which are carried on by all india radio and doordarshan cannot be said to be confined to sovereign functions as they carry on commercial activity for profit by getting commercial advertisements telecast or broadcast through their various kendras and stations by charging fees.

In *general manager, telecom* verses *a srinivasa rao,* telecome department of union of india was held to be an 'industry'. Similar was the decision in *asha rani* v. *Divisional engineer, telecome department,* . In *sub-divisional inspector of post, vaikan,* verses. *Theyyam jeseph,* it was held that the functions of the postal department are part of the sovereign functions of the state, it is, therefore, not an 'industry'. This case was decided without reference to the *bangalore water supply* case. In g.m, *telecom* verses *srinivasa rao* (supra), it was held that the decision in *theyyam joseph* case cannot be treated as laying down the correct law. In *physical research laboratory l. K.g. Sharma,* the physical research laboratory was held not an 'industry' because it is purely a research organisation discharging governmental functions and a domestic enterprise than a commercial enterprise, though it is taking employees' co-operation in achieving its purpose.

In *agricultural produce market committee* verses *ashok harikuni,* it was held, on facts, that none of the functions of the market committee established under karnatka agricultural produce marketing (regulation) act, 1966 "are sovereign or inalienable functions of the state". Therefore, such a market committee was held to be an 'industry'.

In *bharat bhawan trust* verses *bharat bhawan artists'* association, the issue before the supreme court was whether a trust for promotion of art and culture could be called an 'industry'. *Without deciding the said issue finally,* it was held, since bharat bhawan trust is engaged only in promotion of art and preservation of artistic talent and its activities being not of those in which there can be a large scale production to involve co-operation of efforts of the employer and employee, it is doubtful to hold it as an 'industry' under the definition given under s. 20) of the id act.

In *state of gujarat* verses *pratam singh narsingh par mar,* it was held that if a dispute arises as to whether a particular establishment or part of it wherein an appointment has been made is an industry or not, it would be for the person concerned who claims the same to be an 'industry', to give positive facts for coming to the conclusion that it constitutes an 'industry'. Ordinarily, a department of the government cannot be held to be an industry and rather it is a part of the sovereign function. In this case on the basis of the assertion made by the chief conservator of forests the

court held that the scheme that had been undertaken by the department of the state of gujarat wherein the employee had been recruited cannot be regarded as a part of the sovereign functions of the state. The court distinguished this case and *chief conservator of forests* verses *jaganath maruti kondhare,* . In the latter case the forest department of the state of maharashtra was held to be an 'industry'.

In *som vihar apartment owners' housing maintenance society ltd.* Verses *workmen,* association or society of apartment owners employing persons for rendering personal services to its members, held, not "industry" for the purposes of s. 2(j), industrial disputes act. Such employees would not be "workmen" under the act.

In *parmanandv. Nagar palika, dehradun,* engineering department of municipality (respondent nagar palika) was held an 'industry' inclusion of municipality in the constitution by itself would not change this position.

In *state of u.r* verses *jai bir singh,* five judge bench of the supreme court observed that interpretation given by majority judges (krishna lyer, j. Speaking for himself and bhagwati and desai, jj) in *banglore water supply & sewerage board* verses *a. Rajappa,* (1978) is over expansive and one sided i.e. Only worker oriented. Court held that it requires reconsideration by a larger bench for the following reasons:

(1) the decision in *banaglore water supply* case was not a unaminous decision;

(2) of the five judges who constituted majority, three had given a common opinion but the two others had given separate opinions projecting a view partly different from the views expressed in the opinion of the other three judges;

(3) majority opinion expressed the view that their interpretation was only tentative and temporary till the legislature stepped in and removed vagueness and confusion;

(4) judges in the said decision rendered different opinions at different points of time in some instances without going through opinion of other three judges;

(5) worker-oriented approach in construing the definition of industry, unmindful of the interest of the employer and the public who are the ultimate beneficiaries, is a one-sided approach and not in accordance with the provisions of the act;

(6) "sovereign functions", should not be confined to its traditional concept but should comprehend public welfare activities which government undertakes in discharge of its constitutional obligations and as such should fall outside the purview of "industry". Hence, hospitals and educational and research institutions, etc. Should be kept outside the purview of "industry";

(7) even though the act was amended in 1982 yet it has remained unforced and confusion still prevails;

(8) the judicial intrepretation seems to be one of the inhibiting factors in enforcement of the amended definition. The helplessness of the legislature and the executive in bringing into force the amended definition makes reference imperative;

(9) in *banglore water supply* case not all the judges in interpreting the definition clause invoked the doctrine of *noscitur a sociis.* Unanimous decision of a bench of six judges in *safdarjung hospital* expressing the view that although "profit motive" is irrelevant, in order to encompass the activity within "industry" the activity must be "analogous to trade or business in a commercial sense";

(10) experience of past years showing that the majority view in *banglore water supply,* instead of ushering in industrial peace, has given rise to large number of awards granting reinstatement in service and huge amounts of back wages to workers compelling the employers having moderate assets to close down their industries causing harm not only to employers and workers but to the public in general, they being the ultimate beneficieries;

(11) interpretation should be a balanced one having regard to the interest of the workers, the employers as also the public. Object of the act has to be kept in view;

(12) liberal profession based on talent, skill and intellectual attainments such as those of lawyers, doctors, chartered accounts, architects, etc. Should not fall within "industry".

The supreme court concluded that it is, therefore, for the large bench of the supreme court to interpret the definition clause in the present context with the experience of all these years, keeping in view the unenforced amended definition of "industry".

In *umesh korga bhandari* verses *mahanagar telephone nigam ltd.,* it was held (on the question whether mtnl included in the definition of industry as it stands) that in light of question as to scope of meaning of "industry" having been referred to larger bench in *jai bir singh* case , present appeals to remain pending till decision of the larger bench.

In *state of rajasthan* verses. *Ganeshi lal,* (2008) it was held that the accepted concept of "industry" cannot be applied to law department of the government.

General manager, telecom verses a. Srinivasa rao

(telecom department of union of india was held to be an industry.)

Facts

The matter came up before a three-judge bench because of a reference made by a two-judge bench which doubted the correctness of an earlier two-judge bench decision of the supreme court in *sub-divisional inspector of post* verses . *Theyyam joseph,* (1996) 8 scc 489, in which case it was held that the functions of the postal department are part of the sovereign functions of the state, it is, therefore, not an "industry"

Issue

Whether the telecom department of the union of india is an industry within the meaning of the definition of "industry" in section 2(j) of the industrial disputes act, 1947?

Decision of the supreme court

Telecom department of union of india was held to be an "industry" within the meaning of s. 2(7) of the industrial disputes act, 1947.

The court quoted the dominant nature test as laid down in *bangalore water supply* case and held as follows:

"a two-judge bench of this court in *theyyam joseph* case [(1996) 8 scc 489] held that the functions of the postal department are part of the sovereign functions of the state and it is, therefore, not an "industry" within the definition of section 2(j) of the industrial disputes act, 1947. Incidentally, this decision was rendered without any reference to the seven-judge bench in *bangalore water supply.* In a later two-judge bench decision in *bombay telephone canteen employees' association,* air 1997 so 2817 this decision was followed for taking the view that the telephone nigam is not an "industry". Reliance was placed in *theyyam joseph* case for that view. However, in *bombay telephone canteen employees association* case. After referring to the decision in *bangalore water supply* case, it was observed that if the doctrine enunciated in bangalore water supply case is strictly applied, the consequence is "catastrophic". With respect, we are unable to subscribe to this view for the obvious reason that it is in direct conflict with the seven-judge bench decision in *bangalore water supply* case by which we are bound. It is needless

to add that it is not permissible for us, or for the matter any bench of lesser strength, to take a view contrary to that in bangalore water supply or to bypass that decision so long as it holds the field. Moreover, the decision was rendered long back— nearly two decades earlier and we find no reason to think otherwise. Judicial discipline requires us to follow the decision in *bangalore water supply case.* We must, therefore, add that the decision in *theyyam joseph and bombay telephone canteen employees' association* cannot be treated as laying down the correct law. This being the only point for decision in this appeal it must fail."

According, the appeal was dismissed.

State of u.p verses. Jai bir singh

(there are compelling reasons, more than one, before the supreme court for making a reference on the interpretation of the definition of "industry " in section 2(j) of the act, to a large bench and for reconsideration by it, if necessary, of the decision rendered in the case of bangalore water supply & sewerage board. Date of decision 5.5.2005)

Facts

The present appeal was listed before the five judges bench (n. Santosh hedge, k.g. Balakrishnan, *d.m. Dharmadhikari,* arun kumar and b.n. Srikrishna, jj.) Of the supreme court on a reference made by a bench of three honorable judges of the court finding an apparent conflict between the decision of two benches of the court in the cases of *chief' conservation of forests verses jagannath,* of three judges and *state of gujarat verses pratamsingh narsingh par mar,* of two judges. On the question of whether "social forestry department" of state, which is a welfare scheme undertaken for improvement of the environment, would be covered by the definition of "industry" under section 2(j) of the industrial disputes act, 1947, the aforesaid benches (supra) of the court culled out differently the ratio of the seven-judge bench decision of the court in the case *of bangalore water supply & sewerage board verses rajappa,* the bench of three judges in the case *of chief conservator of forests verses jagannath maruti kondhare* based on the decision *of bangalore water supply* case came to the conclusion that "social forestry department is covered by the definition of "industry" whereas the two-judge bench decision in *state of gujarat verses pratamsingh narsingh parmar* took a different view.

Decision of the supreme court

There are compelling reasons before the supreme court for making a reference on the interpretation of the definition of "industry" in section 2(j) of the act, to a larger bench for reconsideration by it, if necessary, of the

decision rendered in the case *of bangalore water supply & sewerage board.* The large bench will have to necessarily go into all legal questions in all dimensions and depth.

The decision in *bangalore water supply* is not a unanimous decision. Of the five judges who constituted the majority, three have given a common opinion but two others give separate opinions projecting a view partly different from the views expressed in the opinion of the other three judges. Beg, c.j. Having retired had no opportunity to see the opinions delivered by the other judges subsequent to his retirement. Krishna lyer, j. And the two judges who spoke through him did not have the benefit of the dissenting opinion of the other two judges and the separate partly dissenting opinion of chandrachud, j. As those opinions were prepared and delivered subsequent to the delivery of the judgement in *bangalore water supply* case. Thus the judges therein delivered different opinions at different points of time and in some cases without going through or having an opportunity of going through the opinions of other judges. They have themselves recorded that the definition clause in the act is so wide and vague that it is not susceptible to a very definite and precise meaning. Hence it was suggested that to avoid reference of the vexed question of interpretation to larger benches of the supreme court it would be better that the legislature intervenes and clarifies the legal position by simply amending the definition of "industry". The legislature responded by amending the definition of "industry" by act 46 of 1982. But more than 23 years (1982 to 2005) the amended provision not having been brought to force, the unamended definition with the same vagueness and lack of precision continues to confuse the courts and the parties. The inaction of the legislative and executive? It necessary for the judiciary to reconsider the subject over and again in the experience of the working of the provisions on the basis the interpretation in the judgement *of bangalore water supply* case rendered *as far back as in the year 1978. In such a situation, it is difficult to ascertain whether the opinion of krishna iyer, j given on his own behalf and on behalf of bhagwati and desai j.I can be held to be an authoritative precedent which would require no reconsideration. Even the judges themselves expressed the view that the exercise of interpretation done by each of them was tentative and was only a temporary exercise till the legislature stepped in. The question arises whether the amended definition, which is now undoubtedly a part of the statute, although not enforced as a relevant piece of subsequent legislation which can be taken aid of to amplify or restrict the ambit of the definition of industry in section*

The definition clause read with other provisions of the act under consideration deserves interpretation keeping in view interests of the employer, who has put his capital and expertise into the industry and the workers who by their labour equally contribute to the growth of the industry. It is a piece of social legislation. In interpreting, therefore, the industrial law, which aims at promoting social justice, interests both of employers, employees and in a democratic society, people, who are the ultimate beneficiaries of the industrial activities, have to be kept in view. A worker-oriented approach in *bang/ore water supply* case in construing the definition of industry, unmindful of the .interest of the employer or the owner of the industry and the public, would be a one sided approach and not in accordance with the provisions of the act.

A necessity to re-examine the decision rendered in *bangalore water supply* case was felt in *coir board* case wherein it was observed as follows:

"looking to uncertainty prevailing in this area and in the light of the experience of the last two decades in applying the test laid down in the case of *bangalore water supply & sewerage board* it is necessary that the decision in *bangalore water supply & sewerage board* case is re-examined. The experience of t he last two decades does not appear to be entirely happy. Instead of leading to industrial peace and welfare of the community (which was the avowed purpose of artificially extending the definition of inudsliy), the application of the industrial disputes act to organizations which were, quite possibly, not intended to be so covered by the machinery set up under the industrial disputes act, might have done more damage than good, not merely to the organizations but also to employees by the curtailment of employment opportunities".

Therefore an order of reference to the chief justice for construing a larger bench of more than seven judges, if necessary was passed. However, where? The matter was listed before a three-judge bench was refused both on the ground that the industrial disputes act had undergone an amendment and that the matter did not deserve to be referred to a larger bench as the decision of seven judges in *bangalore water supply* case was binding on benches of less than seven judges. But no such inhibition limits the power of the present bench of five judges which has been constituted on a reference made due to apparent conflict between the judgements of two different benches of the supreme court.

Exploitation of workers and employers has to equally checked. But the law and particularly industrial law needs to be so interpreted-as to ensure that neither the employers nor the employees are in a position to dominate the other. Both should be able to co-operate for their mutual benefit in the growth of industry and thereby serve public good. An over expansive interpretation of the definition "industry" might be a deterrent to private enterprise in india where public employment opportunities are scare. The public, should, therefore, be encouraged towards self-employment. To embrace within the definition of "industry" even liberal profession like lawyers, architects, doctors, chartered accountants and the like, which are occupations based on talent, skill and intellectual attainments, is experienced as a hurdle by professionals in their self-pursuits. In carrying on their professions, if necessary, some employment is generated, that should not expose them to the rigors of the act. No doubt even liberal professions are required to be regulated and reasonable restrictions in favour of those employed for them can, by law by imposed, but that should be subject of a separate suitable legislation.

The learned judges in *bangalore water supply & sewerage board* case, seems to have confined only such sovereign frictions' outside the purview of "industry" which can be termed strictly as constitutional functions of three wings of the state i.e. Executive, legislature and judiciary. The concept of sovereignty which is confined to "law and order", "defence", "law-making" and "justice dispensation". In a democracy governed by the constitution the sovereignty vests in die people and the state is obliged to discharge its constitutional obligations contamed in the directive principles of state policy in part iv of the constitution of india. From that point of view, whenever the government undertakes public welfare activities in discharge of its constitutional as provided in part iv of the constitution, such activities should be treated as activities in discharge of sovereign functions falling outside the purview of "industry". Whether employees employed in such welfare activities of the government require protection, apart from the constitutional rights conferred on them, may be a subject of separate legislation but for that reason, such governmental activities cannot be brought within the fold of industrial law by giving an undue expansive and wide meaning to the words used in the definition of industry,

It is high time for the supreme court to re-examine the judicial interpretation given by it to the definition of "industry". The legislature should be allowed greater freedom to come farward with a more comprehensive legislation to meet the demands of employers and employees in the public and private sectors. The-inhibition and the difficulties which are being experienced by the legislature and the executive in bringing into force the amended industrial law, more due to judicial interpretation of the definition of "industry" in *bangalore water supply & sewerage board* case (1978) 2 scc 213 need to be removed. The experience of the working of the provisions of the act would serve as a guide for a better and more comprehensive law on the subject to be brought into force without inhibition.

The word "industry" seems to have been redefined under the amendment act keeping in view the judicial interpretation of the word "industry" in the case of *bangalore water supply.* Had there been no such expansive definition of "industry" given in *bangalore water supply* case it would have been open to parliament to bring in either a more expansive or a more restrictive definition of industry by confining it or not confining it to industrial activities other than sovereign functions and public welfare activities of the state and its departments. Similarly, employment generated in carrying on of liberal profession could be clearly included or excluded depending on social conditions and demands of social justice. Comprehensive change in law and/or enactment of new law had not been possible because of the interpretation given to the definition of "industry" in *bangalore*

water supply case. The judicial interpretation seems to have been one of the inhibiting factors in the enforcement of the amended definition of the act for the last 23 years.

The six-judge bench in *safdarjung hospital* case, rightly expressed the view that keeping in view the other provisions of the act and words used in the definition clause, although "profit motive" is irrelevant, in order to encompass the activities within the word "industry", the activity must be *"analogous to trade or business in a commercial sense"* and that the mere enumeration of "public utility services" in section 2(n) read with first schedule of id act, 1947 should not be held decisive, unless the public utility service answers the test of it being an "industry" as defined in clause 2(j) of section 2. The six judges also considered the inclusion of services such as hospitals and dispensaries as public utility services in the definition under section 2(n) of the act. In construing the definition clause and determining its ambit, one has not to lose sight of the fact that in activities like hospitals and education, concepts like right of the workers to go on "strike" or else the employer's right to "close down" and "lay off are not contemplated because they are services in which the motto is "service to the community". If the patients or students are to be left to the mercy of the employer and employees exercising their rights at will, the very purpose of the service activity would be frustrated.

The supreme court must, therefore, reconsider where the line, excluding some callings, services or undertakings from the purview of "industry" should be drawn and what limitations can and should be reasonably implied in interpreting the wide words used in section 2(j). That no doubt is a rather difficult problem to resolve more so when both the legislature and the executive are silent and have kept an important amended provision of law dormant on the statute-book.

Pressing demands of the competing sectors of employers and employees and helplessness of the legislature and the executive in bringing into force the amendment act compelled the present bench of the supreme court to make the reference. Therefore, the present bench ordered that the cases be now placed before the honorable chief justice of india for constituting a suitable larger bench for reconsideration of the judgement of the supreme court in the case of *bangalore water supply.*

Workmen of dimakuchi tea estate verses management of dimakuchi tea estate

facts

One dr. K.c. Banerjee was appointed by the respondents as their assistant medical officer, on three months production. After three months his services were terminated, on the ground of incompetency, with one month's salary in lieu of the notice. On the espousal of his cause by the assam cha karamchari sangh, the government of assam referred to a tribunal a dispute about his reinstatement. The management contended that dr. Banerjee being not a workman his case was not one of an industrial dispute under the act and was, therefore, beyond the jurisdiction of the tribunal to give any relief to him. The tribunal accepted the management's plea. The labour appellate tribunal, on appeal, affirmed the decision. By special leave the workmen appealed to the supreme court.

issue

Whether the dispute in relation to a person who is not a workman falls within the scope of an industrial dispute under s. 2(k) of the act?

Decision of the supreme court

The supreme court held that where the workmen raise the dispute as against their employer the "persons regarding whom the dispute is raised must be one in whose employment, non-employment, terms of employment or conditions of labour (as the case may be) the parties to the dispute have a direct or substantial interest. In the absence of such interest the dispute cannot be said to be a real dispute between the parties. Where the workmen raise a dispute as against their employer the person regarding whose

employment, non-employment, terms of employment or conditions of labour the dispute is raised need not be strictly speaking a "workman" within the meaning of the act but must be one in whose employment, non-employment, terms of employment or conditions of labour the workmen as a class have a direct or substantial interest." applying these principles the court concluded that dr. Banerjee who belonged to the medical or technical staff was not a workman and appellants had neither direct nor substantial interest in his employment or non-employment and even assuming that he was a member of the same trade union it cannot be said on the test laid down that the dispute regarding his termination of service was an industrial dispute within the meaning of s.2(k)of the act.

In the course of his judgement c.r. Dass, c.j., speaking for the court observed as under:

"the expression "any person" occurring in the third part of the definition clause (k) cannot mean any body or everybody in this wide world...it is well settled that "the words of the statute, when there are doubts about their meaning, are to be understood in the sense in which they best harmonies with the subject of the enactment and the object which the legislature has in view" ...the expression "any person" in the definition clause means, in our opinion, a person in whose employment or non-employment, or terms of employment or with condition of labour the workmen as a class have a direct or substantial interest with whom they have, under the scheme of the act, community of interest."

Municipal corporation of delhi verses female workers (muster roll)

(workmen including those employed on muster roll for carrying on activity of delhi municipal corporation in undertaking construction, laying and repairing of roads and digging of trenches were held to be "workmen" under the id act.)

Facts

Female workers (muster roll), engaged by the municipal corporation of delhi (for short "the corporation"), raised a demand for grant of maternity leave which was made available only to regular female workers but was denied to them on the ground that their services were not regularized and, therefore, they were not entitled to any maternity leave. Their case was espoused by the delhi municipal workers union (for short "the union") and, consequently, the following question was referred by the secretary (labour), delhi administration to the industrial tribunal for adjudication:

"whether the female workers working on muster roll should be given any maternity benefit? If so, what directions are necessary in this regard?"

The union filed a statement of claim in which it was stated that the municipal corporation of delhi employs a large number of persons including female workers on muster roll and they are made to work in the capacity for years together

though they are recruited against the work of perennial nature. It was further stated that the nature of duties and responsibilities performed and undertaken by the muster-roll, which have been working with the municipal corporation of delhi for years together, have to work very hard in construction projects and maintenance of roads including the work of digging trenches etc. But the corporation does riot grant any maternity benefit to female workers who are required to work even during the period of mature pregnancy or soon after the delivery of the child. It was pleaded that the female workers required the same maternity benefits as were enjoyed by regular female workers under the maternity benefit act, 1961. The denial of the benefits exhibits a negative attitude of the corporation in respect of a humane problem.

The corporation in their written statement, filed before the industrial tribunal, pleaded that the provisions under the maternity benefit act, 1961 or the central civil services (leave) rules were not applicable to the female workers, engaged on muster roll, as they were all engaged only on daily wages. It was also contended that they were not entitled to any benefit under the employees' state insurance act, 1948. It was for these reasons that the corporation contended that the demand of the female workers (muster roll) for grant of maternity leave was liable to be rejected.

The industrial tribunal issued a direction to the management of the municipal corporation of delhi to extend the benefits of the maternity benefit act, 1961 to such muster-roll female employees who were in continuous service of the management for three years or more and who fulfilled the conditions set out in section 5 of that act.

Decision of the supreme court

The court held that the activity of delhi municipal corporation in undertaking construction, laying and repairing of roads and digging of trenches covered by the definition of industry within the meaning of s. 2(1) of the id act. Therefore, the workmen including those employed on muster roll for carrying out such activities were "workmen" under the id act. The direction of the industrial tribunal was appreciated by the court on the ground of social and economic justice as emphasized by the court in its earlier decision in crown aluminum works verses workmen.

The court said:

"a just social order can be achieved only when inequalities are obliterated and everyone is provided what is legally due. Women who constitute almost half of the segment of our society have to be honored and treated with dignity at places where they work to earn their livelihood. Whatever be the nature of their duties, their avocation and the place where they work, they must be provided all the facilities to which they are entitled. To become a mother is the most natural phenomenon in the life of a woman. Whatever is needed to facilitate the birth of child to a woman who is in service, the employer has to be considerate and sympathetic towards here and must realize the physical difficulties which a working woman would face in performing her duties at the workplace while carrying a baby in the womb or while rearing up the child after birth. The maternity benefit act, 1961 aims to provide all these facilities to a working woman in a dignified so that she may overcome the state of motherhood honourably, peaceably, undeterred by the fear of being victimized for forced absence during the pre-or post-natal period." j.h. Jadhav verses forbes gotak ltd.

(there is necessity of espousal of cause of single workman by "the union"— minority unions and "outside unions included.)

Facts

The appellant was employed by the respondent. He claimed promotion as a clerk. When this was not granted, the appellant raised an industrial dispute. The question whether the appellant was justified in his prayer for promotion with effect from the date that his juniors were promoted was referred to the industrial tribunal by the state government. It was centended by the respondent that the individual dispute raised by the appellant was not an industrial dispute within the meaning of section 2(k) of the industrial disputes act, 1947, as the workman was neither supported by a substantial number of workmen nor by majority union. His cause was supported by gotak mills staff union—minority union.

Issue

Whether the appellant was justified in his prayer for promotion with effect from the date that his juniors were promoted?

Decision of the tribunal and the high court

The tribunal came to the conclusion that in view of the evidence given by the general secretary of the gotak mills staff union and the documents produced, it was clear that the appellant's cause had been espoused by the union which was one of the unions of the respondent employer. On the merits, the tribunal accepted the appellant's contentions that employees who were junior to him had been promoted as clerks. It noted that no records had been produced by the respondent to show that the management had taken into account the appellant's production records, efficiency, attendance or behaviour while denying him promotion. The tribunal concluded that the act of the respondent in denying promotion to the appellant amounted to unfair labour practice. The respondent was directed to promote the appellant as a clerk from the date his juniors were promoted and to give him all consequential benefits.

The division bench of the high court construed section 2(j) of the industrial disputes act, 1947 and came to the conclusion that an individual dispute is not an industrial dispute unless it directly and substantially affect the interest of other workmen. Secondly, it was held that an individual dispute should be taken up by a union which had representative character or by a substantial number of employees, before it would be converted into an industrial dispute neither of which according to the division bench of the high court, had happened in the present case. It was held that there was nothing on record to show that the appellant was a member of the union or that the dispute had been espoused by the union by passing any resolution in that regard.

Decision of the supreme court

It was held that there is necessity of espousal of cause of single workman by "the union"—minority unions and "outside" unions included. The requirements for an individual dispute to become an industrial dispute are:

(1) dispute is connected with employment or non-employment of a workman; and

(2) dispute between a single workman and his employer is sponsored or espoused by the union of workmen or a number of workmen "the union" merely indicates the union to which the employee belongs even though it may be a union of a minority of employees in the establishment, or the union of another establishment belonging to the same industry. In the latter case it would be open to that union to take up the cause of the workmen if it is sufficiently representative of those workmen. It was further held that there is no particular form prescribed to effect espousal of cause of single workman by the union. Normally union must express itself in the form of a resolution which should be proved if in issue. However, proof of support by the union may also be available in other ways. It would depend on facts of each case.

The supreme court held that the division bench of the high court misapplied principles of judicial review under article 226 in interfering with the decision of tribunal. There was evidence which was considered by the tribunal in coming to the conclusion that the appellant's cause had been espoused by the union. High court should not have upset this finding without holding that the conclusion was irrational or perverse. Hence, the high court's conclusion was unsustainable.



J.h. Jadhav* verses*. Forbes gokak ltd

Ruma pal, j. - 2**.** The appellant was employed by the respondent. He claimed promotion as a clerk. When this was not granted, the appellant raised an industrial dispute. The question whether the appellant was justified in his prayer for promotion with effect from the date that his juniors were promoted was referred to the industrial tribunal by the state government. In their written statement before the tribunal the respondent denied the appellant's claim for promotion on merits. In addition, it was contended by the respondent that the individual dispute raised by the appellant was not an industrial dispute within the meaning of section 2(*k*) of the industrial disputes act, 1947, as the workman was neither supported by a substantial number of workmen nor by a majority union. The appellant claims that his cause was espoused by the gokak mills staff union.

3**.** Before the tribunal, apart from examining himself, the general secretary of the union was examined as a witness in support of the appellant's claim. The general secretary affirmed that the appellant was a member of the union and that his cause has been espoused by the union. Documents including letters written by the union to the deputy labour commissioner as well as the objection filed by the union

before the conciliation officer were adduced in evidence. The tribunal came to the conclusion that in view of the evidence given by the general secretary and the documents produced, it was clear that the appellant's cause had been espoused by the union which was one of the unions of the respondent employer. On the merits, the tribunal accepted the appellant's contentions that employees who were junior to him had been promoted as clerks. It noted that no record had been produced by the respondent to show that the management had taken into account the appellant's production records, efficiency, attendance or behaviour while denying him promotion. The tribunal concluded that the act of the respondent in denying promotion to the appellant amounted to unfair labour practice. An award was passed in favour of the appellant and the respondent was directed to promote the appellant as a clerk from the date his juniors were promoted and to give him all consequential benefits.

4**.** The award of the industrial tribunal was challenged by the respondent by way of a writ petition. A single judge dismissed the writ petition. The respondent being aggrieved filed a writ appeal before the appellate court. The appellate court construed section 2(*k*) of the industrial disputes act, 1947 and came to the conclusion that an individual dispute is not an industrial dispute unless it directly and substantially affects the interest of other workmen.

Secondly, it was held that an individual dispute should be taken up by a union which had representative character or by a substantial number of employees, before it would be converted into an industrial dispute neither of which according to the appellate court, had happened in the present case. It was held that there was nothing on record to show that the appellant was a member of the union or that the dispute had been espoused by the union by passing any resolution in that regard.

5**.** The definition of "industrial dispute" in section 2(*k*) of the act shows that an industrial dispute means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of the employment or with the conditions of labour, of any person. The definition has been the subject-matter of several decisions of this court and the law is well settled. The *locus classicus* is the decision in ***workmen* verses. *Dharampal premchand (saughandhi)*** where it was held that for the purposes of section 2(*k*) it must be shown that: (*1*) the dispute is connected with the employment or non-employment of a workman. (*2*) the dispute between a single workman and his employer was sponsored or espoused by the union of workmen or by a number of workmen. The phrase "the union" merely indicates the union to which the employee belongs even though it may be a union of a minority of the workmen. (*3*) the establishment had no union of its own and some of the employees had joined the union of another establishment belonging to the same industry. In such a case it would be open to that union to take up the cause of the workmen if it is sufficiently representative of those workmen, despite the fact that such union was not exclusively of the workmen working in the establishment concerned. An illustration of what had been anticipated in ***dharampal*** case is to be found in ***workmen* verses *indian express (p) ltd.*** Where an "outside" union was held to be sufficiently representative to espouse the cause.

6**.** In the present case, it was not questioned that the appellant was a member of the gokak mills staff union. Nor was any issue raised that the union was not of the respondent establishment. The objection as noted in the issues framed by the industrial tribunal was that the union was not the majority union. Given the decision in ***dharampal*** case the objection was rightly rejected by the tribunal and wrongly accepted by the high court.

7**.** As far as espousal is concerned there is no particular form prescribed to effect such espousal. Doubtless, the union must normally express itself in the form of a resolution which should be proved if it is in issue. However, proof of support by the union may also be available *aliunde*. It would depend upon the facts of each case. The tribunal had addressed its mind to the question, appreciated the evidence both oral and documentary and found that the union had espoused the appellant's cause.

8**.** The division bench misapplied the principles of judicial review under article 226 in interfering with the decision. It was not a question of there being no evidence of espousal before the industrial tribunal. There was evidence which was considered by the tribunal in coming to the conclusion that the appellant's cause had been espoused by the union. The high court should not have upset this finding without holding that the conclusion was irrational or perverse. The conclusion reached by the high court is therefore unsustainable.

9**.** For all these reasons the decision of the high court cannot stand and must be set aside.

10**.** Learned counsel appearing for the respondent then submitted that the matter may be remanded back to the division bench of the high court as the court had not considered the other arguments raised by the respondent while impugning the award of the industrial tribunal. It appears from the impugned decision that the only other ground raised by the respondent in the writ appeal was that the grievance of the appellant had been belatedly raised. We have found from the decision of the industrial tribunal that no such contention had been raised by the respondent before the tribunal at all. We are not prepared to allow the respondent to raise the issue before the high court.

11**.** The respondent finally submitted that pursuant to disciplinary proceedings initiated against the appellant in the meanwhile, the appellant had been dismissed from service and that the order of dismissal was the subject-matter of a separate industrial dispute. We are not concerned with the propriety of the order of dismissal except to the extent that the appellant cannot obviously be granted actual promotion today. Nevertheless, he would be entitled to the monetary benefits of promotion pursuant to the award of the industrial tribunal which is the subject-matter of these proceedings up to the date of his dismissal. Any further relief that the appellant may be entitled to must of necessity abide by the final disposal of the industrial dispute relating to the order of dismissal which is said to be pending.

12**.** We therefore allow the appeal and set aside the decision of the high court. The award of the industrial tribunal is confirmed subject to the modification that the promotion granted by the award will be given effect to notionally for the period as indicated by the award up to the date of the appellant's dismissal from service. Reliefs in respect of the period subsequent to the order of dismissal shall be subject to the outcome of the pending industrial dispute relating to the termination of the appellant's services. If the termination is ultimately upheld, the appellant will be entitled only to the reliefs granted by us today. If on the other hand the termination is set aside, the appellant will be entitled to promotion as granted by the award.

Dharangdhara chemical works ltd. Verses state of saurashtra

("the workmen must have consented to give his personal services and not merely to get the work done, but if he is bound under his contract to work personally, he is not excluded from the definition, simply because he has assistance from others, who work under him". Halsbury's laws of england.)

Facts

The appellant company took from the state government on lease certain salt works at kudain in the state of saurashtra. The salt was manufactured from rain water which soaking down the surface becomes impregnated with saline matter. The operations were seasonal in character and commenced sometime in october at the close of the monsoon. The entire area was divided into small plots *called pattas. Thepattas* were allotted to *aghiaras* and a sum of rs. 400/- in each of *the pattas* were paid to the *aghiaras* as initial expenses. The *aghiaras* were free to engage extra labour at their own cost. They were free to work when they liked as no hours of work was prescribed and no muster roll was maintained. In rainy season when they were free from this work they returned to their villages and become engaged in their agriculture work. The salt manufactured by the *aghiaras* used to be tested

by the appellant company at several stages of manufacture. If the salt was found to be of right quality, the *aghiaras* were paid at the rate of rs. 0-5-6 per mound. Salt which was rejected belonged to the appellant company and the *aghiaras* could not either remove the salt manufactured by them or sell it.

In about 1950, disputes arose between *aghiaras* and the appellants as to the condition under which the *aghiaras* should be engaged by the appellants in the manufacturer of salt. The government of saurashtra referred the dispute for adjudication. The appellants contested the proceedings on the ground, *inter alia,* that the status of the *aghiaras* was that of independent contractors and not of workmen.

Issue

Whether the *aghiaras* working at the salt works at kudain were workmen within the meaning of the term as defined in the industrial dispute act, 1947?

Decision of the industrial tribunal, labour appellate tribunal and the high court

The industrial tribunal, labour appellate tribunal and the high court held that *aghiaras* were workmen within the meaning of s.2(s) of the industrial disputes act, 1947.

Decision of the supreme court

1. The essential condition of a person being a workman within the meaning of s.2(s) is that he must be employed in an industry and a relationship of employer and employee or master and servant must exist between his employer and him.

2. The test to determine employer-employee relationship is whether having regard to the nature of the work employer had due control and supervision in some reasonable sense not only on what is to be done but also on *how it is to be done.* The nature of extent of control which is requisite to establish the relationship of employer and employee must necessarily vary from business to business and is by its very nature incapable of precise definition. It is a question of fact in each case. In *short verses j. W. Henderson,* (1946) 24 ac, the house of lords have stated four indicia of a contract of service, viz., (a) the master's power of selection of his servant, (b) the payment of wages or other remuneration, (c) the master's right to control the method of doing the work, and (d) the master's right of suspension and dismissal.

3. A person can be a workman even though he is paid not per day but by the job. The test is whether the employer retained the right to control the work and it makes no difference whether the man was employed on time basis or piece or job basis. Therefore, *aghiaras* who did the piece work did not cease to be workmen on this ground.

4. What determine whether a person is a workman or an independent contractor is whether he has agreed to work personally or not. If he has then he is a workman and the fact that he takes assistance from other persons would not affect his status. The workman must have agreed to give his personal services and not merely to get the work done and thus if he is bound under his contract to work personally, he is not excluded from the definition, simply because he has assistance from others, who work under him. Therefore the fact that the *aghiaras* were entitled to engage other persons to do the work was not conclusive proof of the fact that they were independent contractors.

5. Whether or not in any given case the relationship of master and servant exists is purely one of fact.

6. The nature or extent of control which is requisite to establish the of master-servant relationship cannot be precisely defined. There are certain cases in which the master cannot control the manner in which work is done. Therefore the correct approach is whether having regard to the nature of work, there is due control and supervision by the employer.

The supreme court held that the *aghiaras* engaged in salt work who have agreed to work personally and on whom there was due control and supervision having regard to the nature of work were 'workmen' even though they took the assistance of others.



Mangalore ganesh beedi workers* verses *union of india

Ray, c.j. - the provisions of the beedi and cigar workers (conditions of employment) act, 1966 referred to as "the act" are impeached as unconstitutional in these petitions and appeals.
2**.** Broadly stated, the act is challenged on the grounds..... the restrictions imposed by the act violate freedom of trade and business guaranteed under article 19(1)(*g*). The act imposes unreasonable burdens in cases where a manufacturer or trade mark holder of beedi has no master and servant relationship and no effective control on independent contractors or home-workers. The manufacturer or trade mark holder is rendered liable as the principal
Employer of contract labour.
3**.** The petitioners and the appellants are of two characters. The majority are proprietors of beedi factories and owners of trade mark registered under the trade marks act in relation to beedies. Some are home-workers.

4**.** The beedi industry is widespread in this country. The manufacture of beedi is done in stages. The tobacco is blended often with some other ingredient. A small quantity of it is put on the beedi leaf which is previously wet to render it flexible to prevent any crushing of leaf and is also cut to size. The beedi leaf is then rolled keeping the tobacco within it and its ends are then closed. The beedis thus rolled are collected and warmed or roasted after which they are ready for packing, labelling and sale. Where the proprietor owns a trade mark, the trade mark labels are affixed to the individual beedis as also on the packets.
5**.** The work of wetting and cutting of the wrapper leaves is one of the items of work in the process. Power is seldom employed for the purpose. The industry depends entirely upon human labour. If more than 20 workers are employed in a particular place for the manufacture of beedis, the provisions of the factories act, 1940 will apply to the premises.
6**.** Three systems are adopted in the manufacture of beedis. First is the factory system. There the manufacturer is the owner of the factory. Workers gather and work under his supervision as his employees. Second is the contract system of employment. That is the most prevalent form. Under this system, the proprietor gives to the middlemen quantities of beedi leaves and tobacco. The contractor on receiving the materials manufactures beedis (*1*) by employing directly labourers and manufacturing beedis or (2) by distributing the materials amongst the home-workers, as they are called, mostly women who manufacture beedis in their own homes with the assistance of other members of their family including children. The third system is that of outworkers. They roll beedis out of the tobacco and beedi leaves supplied by the proprietor himself without the agency of middlemen. The beedis thus supplied whether by the outworkers or contractor are roasted, labelled and packed by the proprietor and sold to the public.
7**.** Under these systems, the contractor engages labourers less than the statutory number to escape the application of the factories act. There is a fragmentation of the place of manufacture of beedis with a view to evading the factory legislation. Sometimes there is no definite relationship of master and servant between the actual worker and the ultimate proprietor. Branch managers or contractors are often men of straw. The proprietor will not be answerable for the wages of the outworkers because there is no privity of contract between them. A large body of actual workers are illiterate women who could with impunity be exploited by the proprietors and contractors. There is in this background an indiscriminate and undetectable employment of child labour. The contractor being himself dependent on the proprietor has little means to have any organised system. Women and infirm persons can earn something by rolling beedis. The dependence of these people particularly the women shows that they have little bargaining power against powerful proprietors or contractors.
8**.** A typical contractor agrees with the proprietor to purchase tobacco and to pay for it at the ruling rate and to supply the proprietor with such quantity of beedis as will be fixed by the proprietor. He also undertakes not to use any tobacco other than that supplied by the proprietor. The proprietor has the authority to send his representative to inspect the place or places of manufacture. The contractor undertakes not to enter into any agreement of similar nature with any other concern to make beedis. The agreement stipulates that the contractor will be the sole employer answerable in regard to the disputes raised by the workers.
9**.** There was a royal commission on labour in india in 1931. The findings were these. The making or beedi is an industry widely spread over the country. It is partly carried on in the home but mainly in the workshops in the bigger cities and towns. Every type of building is used, but small workshops preponderate. It is there that the graver problems mainly arise. Many of these places are small airless boxes. There are no windows where workers are crowded. There are dark semi basements with damp and floors. Sanitary conveniences and arrangements for removal of refuses are practically absent. Payment is by piece rate. The hours are unregulated. Many smaller workshops are open day and night. There are no intervals for meals. There are no weekly holidays.
10**.** In 1944, the government of india appointed a committee under the chairmanship of sri d.v. Rege to investigate conditions of industrial labour. The report referred to the contract system whereby the factory owner engaged a large number of middlemen, supplied them with raw materials and purchased finished products from them. The report found that unhealthy working conditions, long hours of work, employment of women and children, deduction from wages and the sub-contract

system of organisation required immediate attention. It was desirable to abolish outworker system and to encourage establishment of big industries if protective labour legislation was to be enforced with success.

11**.** In 1946, the government of madras appointed a court of inquiry into labour conditions in beedi, cigar, snuff-curing and tanning industries. There were 90,000 workers depending on beedi industry in madras. Of these 26,500 workers were women. Employment of children in the industry was universal. 2/5th of the total workers were children. Home workers were predominant. There were full time workers but they were paid less than fair wages. Working conditions were extremely unsatisfactory from the standpoint of floor, space, sanitation, ventilation and lighting.

12**.** In 1954, the government of india appointed sri natraj, inspector of factories to assess the situation with a view to affording maximum legislative protection to the workers. The report was as follows. Although the number of workers engaged in the manufacture of beedi exceeded one lakh, only 17,544 were employed in factories. The contract and homework systems enriched proprietor at the expense of the worker and also deprived the latter of his bargaining power in regard to conditions of labour. The poverty as well as illiteracy of the workers was taken advantage of by the employers. There were long hours of work with low wages, deplorable working conditions and unrestricted employment of women and children.

13**.** The entire beedi industry was unorganised and scattered over the entire state, employing a large force of women. It called for radical reforms in the organisation. There wasreluctance of the manufacturer to provide certain amenities to the workers such as rest sheds, canteens, creches, ambulance room, etc. Under the indirect employment system conditions obtaining in the industry were still worse. The middlemen contractors did not observe any higher standards in the premises than in those under the manufacturers. The payment of wages act applied to factories, but it was difficult to detect violations of the act because the prescribed registers were not maintained. The madras maternity benefit act which applied to factories was rendered practically ineffective as far as petty industry was concerned because there was no record to prove that women were employed. The report stated that the employers succeeded in organised circumvention of all existing legislation by resorting to splitting up of their factories into smaller units run by contractors who had no knowledge in respect of social laws.

14**.** The conditions in working places were bad. The report suggested licensing of premises to fix responsibility of the employer for maintenance of minimum standards of ventilation, lighting and sanitation in working places.

15**.** The employment of women and children, wages and wage structure in the industry were all considered by the committee. The committee recommended solution of unhealthy working conditions under miserable environments, long working hours with its attendant evils, unregulated employment of women and children and deduction from wages. The contract of home-work system of employment was found to be designed solely for the promotion of trade but not the industry of which the labour forms the integral part. It was, therefore, expected that the beedi industry should carry the labour along with it as it developed and was organised in such manner that it discharged its social and moral responsibilities towards the workers.

16**.** It is in this background that the act came into existence. In ***state of madras*** **verses.** ***Rajagopalan*** this court held that the previous material in the shape of reports of commissions to review the working of the industry was admissible in evidence about the prevailing system and conditions of industry.

17**.** The beedi and cigar workers (conditions of employment) act, 1966 is an act to provide for the welfare of the workers in beedi and cigar establishments and to regulate the conditions of their work and for matters connected therewith. The special feature of the industry was the manufacture of beedis through contractors and by distributing work in the private dwelling house, where the workers took raw materials given by the employers of contractors. The relationship between employers and employees was not well defined. The application of the factories act met with difficulties. The labour in the industry was unorganised and was not able to look after its own interests. The industry was highly mobile.

The attempt of some of the states to legislate in this behalf was not successful. The necessity for central legislation was felt. A bill was mooted to provide for the regulation of the contract system of work, licensing of beedi and cigar industrial premises and matters like health, hours of work, spread over, rest periods, over time, annual leave with pay, distribution of raw materials etc. The anxiety was expressed by several committees to introduce some regulation in the employer-employee relationship and to obtain certain benefits to the employees which were denied to them.

18**.** The so-called contractor or the employer as styled by the employees has been a matter of some concern to the employees as well as to the state. There were certain good and bad points about the systems that were prevalent in the manufacture of beedi. The contractor was very often a man of straw. He was said to be the creation of the principal employer who put him forward on many occasions as a screen to avoid his own responsibility towards the

Employees. Another broad grievance was that there was double checking and rejection of beedis or double chhat, out of which the second chhat at the principal employer's place was invariably in the absence of the employee. This chhat was alleged to be most irrational and depending upon the whim of the employer. As far as the house-work system was concerned there was an advantage to the employee with some kind of disadvantage to the employer.

Persons who could spare time in their houses but could not move out for the purpose of employment got ready employment and could supplement their income from agriculture or other sources. They were in a position to work as and when leisure was available and like a factory employee there was no rigour of attending the factory or work at stated time and for stated number of hours. It appeared that pilfering was a vice of this industry. By pilfering tobacco which is the most valuable ingredient, the employees were able to earn some income by again rolling it into beedis and selling them.

19**.** The relationship between the proprietor, middlemen and out workers came up for consideration in this court in ***chintaman rao*** **verses.** ***State of madhya pradesh*** the proprietor of a beedi factory was prosecuted under the factories act for noncompliance with the provisions of that act. The proprietor pleaded that the workers were not

Under his employment. The contention was that the sattedars who were found in the factory were independent contractors and not workers. The management issued tobacco and sometimes beedi leaves to sattedars who manufactured beedis in their own factories or by an arrangement with a third party. The sattedars collected the beedis thus made and supplied to the factories for a consideration. It was held that the sattedars were independent contractors and not the agents. The enforcement of factory and labour legislation could be rendered impossible by adopting the simple device of disintegrating what normally will be a factory. The legislature wanted to regulate the contract system. The legislation did not want to stop the contract system. The provisions in the act recognised the contractor as a part and parcel of the beedi industry. The contractor is referred to where the terms "contract labour" or "principal employer" or "employer" have been defined. Several functions which the employer has to perform are also performed by the contractor. He delivers tobacco and leaves to the home-worker and collects the rolled beedis after application of chhat. He makes payment to them. Therefore, the contractor has been retained as an integral part though the attempt is to eliminate the vices which crept into the industry.

20**.** The madras high court in ***k. Abdul azeez sahib and sons, four horse beedi manufacturers, vellore-4*** **verses.** ***Union of india*** [(1973) 2 mad lj 126] held the definitions of employer and principal employer in section 2(*g*)(*a*) and 2(*m*) of the act to be valid but held that sections 26 and 27 of the act are wholly unenforceable against the trade mark holders whether with reference to home-workers or with reference to employees working in any industrial premises. The madras high court held that since a worker in a beedi industry is not required to work regularly for any prescribed period of hours in a day or even day after day for any specified period, from the very nature of the case, the provisions in the maternity benefit act, 1961 are unworkable with regard to such home-workers, and, therefore, they will have no application to them. The madras high court held that sections 7(l)(*c*), 7(2), 26, 27, 31, and 37(3) insofar as they relate to home-workers are ultra vires and illegal and unenforceable against trade mark holders in beedis and contractors in the manufacture of beedis.

The madras high court held that sections 7(l)(*c*), 7(2), 26 and 27 are ultra vires and illegal and unenforceable against the petitioners who are manufacturers of cigar or cigar rollers.

21**.** The bombay high court in ***chetabhai purushottam patel, beedi manufacturers of bhandara* verses. *State of maharashtra by secretary, industries and labour department, sachivalaya, bombay*** [(1972) 1 lab lj 130] held that the provisions of section 2(*g*)(*a*) and 2(*m*) of the act are invalid to be in excess of the requirements of the situation because if the principal employer is fared with the proposition of bearing all the civil and criminal responsibilities of omission and commission of contractors under him the inevitable result will be that the manufacturer will give up the gharkata system and may think of some other system less onerous under the act. The bombay high court also said that the words "in relation to other labour" contained in section 2(*g*) (*b*) are to be deleted. The bombay high court further held that the provisions of sections 26 and 27 of the act will not apply to homeworkers at all.

22**.** The mysore high court in ***p. Syed saheb & sons* verses *state of mysore*** held that sections 3 and 4 of the act are constitutional and not violative of articles 14 and 19(l)(*g*) of the constitution. Section 3 of the act prohibits establishment of an industrial premises without obtaining a licence granted under the act. Section 4 of the act provides for the procedure for the issue, renewal and cancellation of a licence. The mysore high court further held that sections 26 and 27 of the act are not unreasonable restrictions and it is possible to find out whether a home-worker has qualified himself for annual leave and it is possible to make up for the lost wages. The mysore high court also held that section 31 of the act is valid and rule 29 does not impose unreasonable restriction by compelling the employer to accept beedis when they are sub-standard and the sub-standard beedis and cigars exceed 5 per cent. If the employer finds that the sub-standard beedis and cigars are above 5 per cent then he has to refer the matter to the inspector.

23**.** The kerala high court in ***chirukandeth chandrasekharan* verses *union of india*** held that the provisions of sections 2(*g*)(*a*)*,* 2(*m*), 3*,* 4, 21, 26 and 27 of the act impose unreasonable restrictions on business or trade and are violative of article 19(1)(*g*) of the constitution. The kerala high court held that the words "in relation to other labour" occurring in section 2(*g*)(*b*) have also be deleted. The kerala high court held sections 3 and 4 to be valid. The kerala high court held that sections 26 and 27 will not apply to home-workers. The kerala high court struck down rule 29 of the kerala rules on the ground that the imposition of 5 per cent on the maximum amount of rejection is an arbitrary percentage. Kerala rule 29 stated that no employer shall ordinarily reject more than 2.5 per cent. The proviso states that there can be rejection up to 5 per cent for reasons recorded in writing. This imposition of 5 per cent limit in the proviso was construed by the kerala high court to be unreasonable inasmuch as the quality of beedis would go down if the workers are assured that more than 5 per cent will not be rejected.

24**.** The andhra pradesh high court in civil appeals nos. 1972 to 1988 of 1971, held that sections 3 and 4 of the act offend articles 14 and 19(l)(*g*) of the constitution and are, therefore, void. The andhra pradesh high court came to the conclusion that the provisions contained in sections 3 to 27 of the act do not apply to home-workers. The high court held that the act is applicable to an independent contractor where he is employing labour for and on his own behalf. There he is the principal employer. No artificial relationship of master and servant arises as a result of the operation of the definitions in sections 2(*g*)(*a*)(*b*) and 2(*m*) of the act. The gujarat high court, in civil appeal no. 585 of 1971, upheld the provisions of the act to be constitutional.

25**.** The first contention on behalf of the petitioners and the appellants is that the act of 1966 is invalid on the ground of lack of legislative competence. The high courts of madras, kerala, gujarat, mysore and andhra pradesh have rightly held the act to have constitutional competence. Counsel on behalf of the petitioners contended that entry 24 in list ii is the only legislative entry for the piece of legislation. Entry 24 speaks of industries subject to the provisions of entries 7 and 52 of list i. Entry 7 in list i speaks of industries declared by parliament by law to be necessary for the purpose of defence or for the prosecution of war. Entry 52 in list i speaks of industries the control of which by the union is declared by parliament by law to be expedient in the public interest. The legislation in the present case does not fall within entry 24 in list ii or entries 7 and 52 in list i. Entry 24 in list iii

speaks of labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits. The act is for welfare of labour. It is not an act for industries. The true nature and character of the legislation shows that it is for enforcing better conditions of labour amongst those who are engaged in the manufacture of beedis and cigars.

26**.** The scheme of the act relates to provisions regarding health and welfare, conditions of employment, leave with wages, extension of benefits by applying other acts to labour. To illustrate section 28 of the act extends benefits of the payment of wages act to industrial premises, section 31 of the act provides for security of service, section 37 of the act extends the benefit of industrial standing orders act, 1946. Again, section 37(3) of the act makes provisions of the maternity benefit act applicable to every establishment. Section 38(1) of the act applies the safety provisions contained in chapter iv of the factories act to industrial premises. Section 39(1) of the act makes the industrial disputes act, 1947 applicable to matters arising in respect of every industrial premises. Section 39(2) of the act provides that disputes between an employee and an employer in relation to issue of raw materials, rejection

Of beedis and cigars, payment of wages for the beedis and cigars rejected by the employer, shall be settled by such authority as the state government may specify. An appeal is provided to the appellate authority whose decision is final. Section 39(1) of the act applies to industrial premises. Section 39(2) of the act applies to every establishment.

27**.** The act speaks of licensing of industrial premises. The benefits under the act are extended to both industrial premises and establishments. Establishments mean also places where home-workers work.

28**.** The pith and substance of this act is regulation of conditions of employment in the beedi and cigar industry. The act deals with particular subject-matter as regards the establishments and industrial premises. These matters are regulation of conditions of employment in the industry and the industrial relations between the employer and the employee. Entries 22 to 24 in list iii are wide enough to cover this piece of labour welfare measure. Entry 22 deals with labour welfare. Entry 23 deals with social security, employment and unemployment. Entry 24 deals with welfare of labour including conditions of work, provident funds, employer's liability, workmen's compensation, invalidity and old age pensions and maternity benefits. The act is valid and falls within entries 22, 23, and 24 of list iii.

29**.** Sections 3 and 4 of the act were challenged as violative of article 19(l)(*g*) and article 14 on account of procedural unreasonableness and conferment of unfettered powers on the licensing authority without the requisite safeguards. These two sections require licence in respect of industrial premises. The provisions are applicable both to trade mark holders as well as contractors. There is no difficulty with regard to manufacturers to obtain licence in respect of industrial premises. If contractors are employers of labour for and on their own behalf, the contractors will have to obtain licences for manufacture of beedis in industrial premises. The relevant authorities have to refer to certain matters in the grant or refusal of a licence. These matters as set out in section 4 of the act are (*a*) suitability of the place or premises which is proposed to be used for the manufacture of beedi or cigar or both (*b*) the previous experience of the applicant, (*c*) the financial resources of the applicant including his financial capacity to meet the demands arising out of the provisions of the laws for the time being in force relating to the welfare of labour (*d*) whether the application is made bona fide on behalf of the applicant himself or any other person and (*e*) welfare of the labour for the locality in the interest of the public generally and such other matters as may be prescribed. The licensing authority is required to communicate his reason in writing when he refuses to grant a licence. Section 5 of the act provides an appeal to the appellate authority against such order. The power to grant or refuse a licence is sufficiently controlled by necessary guidance. There are safeguards preventing the abuse of power. The right to appeal is a great safeguard. The various matters indicated in section 4 in regard to the grant of licence indicate not only the various features which are to be considered but also rule out any arbitrary act. There is machinery as well as procedure for determining the grant or refusal of a licence. The application for grant of a licence is to

be determined on objective considerations as laid down in the section. There is neither unfairness nor unreasonableness in sections 3 and 4 of the act.

30**.** The validity of the act was challenged on the principal ground that the act imposed unreasonable restrictions on the manufacturers in their right to carry on trade and business in the manufacture of beedis and cigars. The unreasonable restriction was said to be the imposition of vicarious liability on the manufacturers for acts and omissions in case of independent contractors through whom they get beedis and cigars and over whose employees

They do not have any control and with whom they do not come in contract. The provisions of section 2(*g*)(*a*) and 2(*m*) read with section 2(*e*) and (*f*) of the act are said to create a totally artificial and fictional definition of employer and thereby to cause vicarious liabilities upon a manufacturer of and trader in beedis in respect of diverse matters which entail civil and criminal liabilities. Liabilities are imposed on manufacturer or trader in beedis in respect of home-workers whom it is said, they cannot control. The home-workers are in thousands. It is impossible for a manufacturer to have any idea of the identity of the persons rolling beedis or the premises where they work. Raw materials are delivered to workers to do the work of rolling the beedis himself and not having done by any other person. It is, therefore, said there is no rational basis for imposing vicarious liability. Though liabilities and obligations are great in relation to contract labour there is said to be no corresponding creation of rights which normally exist in employer in respect of his employees. The cumulative effect and impact of the various provisions of the act imposing liability on the manufacturer is said to render it impossible for the manufacturer or trader to carry on his business. From a commercial point of view, the restrictions are said to be drastic and unreasonable.

31**.** The act defines in section 2(*e*) contract labour meaning any person engaged or employed in any premises by or through a contractor with or without the knowledge of the employer, in any manufacturing process; section 2(*f*) of the act defines employee to mean a person employed directly or through any agency, whether for wages or not, in any establishment to do any work skilled and unskilled and includes (1) any labourer who is given raw materials by an employer or a contractor for being made into beedi and cigar or both at home (hereinafter referred to in this act as "home-worker") and (*2*) any person not employed by an employer or a contractor but working with the permission of, or under agreement with, the employer or contractor. Section 2(*g*) of the act defines "employer" to mean (*a*) in relation to contract labour the principal employer, and (*b*) in relation to other labour, the person who has the ultimate control over the affairs of any establishment or who has, by reason of his advancing money, supplying goods or otherwise, a substantial interest in the control of the affairs of any establishment, and includes any other person to whom the affairs of the establishment are entrusted, whether such other person is called the managing agent, manager, superintendent or by any other name. Section 2(*m*) of the act defines "principal employer" to mean a person for whom or on whose behalf any contract labour is engaged or employed in an establishment. Section *2*(*h*) of the act defines "establishment" to mean any place or premises including the precincts thereof in which or in any part of which any manufacturing process connected with the making of beedi or cigar or both is being, or is ordinarily, carried on and includes an industrial premises. Section 2(1) of the act defines 'industrial premises' to mean any place or premises in which any industry or manufacturing process connected with the making of beedi or cigar or both is being or is ordinarily carried on with or without the aid of power.

32**.** These definitions indicate these features. First, there are workers in industrial premises and workers in an establishment. Second, the act recognises home-workers. Third, the act recognises contract labour by or through contractor. Fourth, any person who is given raw materials by an employer or a contractor is an employee. Again, any person though not employed by an employer or a contractor but working with the permission or under agreement with the employer or a contractor is an employee. Fifth, in relation to contract labour the principal employer is a person for whom and on whose behalf labour is engaged or employed in an establishment. Sixth, the employer in relation to other labour is a person who has ultimate control over the affairs of any establishment or who has by reason of advancing money, supplying goods or otherwise a substantial interest in the affairs of any establishment.

33**.** The two classes of employers are broadly defined as the employer and the principal employer. The first kind is the manufacturer who directly employs labour. Such a manufacturer becomes an employer within the meaning of section 2(*g*)(*b*) of the act by engaging labour. The second class of employer is the principal employer who through a
Contractor as defined in section 2(*a*) of the act engages labour which is known as contract labour. This labour is engaged by or on behalf of the manufacturer who becomes the principal employer. The third category of employer is a contractor who engages labour for executing work for and on his own behalf. Such a contractor may undertake work from a manufacturer or a trade mark holder but he becomes the principal employer in relation to contract labour on the ground that the labour is engaged for and on his own behalf. The fourth class of employer is where a contractor becomes what is known as sub-contractor, of a contractor. A contractor in such a case would ask the sub-contractor to engage labour for and on behalf of the contractor. In such a case the contractor would be the principal employer because the subcontractor is engaging contract labour for and on behalf of the contractor who is the principal employer. The fifth class of employer is where a person by reason of advancing money or supplying goods or otherwise having a substantial interest in the control of any establishment becomes the employer of labour. To illustrate, a mortgagee in possession of an industrial premises, a hypothecatee of goods manufactured in industrial premises or in any establishment, a financier in relation to a manufacturer or a contractor or a sub-contractor may become employer by reason of such consideration mentioned in the act.
34**.** In cases where the manufacturer or trade mark holder himself employs labour there is direct relationship of master and servant and therefore liability is attracted by reason of that relationship. There cannot be any question of unreasonableness in such a case. In the second category the manufacturer or trade mark holder engages contract labour through a contractor and he becomes the principal employer. Though such labour may be engaged by a contractor with or without the knowledge of the manufacturer or trade mark holder, this contract labour is engaged for the principal employer who happens to be the trade mark holder or the manufacturer. The liability arises by reason of contract labour engaged for or on behalf of the principal employer. In the third category, the contractor becomes the principal employer because the contractor engages labour for or on his own behalf. Where the contractor engages labour for the manufacturer it is not unreasonable restriction to impose liability on the manufacturer for the labour engaged by the manufacturer through the contractor. It is important to notice that the act fastens liability on the person who himself engages labour or the person for whom and on whose behalf labour is engaged or where a person has ultimate control over the affairs of the establishment by reason of advancement of money or of substantial interest in the control of the affairs of the establishment.
35**.** Therefore, the manufacturers or trade mark holders have liability in respect of workers who are directly employed by them or who are employed by them through contractors. Workers at the industrial premises do not present any problem. The manufacturer or trade mark holder will observe all the provisions of the act by reason of employing such labour in the industrial premises. When the manufacturer engages labour through the contractor the
Labour is engaged on behalf of the manufacturer, and the latter has therefore liability to such contract labour. It is only when the contractor engages labour for or on his own behalf and supplies the finished products to the manufacturer that he will be the principal employer in relation to such labour and the manufacturer will not be responsible for implementing the provisions of the act with regard to such labour employed by the contractor. If the right of rejection rests with the manufacturer or trade mark holder, in such a case the contractor who will prepare beedis through the contract labour will find it difficult to establish that he is the independent contractor. If it is a genuine sale transaction by the contractor to the manufacturer or trade mark holder it will point in the direction of an independent contractor.
36**.** This court in ***dewan mohideen sahib*** **verses** ***industrial tribunal, madras*** said that the so called independent contractor in that case was supplied with tobacco and leaves and was paid certain amounts for the wages of the workers employed and for his own trouble. The so called independent contractor was merely an employee or an agent of the appellant in that case. The so

called independent contractor had no independence at all. The proprietor could at his own choice supply raw material or refuse to do so. The contractor had no right to insist on supply of raw materials to him. The work was distributed between a number of so called independent contractors, who were told to employ not more than 9 persons at one place to avoid regulations under the factories act. This court held that the relationship of master and servant between the appellant and the employees employed by the independent contractor was established in that case. If it is found that manufacturers or trade mark holders are not responsible on the ground that the person with whom they are dealing are really independent contractors then such independent contractors will have to be considered as principal employers within the meaning of the act.

37**.** The contention on behalf of the petitioners and the appellants is that in common law a person cannot be made responsible for actions of an independent contractor and that he should not be penalised, for the contravention of any law by an independent contractor is to be examined in view of the language employed in defining the expressions contract labour, contract, establishment, employer and principal employer. It was particularly said that when home-workers were given tobacco and leaves directly by the manufacturers the home-workers would not be under their control and the manufacturers should not be made responsible for providing any amenities or leave facilities for those home-workers.

38**.** This court in ***silver jubilee tailoring house*** **verses** ***chief inspector of shops and establishments*** discussed the question as to whether employer-employee relationship existed between the tailoring house and the workers in that case. The definition of a person employed in that case was a person wholly or principally employed therein in connection with the business of the shop. The workers were paid on piece rate basis. They attended the shops if there was work. The rate of wages paid to the workers was not uniform. The rate depended upon the skill of the worker and the nature of the work. The workers were given cloth for stitching. They were told how the stitching was to be done. If they did not stitch it according to the instructions, the employer rejected the work. The worker was asked to re-stitch. If the work was not done according to the instruction no further work was given to a worker. A worker did not have to make an application for leave if he did not come to the shop on a day. If there was no work, the employee was free to leave the shop. All the workers worked in the shop. Some workers could take cloth for stitching to their homes.

39**.** Mathew, j., speaking for the court referred to the decisions of this court and english and american decisions and came to these conclusions. First, in recent years the control test as traditionally formulated has not been treated as an exclusive test. Control is an important factor. Second, the organisation test viz. That the workers attend the shop and work there is a relevant factor. If the employer provides the equipment this is some indication that the contract is a contract of service. If the other party provides the equipment this is some evidence that he is an independent contractor. No sensible inference can be drawn from the factory of equipment where it is customary for servants to provide for their own equipment. Little weight can today be put upon the provisions of tools of minor character as opposed to plant and equipment on a large scale. Third, if the employer has a right to reject the end product if it does not conform to the instructions of the employer and direct the worker to restitch it, the element of control and supervision as formulated in the decisions of this court is also present. Fourth, a person can be a servant of more than one employer. A servant need not be under the exclusive control of one master. He can be employed under more than one employer. Fifth, that the workers are not obliged to work for the whole day in the shop is not very material. In the ultimate analysis it would depend on the facts and circumstances of each case in determining the relationship of master and servant.

40**.** The present legislation is intended to achieve welfare benefits and amenities for the labour. That is why the manufacturer or trade mark holder becomes the principal employer though he engages contract labour through the contractor. He cannot escape liability imposed on him by the statute by stating that he has engaged the labour through a contractor to do the work and therefore he is not responsible for the labour. The contractor in such a case employs the labour only for and on behalf of the principal employer. The contractor being an agent of the principal employer for manufacturing beedis is amenable to the control of principal employer. That is why the statute says that even if the

contractor engages labour without the knowledge of the employer the principal employer is answerable for such labour because the labour is engaged for or on his behalf. The act and the rules thereunder prescribe maintenance of log books and registers. Where the manufacturer or the trade mark holder engages labour directly, the manufacturer maintains registers and log books. Where the manufacturer engages contract labour through a contractor the manufacturer will require the contractor to maintain such log books of the contract labour and through such books and registers will keep control over not only the contractors but also the labour.

41**.** The principal employer is the real master of the business. He has real control of the business. He is held liable because he exercises supervision and control over the labour employed for and on his behalf by contractor. The benefits of the welfare measure reach the workmen only by direct responsibility of the principal employer, the basis of the welfare measure is in the interest of the workers with regard to their health, safety and wages including benefits of leave and family life. The bombay high court and the kerala high court struck down the provisions contained in sections *2*(*g*)(*a*) and 2(*m*) of the act in regard to the principal employer being liable for contract labour as an unreasonable restriction on the manufacturer's right to carry on business. This view proceeds on the basis that the principal employer is liable for acts of the independent contractor. The act does not define an independent contractor, nor mention the independent contractor. The act speaks of the principal employer in relation to contract labour and employer in relation to other labour. When a contractor engages labour for or on behalf of another person that other person becomes the principal employer. The attorney general rightly said that if it were established on the facts of any particular case that a person engaged labour for himself he would be the principal employer of contract labour. In such an instance there is no question of agency on behalf of another person.

42**.** In cases where an industrial manufacturer finds it convenient to give work on contract rather than do it employing his own man he cannot have the advantages of employing the labour without corresponding obligations. If the contractors could be made responsible for the working conditions of labour or their wages or their leave or their other benefits then no question would arise. It is not uncommon for labourers to work for a contractor on terms which are designed to satisfy the law that they are not servants but independent contractors.

43**.** In the present case, it is not material to find out as to who can be called an independent contractor. It can be said that independent contractors are those who employ labour for and on behalf of themselves in so far as the present act is concerned. The only scope for inquiry is whether a person has employed labour for and on his own behalf. If the answer be in the affirmative then such a contractor would be a principal employer within the meaning of section 2(*g*)(*a*).

44**.** It appears that the principal employer or the employer, as the case may be, is liable on the ground that the labour is employed for or on behalf of the principal employer or the employer. In relation to contract labour the principal employer is the person for whom or on whose behalf any contract labour is engaged in any establishment. An employer in relation to other labour is the person who has the ultimate control over the affairs of any establishment or has a substantial interest in the control of the affairs of any establishment as defined in section 2(*g*)(*b*) of the act. There is no vicarious liability in the case of the principal employer or in the case of employer. The act does not define an independent contractor. The act does not prevent an independent contractor from being the principal employer in relation to contract labour. It will be a question of fact in each case as to who is the person for whom or on whose behalf contract labour is engaged. If such a contractor who is referred to as an independent contractor employs labour for himself the liability will attach to him as the principal employer and not to the manufacturer or trade mark holder. There is no restriction on the right of the manufacturer or the trade mark holder to carry on business. They are liable under the act for contract labour employed for or on behalf of them.

45**.** For the foregoing reasons the provisions of the act in particular contained in section 2(*g*)(*a*), 2(*g*)(*b*) and 2(*m*) are constitutionally valid and do not impose any unreasonable restriction on the manufacturer or trade mark holder.

46**.** On behalf of the petitioners and the appellants, it is said that section 26 of the act gives substantive rights with regard to leave and section 27 of the act is the procedural part in computing

wages. The contention advanced was that section 26 of the act speaks of employees in an establishment and, therefore, these sections do not apply to home-workers. The contentions are that sections 26 and 27 of the act cast an unreasonable burden and impose obligations which are not practically capable of fulfilment and are thus violative of article 19(1)(*f*) and (*g*) of the constitution. In any event sections 26 and 27 of the act are said to be unenforceable in regard to home-workers and are, therefore, violative of article 19(1)(*f*) and (*g*) so far as the same are applicable to home-workers. These two sections deal with leave and wages during leave period. Broadly stated, section 26 allows leave at the rate of one day for every 20 days of work performed by an adult employee during the previous calendar year. In the case of a young person leave is at the rate of one day for every 15 days of work during the previous calendar year. There are provisions as to calculation of leave which are not material in the present case.

47**.** Under section 27 of the act an employee shall be paid at the rate equal to the daily average of his full time earning for the days on which he had worked during the month immediately preceding his leave exclusive of any over time earnings and bonus but inclusive of dearness and other allowances. There are two explanations. The first explanation states that the expression "total full time earning" includes cash equivalent to the advantage accruing through the concessional sale to employees of foodgrains and other articles, as the employee is for the time being entitled to, but does not include bonus. The second explanation states that for the purpose of determining the wages payable to a home-worker during leave period or for the purpose of payment of maternity benefit to a woman home-worker "day" shall mean any period during which such home-worker was employed, during a period of twenty four hours commencing at midnight, for making beedi or cigar or both.

48**.** The word "establishment" is defined in section 2(*h*) of the act to mean any place or premises including the precincts in which or in any part of which any manufacturing process connected with the making of beedis or cigars or both is carried on and it includes an industrial premises. Section 2(*i*) of the act defines "industrial premises" to mean any place or premises not being a private dwelling house where the industry or manufacturing process of making beedis or cigar is carried on. An employee is defined in section 2(*f*) of the act to mean any person employed directly or through any agency in any establishment and include any labour who is given raw materials by an employer or contractor at home referred to as the home-worker and any person employed by an employer or a contractor but working at the premises with the employer or contractor. Therefore, the words "employed in an establishment" in section 26 of the act are referable to home-workers as well. The second explanation to section 27 of the act also speaks of determination of wages payable to homeworker during leave period.

49**.** It was said that the words "total full time earnings" occurring in section 27 of the act were inapplicable to home-workers for these reasons.

50**.** First a home-worker with the assistance of his family members could collect large earnings in a month preceding the month in which he would take leave. This was said to be an unreasonable restriction on an employer inasmuch as a home-worker would not work hard or perhaps at all for a considerable period of time and would work only in the month preceding which he would take leave. It is not possible for a home-worker to increase his earnings because the employer will have control over raw materials supplied to home-worker as also on the daily turnover. An employer is in a position to prevent malpractices or abuse of taking more materials to make a higher income. It is also reasonable to hold that an employer will not allow an employee to concentrate on increasing the income.

51**.** It was secondly said that section 27 of the act did not prescribe the minimum number of days an employee should work before he was entitled to annual leave wages. Reference was made to section 79(1) of the factories act 1948 which provides for 240 days of work as minimum for entitlement of annual leave. The provision in section 26 of the act is that for every 20 days one day's leave is allowed. If any worker does not work hard one will not be

Entitled to leave as contemplated in the act. The basis of calculating one day's leave for every 20 days of work is also adopted in the case of government servants. [*see* central civil service leave

rules, 1972 rules 26 and 2(m).] Instead of being unreasonable it can be said to be an impetus to a servant to put in the maximum of work in order to obtain the maximum amount of leave. The entitlement to leave under section 27 of the act is based on the number
Of days of actual work. It is, therefore, not an unreasonable restriction on the employer.
52**.** Thirdly, it is said that the payment of leave wages at the rate equal to the daily average of his total full time earnings in the case of home-workers is unreasonable. Reference is made to section 22 of the act which speaks of notice of periods of work in industrial premises. Section 22 of the act is not applicable to home-workers. In the case of homeworkers it is said that they are free to do work at any time and for any length of time in a day even for 24 hours a day. It is, therefore, said that it will be difficult to calculate the total fulltime earnings of home-workers.
53**.** The words in section 27 of the act are "total full time earnings". One meaning of the words in the case of home-workers will be daily average hours of work done by homeworkers during the last month before leave provided such average does not exceed the daily period of work as prescribed in a notice under section 22 of the act. Such a construction would give not only full meaning to the words "full time earnings" but would also place home-workers and workers in industrial premises in the same position with regard to their leave wages. It will not cast unreasonable burden on the employer in the form of leave wages disproportionate to the amount of work done by the home-workers.
54**.** Another meaning is that the total full time earnings would be the actual total earnings as far as the workers in industrial premises as well as home-workers are concerned. With regard to the second meaning the words "full time" will not have any restriction as to hours of work. The result may be that a home-worker may have longer hours of work and larger income compared with the worker in the industrial premises, but such longer hours of work
Can be controlled by an employer both with regard to giving raw materials and allowing longer hours of work.

55**.** As a matter of fact it is found that home-workers can turn out 700 to 1000 pieces a day. That is the view expressed in the report of the royal commission on labour in india 1931 as also the labour investigation committee report, 1944 and the report of the court of enquiry appointed by the government of madras, 1947. The minimum wages prescribed by various states for these home-workers are between rs 2 to rs 4.30 for rolling 1000 pieces. Therefore, the financial burden on account of leave wages will not be higher to constitute any unreasonable restriction.
56**.** The bombay high court in the present appeals said that the provisions of sections 26 and 27 of the act constitute unreasonable restriction not only with regard to home-workers but also with regard to employees in industrial establishment. The reason given is that if employees in industrial premises do not choose to work for all days for the full hours notified it will be equally impossible to determine what his full time earnings will be and what his daily average of the full time earnings for the days on which he worked during the preceding month will be. The mysore high court in the present appeal correctly said that the homeworkers will get wages for the leave period corresponding to the number of beedis manufactured by him for a particular employer. The hours of work will in that case be immaterial, because if he worked for less number of hours he would obtain lesser payment. There will thus be no difficulty in computing wages payable for the annual leave period. The home-worker will get leave wages corresponding to his actual earning just as the worker in the industrial premises will get leave wages corresponding to his full time earnings.
57**.** The andhra pradesh high court in the present appeal said that home-workers carry on their rolling work at homes which are neither establishments nor industrial premises. The word "establishment" as defined in section 2(*h*) of the act relates to home-workers as well. It is only industrial premises as defined in section 2(*i*) of the act which excludes private dwelling houses.
58**.** The home-workers are not required to work for a specified number of hours a day. The fact that sections 17 to 23 of the act can have no application to home-workers but only to persons employed in industrial premises does not render sections 26 and 27 of the act inapplicable to home-workers. The express language of sections 26 and 27 of the act is relateable to home-workers. They work in

establishments. The daily average of total full time earnings for the days worked during the month immediately preceding the leave is applicable to home-workers. It is because payment to home-workers is made at piece rate viz. For the number of beedis rolled. The madras high court said that sections 26 and 27 of the act have imposed unreasonable restrictions on manufacturers in regard to employees in industrial premises. The madras high court held that for working 11 days a worker would be entitled to one day as annual leave with wages. The act does not say so. The act provides that any fraction of leave for half a day or more will be treated as one day's full leave. Therefore, if on a calculation of entire leave at the rate of one day for every 20 days of work, there is any fraction of more than one day's leave so calculated or earned it would be treated as one day. It is only where there is fraction of leave earned that for such 11 days work one day's leave is to

Be given. It is not same as providing one day's leave for working only 11 days in all cases. The entitlement under the act to one day's leave for every 20 days shows that the period of 20 days is a minimum period prescribed for earning one day's leave.

59**.** The structure of sections 26 and 27 of the act is two-fold. First, so far as workers employed in industrial premises are concerned they are entitled to annual leave with wages provided they work for at least 20 days a year, for full hours of work specified in the notice. Therefore, sections 26 and 27 of the act will not apply to workers in industrial premises who have not worked for full working hours according to the notice for 20 days a year. Second,

Sections 26 and 27 of the act will apply to home-workers who work at least 20 days a year and the day within the expression 20 days will mean any period of day because there is no notified hour of work.

60**.** In view of the fact that the two sections are applicable both to workers in industrial

Premises and home-workers the expression "total full time earnings" occurs in section 27 of the act. Section 17 deals with working hours. Section 22 speaks of notice of periods of work. Sections 17 and 22 refer to industrial premises and are therefore not applicable to homeworkers. The total full time earnings for workers in industrial premises will attract the specified periods of work contemplated in section 22 of the act. With regard to a homeworker the wages during leave period will be calculated with reference to the daily average of his total full time earnings for the days on which he had worked during the preceding month. In the case of home-workers it will be the average of 30 days earning. To illustrate, if the worker has earned different sums on different days during the month the sums will be added for the purpose of arriving at an average. The computation in the case of home-workers will be first with reference to the total earning during the month and full time earning is the average thereof. The second explanation to section 27 of the act shows that for the purpose of determining the wages payable to home-worker during leave period day shall mean any period during which such home-worker, was employed during any period of 24 hours. Therefore, so far as the home-worker is concerned day shall mean any period. 61**.** The manner in which leave wages for workers in industrial premises and homeworkers are to be calculated may be illustrated with reference to the beedis and cigar workers (conditions of employment) mysore rules, 1969. Section 44(2) of the act provides that the state government may make rules inter alia for the records and register they shall

Maintain in establishments in compliance with the provisions of the act and the rules thereunder. Establishment means both industrial premises and any private house where the home-workers carry on their work. Rule 33 of the mysore rules framed under the act speaks of maintenance of records and registers in form 8. Form 8 has 8 columns as the muster roll of employees in industrial premises. Rule 33(2) of the mysore rules speaks of records for home-workers in form 14. There are four columns showing the date, whether work wasdone, number of beedis manufactured and the wages received. At the foot of form xiv it shows the total number of days worked in the month. Therefore, in the case of home-workers wages are calculated on the basis of these records, namely, the number of days worked and second the amount of wages received. In the case of home-workers hours of work are not necessary. In the case of employees in industrial premises columns 8 and 9 show inter alia thegroup, relay, shift number and period work. With regard to home-workers payment is made at the rate of 1000 pieces of beedis. Leave with wages in the case of home-workers is on that basis of

payment. The log book is a form of guarantee and security for both the employer and the worker in regard to quality of work and relative payment.

62**.** Reference was made to four earlier decisions of this court for the purpose of showing that sections 26 and 27 are inapplicable to home-workers. These decisions are ***shri chintaman rao*** **verses.** ***State of madhya pradesh****,* ***shri birdhichand sharma*** **verses.** ***First civil judge, nagpur shankar balaji waje*** **verses.** ***State of maharashtra*** and ***bhikuse yamasa kshatriya*** **(*p*)** ***ltd. V*****erses** ***union of india***. These four cases were decided with reference to the factories act. Sections 79 and 80 of the factories act were considered there. These two sections are in similar language to sections 26 and 27 of the act. The only difference is that unlike section 79 of the factories act, in section 26 of the act there is no requirement of working for 240 days a calendar year for entitlement to annual leave and further that in section 26 of the act the words used are

"employee" in place of the word "worker" and the word "establishment" in place of the word "factory" in the factories act.

63**.** In ***chintaman rao*** case this court held that the three ingredients and concepts of employment are first there must be an employer, second, there must be an employee and the third, there must be a contract of employment. In ***chintaman rao*** case certain independent contractors known as sattedars supplied beedis to the manager of a beedi factory. The sattedars manufactured the beedis in their own factories or they entrusted the work to third parties. The inspector of factories found in the beedi factory certain sattedars who came to deliver beedis manufactured by them. The owner of the factory was prosecuted for violation of sections 62 and 63 of the factories act for failure to maintain the register of adult workers. It was held that the sattedars and their "coolies" (*sic*) were not workers within the definition of section 2(1) of the factories act. The ratio was that the sattedars were not under the control of the factory management and could manufacture beedis wherever they pleased. Further the "coolies" (*sic*) were not employed by the management through the sattedars.

64**.** In ***birdhichand sharma*** case the appellant employed workmen in factory. The workmen were not at liberty to work at their houses. Payment was made for piece rates according to the amount of work done. The workmen applied for leave for 15 days. The appellants did not pay their wages. The appellant contended that the workmen were not workmen within the meaning of the factories act. It was held that the workmen could not be said to be independent contractors but were workmen within the meaning of section 2(1) of the factories act. A distinction was sought to be drawn between workmen and independent contractors. It was held that though the workmen could come and go when they liked, they were piece rate workers within the meaning of the factories act. If the worker did not reach factory before midday he would be given no work. He was to work at the factory. He could not work elsewhere. He would be removed if he was absent for 8 days. His attendance was noted. If his work did not come up to the standard the pieces prepared would be rejected. The leave provided under section 79 of the factories act was held to be a matter of right when a worker had put in a minimum number of working days.

65**.** In ***shankar balaji waje*** case it was held that the labourers who used to roll beedis in the factory were not workers within the meaning of the factories act. ***Birdhichand sharma*** case was distinguished on the facts. The minority view was that the workers in ***shankar balaji waje*** case were of the same type as ***birdhichand sharma*** case*.* In ***shankar balaji waje*** case the majority view was that there was contract of service. The worker was not bound to attend the factory for any fixed hours. He could be absent from the work any day he liked and for ten days without informing the appellant. He had to take permission if he was to be absent for more than 10 days. The worker was not bound to roll beedis at the factory. He could do so at home with the permission of the appellant. There was no actual supervision. Beedis not up to the standard could be rejected. Workers were paid at fixed rates.

66**.** In ***bhikuse yamasa*** case this court had to consider whether a notification under section 85 of the factories act giving the beedi rollers benefits provided to workers in the factories act was valid. Beedi rollers were refused benefits by the owners of beedi manufacturing establishments. Therefore, the state government issued notification under section 85 of the factories act. Section 85 of the factories act provides that the state government may declare that all or any of the provisions of the

act shall apply to any place where a manufacturing process is carried on notwithstanding that the number of persons employed therein is less than the number specified in the definition of factory or where the persons working therein are not employed by the owner but are working with the permission

Of, or under agreement with, such owner. The state government designated certain places to be deemed factory and the persons working there to be deemed workers. This court said that extension of the benefits of the factories act to premises and workers not falling strictly within the purview of the factories act is intended to serve the same purpose. On this reasoning the provisions for the benefit of deemed workers were held to be reasonable within the meaning of article 19(1)(*g*) of the constitution. 67**.** These four decisions were relied on by counsel for the petitioners and the appellants to show that home-workers would not be entitled to leave on the ground that sections 26 and 27 of the act were unworkable in regard to home-workers and constituted unreasonable restrictions. The imposition of liability to afford to home-workers benefits like annual leave with wages cannot be said to be unreasonable restriction on the right of the owner to carry on his business. In the act, the word, "employee" includes a home-worker. The word "establishment" applies to a private house. The second explanation to section 27 of the act indicates that a home-worker is dealt with by the section. Sections 26 and 27 of the act are to be read together. In ***birdhichand sharma*** case this court held that if a worker had put in a number of working days he would be entitled to leave. This court did not go into a question as to what the meaning of the word "day of work" would be to entitle a worker annual leave under section 79 of the factories act in ***birdhichand sharma*** case.

68**.** In the present case the act contemplates that home-workers are at liberty to work at any time and for any number of hours a day. The act cannot be said to be not applicable to home-workers. The act has made a distinction between the two types of workers and has made the act applicable to both the types of workers. Even with regard to workers in industrial premises where period of work is notified it is not obligatory on the part of the employer to allow an employee to work in the industrial premises for the whole of the notified period of work. The employee can be asked to work for the whole of the notified period of work which will not exceed 9 hours a day or 48 hours a week as provided in section 17 of the act. In ***shankar balaji waje*** case the majority view was that the expression "total full time earnings" mean earnings in a day by working full time on that day and full time was to be in accordance with the period given in the notice displayed in the factory for the particular day. On that ground the workers in ***shankar balaji waje*** case were held not to be entitled to wages for the leave period because such wages could not be calculated when the terms of work were such that they could come and go when they liked and no period of work was mentioned with respect to workers. The majority view in ***shankar balaji waje*** case will not

Apply to sections 26 and 27 of the act because the home-workers are entitled to wages during the leave period and such wages do not in the case of home-workers depend upon the consideration whether a particular home-worker works for a whole of the notified period of work. The basis of calculation of wages in the case of home-workers is the daily average of his total full time earnings for the days on which he had worked during the month immediately preceding his leave. If a home-worker does full time work by rolling out 1000 pieces he will get corresponding amount of wages. Both the factory workers in industrial premises and home-workers in establishments are similarly placed by proper control over or regulation of supply of raw materials to home-workers. Just as the total full time earnings of the worker in an industrial premises are calculated with reference to hours of work each day, similarly the full time earnings of the home-worker are calculated by the earnings of each day which are kept under control by supply of measured raw materials to produce the requisite number of beedis which a worker can produce a day within his hours of work in establishment. So far as home-workers are concerned, the payment is made at piece rate and it is not material in their case about specified hours of work because they will get lesser payment if they will not work for the same number of hours as workers in industrial premises. The provisions of sections 26 and 27 are applicable to home-workers and workers in industrial premises are also capable of being made applicable without any reasonable restrictions on employers.

69**.** It has been contended that section 31 of the act which provides one month's notice in lieu of notice of dismissal was an unreasonable restriction. The reason advanced was that the act has not defined the word "wages" and therefore it is not possible to calculate wages. Section 27 of the act prescribed the rate for calculating wages during the period of leave. Section 39(1) of the industrial disputes act applies to matters in respect of every industrial premises. Section 2(*rr*) of the industrial disputes act defines wages. The definition of wages in the industrial disputes act applies to workers in industrial premises contemplated by the act. Home-workers are not included in industrial premises because they work in private dwelling houses which are establishments. The definition of wages in the industrial disputes act will apply to workers who are paid on monthly basis. Section 28(1) of the act empowers the state government to direct that the provisions of the payment of wages act, 1936 shall apply to employees in establishments to which the act applies. Section 2(6) of the payment of wages act defines "wages" to include *inter alia* any remuneration to which the person employed is entitled in respect of any leave period. Some aid may be had from the definition of wages in the payment of wages act viz. Wages include leave wages. Therefore, the word "wages" in section 31 of the act will mean wages which are calculated under section 27 of
The act. This can be calculated both in the cases of workers in industrial premises and homeworkers in establishments. Therefore, the provisions contained in section 31 of the act cannot be said to be unreasonable restrictions.
70**.** The petitioners and the appellants next contended that rule 37 of the maharashtra rules and rules 29 of the mysore rules framed under section 44 of the act imposed unreasonable restrictions on the beedi and cigar manufacturers. Rule 37 of the maharashtra rules provides that no employer or contractor shall ordinarily reject as sub-standard or chat or otherwise more than 5 per cent of the beedis or cigars of both received from the worker
Including a home-worker. Rule 37(2) of the maharashtra rules further provides that where any beedi or cigar is rejected as sub-standard or chhat or otherwise on any ground other than the ground of wilful negligence of the worker, the worker shall be paid wages for the pieces so rejected at one half of the rates at which wages are payable to him for the beedis or cigars or both which have not been so rejected.
71**.** Rule 29 of the mysore rules provides that no employer or contractor shall ordinarily reject as sub-standard or chhat or otherwise more than 2 per cent of the beedis or cigars or both received from the worker including a home-worker. It is also provided there that the employer or contractor may effect such rejection up to 5 per cent for reasons to be recorded and communicated in writing to the worker.
72**.** Rule 29 of the kerala rules is identical to rule 29 of the mysore rules except that instead of 2 per cent it provides for 2.5 per cent as a limit for rejection.
73**.** The kerala high court held that kerala rule 29 fixes arbitrary percentage and is not in the interest of the general public. The imposition of 5 per cent by the proviso to rule 29 was said by the kerala high court to be arbitrary. It was said that the percentage of rejection might be higher than 5 per cent but the fixed limit of 5 per cent would have this bad consequence, it is that quality of beedis would go down if the workers were assured that more
Than 5 per cent would not be rejected.
74**.** The mysore high court rejected the contention that mysore rule 29 imposes an unreasonable restriction. The reason given by that high court was as follows. The argument that sub-standard beedis or cigars in excess of 5 per cent cannot be rejected by the employer is unsound. Ordinarily 2 per cent rejection is permitted. Rejection up to 5 per cent is permissible only after recording reasons therefor. But if the employer finds that the quantity of substandard beedis is about 5 per cent, the matter is to be referred to the inspector. Therefore, rule 29 does not compel the employer to accept sub-standard beedis when the rejection is above 5 per cent.
75**.** The bombay high court upheld rule 37 of the maharashtra rules which allows rejection of more than 5 per cent. The 5 per cent rejection is said by the bombay high court to be an outer limit. It does not mean according to the bombay high court that the rejection must be 5 per cent. It is said that the contractors by reason of their experience will find 5 per cent rejection to be reasonable. The

experience suggests that the outer limit of 5 per cent is fairly reasonable. It is difficult to imagine that no limit should be fixed. The bombay high court further found that even for sub-standard beedis there is a market though at a lesser rate. The bombay high court further found that pilfering of tobacco was an accepted vice of the industry. Inspite of that malady rejection in the industry hardly exceeded 3 per cent. The bombay high court found 5 per cent rejection to be reasonable.

76**.** The maximum limit of 5 per cent for the rejection of beedis is, therefore, based on experience in the industry and secondly the employer can reject more than 5 per cent by raising a dispute before the appropriate authority.

77**.** On behalf of the petitioners and the appellants it was said that the word "substandard" by itself would offer no guidance for rejection and confer arbitrary power. Section 39(1) of the act provides that the provisions of the industrial disputes act shall apply to matters arising in respect of every industrial premises and section 39(2)(*c*) of the act provides that notwithstanding anything contained in sub-section (1) a dispute between an employer and employee relating to the payment of wages for beedi or cigar or both rejected by an employer shall be settled by such authority and in such manner as the state government may by rules specify in that behalf. Section 44(2)(*r*) of the act provides for making of rules with regard to the manner in which sorting or rejection of beedi or cigar or both and disposal of rejected beedi or cigar or both shall be carried out. The mysore rule 27 provides that any dispute between an employer and employee in relation to rejection by the employer of beedi or cigar or both make by an employee may be referred in writing by the employer or the employee or employees to the inspector for the area who shall after making such enquiry as he may consider necessary and after giving the parties an opportunity to represent their respective cases, decide the dispute and record the proceedings in form x. Form x relates to

Record of decision of order. Various particulars, inter alia, are substance of the dispute, substance of the evidence taken and findings and statement of the reasons therefor. There is also a right of appeal from the decision of the inspector to the chief inspector.

78**.** It therefore appears that the rules about rejection and fixing maximum limit of 5 per cent are reasonable and fair. First, experience in the industry as recorded in the report of minimum wages committee supports such limit of 5 per cent as normal and regular. Second, inspite of 5 per cent maximum limit it is permissible to the employer to reject more than 5 percent. For that a dispute is raised before the appropriate authorities set up under the rules. The state government under section 44(2)(*r*) and (*s*) of the act is empowered to make rules in respect of the manner in which sorting or rejection of beedi or cigar or both and disposal of rejected beedi or cigar or both shall be carried out and the fixation of maximum limit of rejection of beedi or cigar or both manufactured by an employee. Section 39(2) of the act provides that a dispute between an employer and employee relating inter alia to rejection by

The employer of beedi or cigar or both made by an employee and the payment of wages for beedi or cigar rejected by the employer shall be settled by such authority and in such manner as the state government may by rules specify in that behalf. Rule 27 of the mysore rules as well as rule 27 of the kerala rules provide that a dispute between an employer and employee or employees in relation to rejection by the employer of beedi or cigar or the payment of wages for the beedi or cigar rejected by the employer may be referred in writing by the employer or employee to the inspector for the area. The inspector after hearing the parties shall decide the issue. The aggrieved party has the right of appeal to the chief inspector.

79**.** Under rule 29 of the mysore rules rejection of more than 2 per cent and up to 5 per cent is required to be for reasons in writing. Rule 37 of the maharashtra rules provides for rejection up to 5 per cent without any obligation to give reasons. It was said by the petitioners that the mysore and kerala rules fixed the limit for rejection but the maharashtra rule did not do so. Both the rules fixed 5 per cent as the maximum limit for rejection. The mysore and the kerala rules have nothing corresponding to maharashtra rule 37(2) requiring payment at half the rates for beedis rejected as sub-standard, if the same was not due to the wilful negligence of the employee. It was, therefore, said that either up to 5 per cent rejection under maharashtra rule 37 or rejection of more than 5 per

cent the employer was under an obligation to make payment at half of the rate as rejected beedis if such rejection was not due to the wilful negligence of the employee.

80**.** It has, therefore, to be ascertained as to whether the rules prohibit employer from rejecting more than 5 per cent even if they are found to be sub-standard and secondly whether the requirement to pay wages at one half of the rate for the rejected beedis is a reasonable restriction. The rules provide for rejection up to 5 per cent. The rules further used the word "ordinarily" in regard to such rejection. In case of rejection of more than 5 per cent rule 27 of the mysore rules and rule 37 of the maharashtra rules provide for raising of a dispute in regard to such rejection. The dispute contemplated is in relation to rejection of beedis and the payment of wages for the rejected beedis. The words "rejection" and "rejected" indicate that the dispute is raised because of the rejection of beedis. The contention advanced on behalf of the petitioner that before a dispute is raised no rejection is possible is erroneous. The dispute arises because of rejection. Therefore, rules 27 and 29 of the mysore rules and rule 27 of the kerala rules do not impose any unreasonable restriction on the right of rejection.

81**.** Maharashtra rule 27 also permits rejection of more than 5 per cent and raising of disputes. The contention on behalf of the petitioners that the maharashtra rule which requires payment at one half of the rate for the rejected beedis on any ground other than the ground of wilful negligence of the worker is an unreasonable restriction is not correct. The bombay high court correctly held that the experience in the industry is that there is a market for substandard beedis. It is also reasonable to hold that home-workers will be interested in seeingthat the beedis are not sub-standard because in the process home-workers would be earning less. The maharashtra rule is intended to eliminate exploitation of illiterate workers who are mostly women. The rules with regard to rejection are, therefore, reasonable. It is also open to the employers to raise dispute for rejection above 5 per cent.

82**.** The petitioners and the appellants challenged section 37(3) of the act as unworkable. That sub-section provides that the provisions of the maternity benefit act, 1961 shall apply to every establishment as if such establishment were an establishment to which the said 1961 act had been applied by notification under section 2(1) of the said 1961 act. The proviso to section 37(3) of the act states that maternity benefit act in its application to a home-worker

Shall apply subject to certain modifications. The madras high court upheld the contention and said that since a worker in a beedi industry is not required to work regularly for any prescribed period of hours in a day or even day after day for any specified period, from the very nature of the case, provisions of the said 1961 act are unworkable with regard to such home-workers. It may be stated that the reasonableness of section 37(3) of the act was not

Challenged. An argument which was submitted was that it was difficult to locate homeworkers. That argument was not pressed in this court. The provisions of the said 1961 act in sections 4 and 5 thereof deal with prohibition of employment of, or work by, women, prohibited during certain period and right of payment of maternity benefit. Section 4 of the 1961 act does not present any difficulty because it speaks of prohibition of work by a woman in any establishment during six months immediately following the day of her delivery. Further, section 4 provides that on a request being made by a pregnant woman she will not be required to do work of an arduous nature or work which involves long hours of standing and that period is one month immediately preceding the period of six weeks before the date of her expected delivery. Section 5(2) of the said 1961 act provides that no woman shall be entitled

To maternity benefit unless she has actually worked in any establishment for a period of not less than 160 days in the twelve months immediately preceding the date of her expected delivery. There is no difficulty with regard to working of these sections in regard to maternity benefits to women employed in an establishment.

83**.** For these reasons, we held that parliament had legislative competence in making this act and the provisions of the act are valid and do not offend any provision of the constitution.

(commission agents/deposit collectors of banks, although were not regular employees, held, nonetheless covered further held, relationship of master and servant did exist between the bank and such workmen.)

Facts and contentions of the parties

The government of india, ministry of labour by an order dated 3-10-1980 referred the following dispute under section 7-a and 10(l)(d) of the industrial disputes act between the management of 11 banks and the deposit collectors to the industrial tribunal, hyderabad for adjudication:

"whether the demands of the commission agents or as the case may be deposit collectors employed in the banks listed in the annexure that they are entitled to pay scales, allowances and other service conditions to regular clerical employees of those banks is justified? If not, to what relief are the workmen concerned entitled and from which date?"

Before the tribunal parties led evidence both oral and documentary. After hearing the parties the tribunal by its award dated 22-12-1988 held that the deposit collectors were workmen of the bank concerned.

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Hussainbhai* verses *alath factory thezhilali union

V.r. Krishna iyer, j. -the petitioner before us in this special leave petition is a factory owner manufacturing ropes. A number of workmen were engaged to make ropes from within the factory, but these workmen, according to the petitioner, were hired by contractors who had executed agreements with the petitioner to get such work done. Therefore, the petitioner contended that the workmen were not *his* workmen but the contractors' workmen. The industrial award, made on a reference by the state government, was attacked on this ground. The learned single judge of the high court, in an elaborate judgment, rightly held that the petitioner was the employer and the members of the respondent-union were employees under the petitioner. A division bench upheld this stand and the petitioner has sought special leave from this court.

2. It is not in dispute that 29 workmen were denied employment which led to the reference. It is not in dispute that the work done by these workmen was an integral part of the industry concerned; that the raw material was supplied by the management; that the factory premises belonged to the management; that the equipment used also belonged to the management and that the finished product was taken by the management for its own trade. *The* workmen were broadly under the control of the management and defective articles were directed to be rectified by the management. This concatenation of circumstances is conclusive of the question. Nevertheless, this issue is being raised time and again and so we proceed to pass a speaking order. We should have thought that even cases where this impressive array of factors were not present, would have persuaded an industrial court to the conclusion that the economic reality was employer-employee relationship and, therefore, the industrial law was compulsively applicable. Even so, let us look at the issue afresh.

3. Who is an employee, in labour law? That is the short, die-hard question raised here but covered by this court's earlier decisions. Like the high court, we give short shrift to the contention that the petitioner had entered into agreements with intermediate contractors who had hired the respondent-union's intermediate workmen and so no direct employer-employee *vinculum juris* existed between the petitioner and the workmen.

4. This argument is impeccable in *laissez faire* economics 'red in tooth and claw' and under the contract act rooted in english common law. But the human gap of a century yawns between this strict doctrine and industrial jurisprudence. The source and strength of the industrial branch of third world jurisprudence is social justice proclaimed in the preamble to the constitution. This court in ***ganesh beedi*** case has raised on british and american rulings to hold that mere contracts are not decisive and the complex of considerations relevant to the relationship is different. Indian justice, beyond atlantic liberalism, has a rule of law which runs to the aid of the rule of life. And life, in conditions of poverty aplenty, is livelihood, and livelihood is work with wages. Raw societal realities, not fine-spun legal niceties, not competitive market economics but complex protective principles, shape the law when the weaker, working class sector needs succour for livelihood through labour. The conceptual confusion between the classical law of contracts and the special branch of law sensitive to exploitative situations accounts for the submission that the high court is in error in its holding against the petitioner.

5. The true test may, with brevity, be indicated once again. Where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers' subsistence, skill and continued employment. If he, for any reason, chokes off, the worker is, virtually, laid off. The presence of intermediate contractors with whom alone the workers have immediate or direct relationship *ex contractu* is of no consequence when, on lifting the veil or looking at the conspectus of factors governing employment, we discern the naked truth, though draped in different perfect paper arrangement, that the real employer is the management, not the immediate contractor. Myriad devices, half-hidden in fold

after fold of legal form depending on the degree of concealment needed, the type of industry, the local conditions and the like may be resorted to when labour legislation casts welfare obligations on the real employer, based on articles 38, 39, 42, 43 and 43-a of the constitution. The court must be astute to avoid the mischief and achieve the purpose of the law and not be misled by the *maya* of legal appearances.

6. If the livelihood of the workmen substantially depends on labour rendered to produce goods and services for the benefit and satisfaction of an enterprise, the absence of direct relationship or the presence of dubious intermediaries or the make-believe trappings of detachment from the management cannot snap the real life-bond. The story may vary but the inference defies ingenuity. The liability cannot be shaken off.

7. Of course, if there is total dissociation in fact between the disowning management and the aggrieved workmen, the employment is, in substance and in real-life terms, by another. The management's adventitious connections cannot ripen into real employment.

8. Here, on the facts, the conclusion is correct and leave must be refused.



Miss a. Sundarambal verses government of goa, daman & diu

(an educational institution is an industry, but teachers in an educational institution cannot be treated as workman.)

Facts

The appellant, miss a. Sundarambal, was appointed as a teacher in a school conducted by the society of franciscan sisters of mary at caranzalem, goa. Her services were terminated by the management by a letter dated april 25, 1975. After failed in her several efforts in getting the order of termination cancelled, she raised an industrial dispute before the conciliation officer under the industrial disputes act 1947. The conciliation proceedings failed and the government of goa, daman and diu declined to make a reference under s. 10(l)(c) on the ground that the appellant was not a workman under s.2(s) of the act. Thereupon, the appellant filed a write petition before the high court of bombay, panaji bench, goa for issue of a writ in the nature of mandamus requiring the government to make a reference under s. 10(1)(c) of the act to the labour court to determine the validity of the termination of her services. The high court held that the appellant was not a workman by its judgement dated september s. 1983. The appellant then filed the appeal by special leave in the supreme court,

Issue

1. Whether the school, in which the appellant was working, was an industry?
2. Whether the appellant was a 'workman[7] employed in that industry?

Decision

The court held that even though an educational institution has to be treated as an 'industry, teachers in an educational institution cannot be considered as workmen.

Bang/ore water supply & sewerage board verses r. Rajappa followed. *The corporation of the city of nagpur verses its employees* followed. *May and baker (india) ltd. Verses workman,* (1961) followed. *University of delhi. Ram nath,* (1963) overruled.

Fn *university of delhi verses ram nath* it was held that the university of delhi, which was an educational institution and miranda house, a college affiliated to the said university, also being an educational institution could not come within the definition of the expression "industry' as defined in s.2(i) of the act. But in *bangalore water supply and sewer age board rajappa* the decision in *university of delhi verses ram nath* was overruled. Krishna lyer, j. Who delivered the majority judgement in *bangalore* case observed thus: (para 143).

"where a complex of activities, some of which qualify for exemption, other not, involves employees on the total undertaking, some of whom are not "workmen' as in the university of delhi case, or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the *corporation of nagpur,* will be the true test. The whole undertaking will be "industry" although those who are not 'workmen' by definition may not benefit by the status."

Thus an educational institution has to be treated as an industry in view of the decision in *bangalore water supply & sewerage board* verses *rajappa* but whether teachers in an educational institution can be considered as workmen was not decided in that case.

In para 7 of its judgement the court reproduced the definition of workman as given in s.2(s) of the act. In order to be a workman, a person should be one who satisfies the following conditions:

(1) he should be a person employed in an industry for hire or rewards;
(2) he should be engaged in skilled or unskilled manual, supervisory, technical or clerical work; and

(3) he should not be a person falling under any of the four clauses, e.g., (1) to (4) mentioned in the definition of "workman' in s.2(s).

The question for consideration before the court was "whether a teacher in a school falls under any of the four categories, namely, a person doing any skilled work, technical work or clerical work." if he does not satisfy any one of the above descriptions he would not be a workman even though he is an employee of an industry as settled in *may and baker (india) ltd. Verses workmen.* In that case a person employed by a pharmaceutical firms as a representative (for canvassing orders), whose duties consisted mainly of canvassing orders and any clerical or manual work that he had to do was only incidental to his main work of canvassing, was held not a workman under s.2(s) of the act because he was not mainly employed to do any skilled or unskilled manual or clerical work for hire or reward which were the only two classes of employees who qualified for being treated as 'workman' under the definition of the expression 'workman in the act, as it stood then. *As a result of the above decision a separate law entitled the sales promotion employees (conditions of service) act, 19 76 was passed and s. 2(s) was amended by including persons doing technical work as well as supervisory work.*

The court held that "the teachers employed by educational institutions whether the said institution are imparting primary, secondary, graduate or post-graduate education cannot be called as 'workmen' within the meaning of s.2(s) of the act. Imparting of education which is the main function of teachers cannot be considered as skilled or unskilled manual work or supervisory work or technical work or clerical work. Imparting of education is in the nature of a mission or noble vocation. A teacher educates children, and makes them fit to become responsible citizens. Children grow under the care of teachers. The clerical work, if any they may do, is only incidental to their principal work of teaching. We agree with the reasons given by the high court for taking the view that teachers cannot be treated as 'workmen' as defined under the act. It is not possible to accept the suggestion that having regard to the object of the act, all employees in an industry except those falling under the four exceptions (1) to (4) in s.2(s) of the act should be treated as workmen. The acceptance of this argument will render the words 'to do any skilled or unskilled manual, supervisory, technical or clerical work' meaningless. A liberal construction as suggested would have been possible only in the absence of these words. The decision in *may and baker (india) ltd. Verses workmen* precludes us from taking such a view. *We, therefore, hold that the high court was right in holding that the appellant was not a 'workman' though the school was an industry in view of the definition of 'workman' as it now stands."*

Note: *a. Sundarambal* was affirmed by the seven-judge constitution bench in *h.r. Adyanthaya.*

H.r. Adyanthaya verses . Sandoz india ltd.

(in order to fall within the definition of workman, a per son must be employed to do any of categories of work mentioned in the main body of the definition)

issue

Whether the 'medical representatives' as they are commonly known, are workmen according to the definition of 'workman' under section 2(s) of the industrial disputes act, 1947?

decision of the supreme court

The definition of workman, as it stood originally when the industrial disputes act came into force w.e.f. 1-4-1947, read as follows:

"(s) 'workman' means any person employed (including an apprentice) in any industry to do any skilled or unskilled, manual or clerical work for hire or reward and includes, for the purposes of any proceeding under this act in relation to an industrial dispute, a workman discharged during that dispute, but does not include any person employed in the naval, military, or air services of the crown."

It was amended by amending act 36 of 1956 which came into force from 29.8.1956 to read as follows:

"(s) 'workman' means any person (including an apprentice) employed in any industry to do any skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed in implied, and for the purposes of any proceeding under this act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person."

The change brought about by this amendment was that the persons employed to do 'supervisory' and 'technical' work were also included in the definition for the first time by this amendment, although those who were employed in a supervisory capacity were so included in the definition provided their monthly wage did not exceed rs. 500. The definition of'workman[1] was further amended by amendment 46 of 1982 which was brought into force w.e.f. 21.8.1984. It read as—

"(s) 'workman[1] means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person..."

The first change brought about by this amendment was that whereas earlier only those who were doing unskilled or skilled manual work were included in the said definition, now those who did any unskilled or skilled work, whether manual or not, came to be included in it. The second and the most important change that was brought about was that those persons who were employed to do 'operational' work were also brought within the fold of the said definition. Other changes which the definition of 'workman' underwent are not relevant for the instant case.

The court gave reference of a number of decided cases some of which are as follows:

In *may & baker (india) ltd. Verses workmen,* air 1967 sc 678, the court found that the main work of the medical representatives was that of canvassing sales. Any clerical or manual work that he had to do was incidental to the said main work, and could not be more than a small fraction of the time for which he had to work. In the

circumstances the court held that medical representatives are not workmen under the act. The dispute in question has arisen prior to 6-1-1956.

In *western india match co. Ltd. Verses workmen* popularly known as wimco case), it was held that sales is as much an essential part of an undertaking which is established for the manufacture and sale of a product. Employees working in the sales office were held to be workmen as 75% of their work was clerical in the instant case.

In *burniah shell oil storage & distribution co. Of india ltd. Verses burnt ah shell management staff association,* air 1971 sc 922, the dispute in question had arisen prior to 28-10-1967. It was held that the main job of the sales engineering representatives and district sales representatives was canvassing and obtaining orders. On these facts, the court held that the work they were doing was neither manual nor clerical nor technical nor supervisory, and further added that the work of canvassing and promoting sales could not be included in any of the said four classifications. Thus they were held to be not workmen under the industrial disputes act, 1947.

In *s.k. Shanna verses mahesh chandra,* (1983) 4 scc 214, the dispute in question arose on account of dismissal of the appellant-development officer w.e.f. 8-2-1969. The three-judge bench of the court did not refer to the earlier decision in *may & baker, wimco* and *burmah shell* cases. The court found that the principal duty of a development 6fficer was to organise and develop the business of the corporation in the area allotted to him, and for that purpose, to recruit active and reliable agents, to train them, to canvass new business and to render post-sale services to policy holders even so,, he had no authority either to appoint the agents or to take disciplinary action against them. He does not supervise the work of the agents though he was required to train them and assist them. He was to be friend, philosopher and guide of the agents working within his jurisdiction and no more. The agents are not his subordinates. He has no subordinate staff working under him. Thus he was not engaged in any administrative or managerial work and therefore, he was a workman within the meaning of the id act.

In *ved prakash gupta verses delton cable india (?) Ltd.,* (the dispute had arisen on account of dismissal of security inspector. On the facts, the court held that the substantial duty of the employer was that of a security inspector at the gate of the factory and it was neither managerial nor supervisory in nature in the sense in which those terms are understood in industrial law. This decision did not refer to *may & baker, wimco* and *burmah shell* cases and instead followed the ratio of the earlier decision in *s.k. Verma* case.

The legal position was summarised by the court as follows:

"till 29-8-1956 the definition of workman under the id act was confined to skilled and unskilled manual or clerical work and did not include the categories of persons who were employed to do 'supervisory' and 'technical' work. The said categories came to be included in the definition w.e.f. 29-8-1956 by virtue of the amending act 36 of 1956. It is, further, for the first time that by virtue of the amending act 46 of 1982, the categories of workman employed to do 'operational' work came to be included in the definition. What is more, it is by virtue of this amendment that for the first time those doing non-manual unskilled and skilled work also came to be included in the definition with the result that the persons doing skilled and unskilled work whether manual or otherwise, qualified to become workmen under the id act."

The court further said:

"we thus have three three-judge bench decisions which have taken the view that a person to be qualified to be a workman must be doing the work which falls in any of the four categories, viz., manual, clerical, supervisory or technical and two two-judge bench decisions which have by referring to one or the other of the said three decisions have reiterated the said law. As against this, we have three three-judge bench decisions which have without reference to the decisions in *may & baker, wimco* and *burmah shell* cases have taken the other view which was expressly negatived, viz., if a person does not fall within the four exceptions to the said definition he is a workman within the meaning of the id act. These decisions are also based on the facts found in those cases. They have, therefore, to be confined to those facts. *Hence the position in law as it obtains today is that a person to be a*

workman under the id act must be employed to do the work of any of the categories, viz., manual, unskilled, skilled, technical, operational, clerical or supervisory. It is not enough that he is not covered by either of the four exceptions to the definition. We reiterate the said interpretation"

The court then -referred to the relevant provisions of the sales promotion employees (conditions of service) act, 1976 (the 'spe act') which came into force w.e.f. 6-3-1976 and applied forthwith to every establishment engaged in pharmaceutical industry by virtue of its s. 1(4). The definition of sales promotion employee in clause (d) of section 2(d) of spe act *as it originally enacted read* as follows:

"(d) 'sales promotion employee' means any person by whatever name called (including an apprentice) employed or engaged in any establishment for hire or reward to do any work relating to promotion of sales or business, or both, and—

(1) who draws wages (being wages, not including any commission) not exceeding seven hundred and fifty rupees per mensem; or

(2) who had drawn wages (being wages, including commission) or commission only, in either case, not exceeding nine thousand rupees in the aggregate in the twelve months immediately preceding the months in which this act applies to such establishment and continues to draw such wages or commission in the aggregate, not exceeding the amount aforesaid in a year.

But does not include any such person who is employed or engaged mainly in a management or administrative capacity."

The aforesaid definition was expanded by act 48 of in 1986 w.e.f. 6-5-1987, so as to include all sales promotion employees without a ceiling on their wages except those employed or engaged in a supervisory capacity drawing wages exceeding rs. 1600 per mensem and those employed or engaged mainly in managerial or administrative capacity.

Section 6(2) of the spe act made the provisions of the industrial disputes act, as in force for the time being, applicable to the medical representatives stated as follows:

"(2) the provisions of the industrial disputes act, 1947 (14 of 1947), as in force tx>r the time being, shall apply to, or in relation to, sales promotion employees as they apply to, or in relation to, workmen within the meaning of the act and for the purposes of any proceeding under that act in relation to an industrial dispute, a sales promotion employee shall be deemed to include a sales promotion employee was has been dismissed, discharged or retrenched in connection with, or as, a consequence of, that dispute or whose dismissal, discharge or retrenchment had led to that dispute."

In appeared to the court that the spe act was brought on the statute books as a result of the court's decision in *may & baker* case.

The court held that the classification made between the two categories sales promotion employees, viz, those drawing wages upto a particular limit and those drawing above it, is fairly intelligible. The object of the legislation further appears to be to give protection to the weaker sections of the employees belonging to the said category. The extension of the protective umbrella could not as a matter of right, therefore, be demanded by those who draw more wages. Even in the definition of workman under id act as well the spe act, the classification of those employed to do supervisory work has been made on the basis of their monthly income although the work done by the two sections of the workmen is the same, viz, supervisory and those drawing wages above the particular limit has been excluded from the said definition. Thus the definition clause was held not discriminatory.

***S.k.* Maini verses . M/s caroria sahu co. Ltd.**

(an employee discharging managerial duties and functions may not, as a matter of course, be invested with the power of appointment and discharge of other employees.)

Facts

The appellant shri s.k, maini was working as the shop manager/in-charge of the respondent-company m/s. Carona sahu company limited. On an allegation of misconduct against *the* appellant, a domestic enquiry was caused by the respondent-company and by order dated march 12, 1981 the service of the appellant was terminated, on september 28, 1981, government of punjab referred the following dispute for adjudication to the labour court, jalandhar: "whether the termination of service of shri s.k. Maini is justified and in order? If not to what relief and amount of compensation is he entitled?

Before the labour court a preliminary[7] objection was raised by the respondent-company as to the maintainability of the said reference by contending that shri s.k. Maini was not a workman within the definition of section 2(s) of the industrial disputes act, 1947 because being a shop manager/!n-charge of the shop, he had been discharging mainly managerial and administrative functions and had been supervising the works of other employees subordinate to him for running the said shop and even if he was a supervisor at the relevant time, shri s,k. Maini was drawing a salary of more than rs. 500 per month. Hence, he could not be held to be a workman under the industrial disputes act. Accordingly, the reference was not maintainable and shri maini was not entitled to get any relief from the labour court.

The labour court, jalandhar, *inter alia* came to the finding that although shri mains was a shop manager/i n-charge of the shop but his duties were mainly clerical and he had no independent authority to appoint or discharge the employees and to charge-sheet them and his functions could not be held mainly to be supervisory or managerial. Accordingly, shri maini was a workman under the industrial disputes act

As aforesaid, the respondent-company challenged the validity of such award of the labour court before the punjab and haryana high court, the learned single judge of the punjab and haʳyana high court *inter alia* came to the finding after analyzing the powers a < j responsibilities of shri mains as shop manager/in charge and evidence on record, that the predominant duties of shri maini were administrative or managerial and to some extent supervisory in nature. It was also held by the learned single judge that the power to employ or dismiss or even initiate disciplinary action was not the sole criterion to decide the true nature of duties of a manager or administrator. Such test was relevant to determine whether the duties were supervisory in nature. The learned judge was of the view that although some of the duties like maintaining accounts, filing certain forms were clerical in nature, but the major job of the employee concerned was administrative or managerial. Accordingly, the employee was not workman under section 2(s) of the industrial disputes act,

Issue

Whether the appellant was a workman under the id act, 1947?

Decision of the supreme court

The court held that the functions of the appellant appear to be administrative and managerial by virtue of his being in charge of the shop, he was the principle officer-in-charge of the management of the shop. It is true

that he himself was also required to do some works of clerical nature but by and large being in charge of the management of the shop he had been principally discharging administrative and managerial work. A manager or an administrate e officer is generally invested with the power of supervision in contradistinction to the stereotype work of a clerk. Within the authority indicated in the terms and conditions of his service, the appellant was authorised to take decision in the matter of temporary appointments and in taking all reasonable steps incidental to the proper running of the shop. Precisely for the said reason, the appellant had signed the statutory forms as an employer, ft should be borne in mind that an employee discharging managerial duties and functions may not, as a matter of course, be invested with the power of appointment and discharge of other employees, hence, the high court was justified in holding that the appellant was not a workman under s. 2(s) of the industrial disputes act, 1947."

The designation of an employee is not of much importance and what is important is the nature of duties being performed by the employee. The determinative factor is the main duties of the employee concerned and not some works incrementally done. A manager or administrative officer is generally vested with the power of supervision in contradiction to the stereotype work of a clerk, f f the principal function is of supervisory nature, the employee concerned will not be workman only if he draws a particular quantum of salary at the relevant time as indicated in s. 2(s).

The court said:

"in the instant case, it, however, appears to us that shri maini as manager/ . Incharge of the shop was made responsible and liable to make good such amount of credit whether such sale on credit had been made by him or by any other member of the staff in employment under him with or without his knowledge. Under the terms and conditions of service, he was asked to take charge of the shop to which his service was transferred. Mr. Maini, under the terms and conditions of service, was required to be held responsible and liable for any loss suffered by the company due to deterioration of the quality of the stock or any part thereof and loss of any of the other articles lying in the shop caused by reason of any act of negligence and for omission to take any precaution by the employees. Mr. Maini was also required to notify the company by trunk call and/or telegram not later than three hours after the discovery in the said shop of any fire, theft, burglary, loot or arson. He was required to investigate into the matter immediately and get the cause and amount of loss established by local authorities. Mr. Maini as in-charge of the shop was required to keep and maintain proper accounts as approved by the company indicating the exact amount to be paid from the receipts from the respective staff. Under clause xiii of the terms and conditions of the service, mr. Maini would remain fully responsible to the company for damages or loss caused by acts or commission of the loss of the employees of the shop. Under clause xv of the terms and conditions of service, the shop in-charge was required to keep himself fully conversant with all the regulations in force which may come into force from time to time with regard to octroi, sales tax and shops and commercial establishments act and/or any other local regulation applicable to the shop. Clause xxi indicates that non-compliance with any of the local or state acts or central acts would be viewed seriously and manager would be held responsible for any fine/penalty imposed and/or prosecution launched against the company. It also appears that in the event of a salesman being absent, the shop in-charge is empowered to appoint temporary helper for the said period to work as acting salesman. Similarly, in the event of helper being absent, the shop manager is also empowered to appoint part-time sweeper and to entrust the work of a helper to a sweeper. Such functions, in our view, appear to be administrative and managerial. By virtue of his being in-charge of the shop, he was the principal officer-in-charge of the management of the shop. We therefore find justification in the finding of the high court that the principal function of the appellant was of administrative and managerial nature. It is true that he himself was also required to do some works of clerical nature but it appears to us that by and large shri maini being in-charge of the management of the shop had been principally discharging the administrative and managerial work. A manager or an administrative officer is generally invested with the power of supervision in contradiction to the stereotype work of a clerk."

G.b. Pant university of agriculture & technology verses state of u.p.

(*workers of cafeteria, required by regulations to be maintained in a residential university and to be compulsorily used by the resident-students, were held to be employees of the university.)*

Facts

G.b. Pant university of agriculture and technology established under the u.p. Agricultural university act, 1958 happens to be a residential university having about 14 hostels to provide accommodation to the students with a cafeteria to provide food services to the residents of the hostels and others. There are about 170 employees working in these cafeterias and these are the employees who claim regulations of the service as regular employees of the university which, however, stands negated by the university authority. The records depict that the reason of refusal to accept such a claim, the disputes were referred under two separate references in terms of section 4(k) of the uttar pradesh industrial disputes act in november 1991 which were registered as references nos. 141 and 142 of 1991. The labour court upon acceptance of the claim of the employees in no certain terms found the entitlement of the employees of the cafeteria and declared the latter to be the regular employees of the university from the date of the award and held entitled to receive the same salary and other benefits as the other regular employees of the university. The university, however, being aggrieved by the award moved two writ petitions by way of challenges to the two awards under article 226 of the constitution. The high court also on a detailed scrutiny of the regulations and other materials on record dismissed the writ petitions with an observation that the impugned award of the case and do not suffer from any error of law.

Issue

Whether the workers of cafeteria were employees of the university? Decision of the supreme court

The court felt it expedient to quote a few of the regulations which unmistakably depict total control of the university in the matter of running and maintenance of the cafeteria. There are given below:

"54. It shall be compulsory for each student residing in a hostel to join the cafeteria of that hostel unless otherwise permitted by the chief warden of the hostel on the request of the guardian of the student, and the recommendation of the warden of that hostel to take food with his guardian. In that event the chief warden shall inform all officers concerned of the university, for example, comptroller, dean student welfare, hostel warden, etc.

76. The comptroller of the university shall operate the [4]gbpua food services account', issue cheques, maintain the cash book and classified accounts (unit wise/ head wise) of income and expenditure as well as students' ledgers in his office like other accounts of the university. In addition to arranging timely payment of the cafeteria bills duly authorised by the warden and ensuring recovery of the cafeteria dues from the students and staff members concerned the comptroller shall be responsible for getting the cafeteria accounts audited cent-per cent regularly.

80. The accounts clerk-cum-storekeeper of the hostel cafeteria shall be responsible for the proper and up-to-date maintenance of the cafeteria stores, store records and account books including daily-menu book, cash book, consumable stock book, daily preparation and sales register, cash credit and coupon transaction

register, store daybook *(roznamcha)* indents, challans, bill register, daily-sales sheets, cash memo book, bill book, etc. Under the direct supervision, control and guidance of the hostel manager. His functions and duties shall be as follows:

82. The other cafeteria staff including tea man, head cook, bearers, etc. Shall work in accordance with the instructions of the hostel manager/warden. The duties of these staff members shall be defined/prescribed by the warden of the hostel,

88. The accounts of the warden's office (bills and vouchers) shall be taken by the hotel manager to the office of the comptroller for scrutiny and checking.

92. The entire cafeteria staff including tea man, head cook, bearers, etc. Shall work in accordance with the instructions of the hostel manager/warden. The duties of these staff members shall be defined/prescribed by the warden of the hostel.

88. The accounts of the warden's office (bills and vouchers) shall be taken by the hotel manager to the office of the comptroller for scrutiny and checking.

92. The entire cafeteria staff shall work under the direct supervision of the warden/assistant warden in accordance with the advice of the food committee and under the administrative control of the chief warden. All cases of appointments, termination of service and other punishments and promotions, rewards etc. Shall be dealt with by the chief warden in consultation with the warden and the food committee,

93. (1) all the appointments of cafeteria staff would be made by the food committee of the hostel with the approval of the chief warden

(2) the leave, annual increments, uniform, travelling allowance, etc. To the cafeteria staff shall be governed in accordance with the policies laid down by the central food committee.

106. (1) the bills/vouchers/imprest/temporarily advance adjustment accounts and monthly food accounts duly passed by the respective food secretary/chairman, food committee to their entire satisfaction and entered in the food secretary/ chairman, food committee to their entire satisfaction and entered in the food provision control register shall be sent to the comptroller directly for scrutiny and payment/adjustment/recovery of dues expeditiously. The wardens, hostel managers and the respective food secretaries will be fully responsible for making stock entries of all purchases made in respect of their hostels. The payment will be made only if a certificate in the following form is given on the bill (rubber stamp for which could be got made for convenience):

'Certified that the goods as per specification have been received and entered in the stock books,'

(2) the warden shall have full financial and administrative control of their hostel cafeteria funds and be responsible for up-to-date maintenance control of their hostel cafeteria funds and be responsible for up-to-date preparation of monthly food accounts and submission of monthly recovery lists accurately within time and according to the procedure prescribed in the hostel cafeteria regulations. The warden/hostel manager/food secretary concerned will be fully responsible for checking of rates charged in the bills and payments will be authorised on the basis of the certification.

107. (1) similarly, the preparation of vouchers for adjustment account of temporary advances and recoupment of the permanent advance shall be done by the accounts clerk-cum-stockeeper/hostel manager which shall be checked and signed by the food secretary, warden expeditiously and the warden shall ensure that no cash is drawn and retained by the hostel cafeteria when it is not required for its immediate expenditure.

109. The hostel cafeteria's accounts clerk-cum-storekeeper shall be responsible to the warden/chief warden on the one hand and on the other be also responsible to the comptroller for correctness of the cafeteria accounts."

The workers of the cafeteria, required by regulations to be maintained by the residential university and to be compulsorily used by the resident-students, were held to be employees of the university. The university was directed to regularize services of the employees in terms of the award passed by the labour court by 31-8-2000 so as to entitle the employees of the cafeteria to obtain the monthly wages on a par with the other employees of

the university, as directed by the labour court. The arrears of salary, if there be any payable, as per the said directions, as confirmed by the high court, be paid to the canteen staff by twelve equal monthly instalments along with the regularised salary.

Management of chandramalai estate, ernakulam verses its workmen

(it *will not be right for the labour to think that for any kind of demand a strike can be commenced with impunity without exhausting reasonable avenues for peaceful achievement of their objects.)*

Facts

On august 9, 1955 the union of the workmen submitted a charter of demands to the management. Though the management agreed to fulfil some of the demands the principal demands namely price of rice and cumbly allowance remained unsatisfied. The dispute was referred for conciliation and the conciliation was held on november 30, 1955 but it failed. On the following day the union gave a strike notice and the workmen went on strike from december 9, 1955. Thus the union did not choose to wait for a reference to the industrial tribunal. It was urged on behalf of the appellant that there was nothing in the nature of the demands to justify, such hasty action. As regards the cumbly allowance the appellant had paid nothing since 1949 when it was first stopped till the union raised it on august, 1955. The grievance for collection of excess price of rice was more recent. The strike ended on jan. 5, 1956. Government had referred the dispute for adjudication to the industrial tribunal. The tribunal granted the workmen's demand on all the issues referred to it including the cumbly allowance (allowance for blankets) and reimbursement for excess charge of price of rice. The tribunal also held that the strike was half justified and half unjustified and, therefore, ordered the management to pay workmen 50% of their total emoluments for the strike period. Issues

(1) was the price realized by the management for the rice sold to the workers after decontrol excessive and if so, are the workers entitled to get refund of the excessive, value so collected?

(2) were the workers entitled to get cumbly allowance (chandermali estate was situated at a high attitude) which was customary for the estates in that region to pay?

(3) are the workers entitled to get wages for the period of the strike? Decision of the supreme court

The supreme court agreed with the tribunal in respect of refund of excessive value of rice collected and payment of cumbly allowance, but did not allow any payment for the strike as it held that the strike was unjustified. In the opinion of the court workmen might well have waited for some time after conciliation efforts failed before starting a strike and in the meantime to have asked the government make a reference. They did not wait at all. The conciliation efforts failed on november 30,1955, and on the very next day the union made its decision on strike and sent the notice of the intended strike from 9th december 1955, and they actually went on strike from that date. The government acted quickly and referred the dispute on january 3, 1955. It was after this that the strike was called off. Therefore, it was held that the strike was totally unjustified. The court agreed with the management that there was nothing in the demands to justify such hasty action. In the course of its judgement the court observed-

"while on the one hand it has to be remembered that strike is a legitimate and sometimes unavoidable weapon in the hands of labour it is equally important to remember that indiscriminate and hasty use of this weapon should not be encouraged. It will not be right for the labour to think that for any kind of demand a strike can be commenced with impunity without exhausting reasonable avenues for peaceful achievement of their objects. There may be cases where the demand is of such an urgent and serious nature that it would not be reasonable to

expect labour to wait till after asking the government to make a reference. In such cases, strike even before such a request has been made well be justified. The present is not however one of such cases."

Syndicate bank* verses *k. Umesh nayak

P.b. Sawant, j. - these appeals have been referred to the constitution bench in view of the apparent conflict of opinions expressed in three decisions of this court - a three-judge bench decision in ***churakulam tea estate (p) ltd.* Verses *workmen*** and a two-judge bench decision in ***crompton greaves ltd.* Verses *workmen*** on the one hand, and a two-judge bench decision in ***bank of india* verses *t.s. Kelawala*** on the other. The question is whether workmen who proceed on strike, whether legal or illegal, are entitled to wages for the period of strike? In the first two cases, viz., ***churakulam tea estate*** and ***crompton greaves***, the view taken is that the strike must be both legal and justified to entitle the workmen to the wages for the period of strike whereas the latter decision in ***t.s. Kelawala*** has taken the view that whether the strike is legal or illegal, the employees are not entitled to wages for the period of strike. To keep the record straight, it must be mentioned at the very outset that in the latter case, viz., ***t.s. Kelawala*** the question whether the strike was justified or not, was not raised and, therefore, the further question whether the employees were entitled to wages if the strike is justified, was neither discussed nor answered. Secondly, the first two decisions, viz., ***churakulam tea estate*** and ***crompton greaves*** were not cited at the bar while deciding the said case and hence there was no occasion to consider the said decisions there. The decisions were not cited probably because the question of the justifiability or otherwise of the strike did not fall for consideration. It is, however, apparent from the earlier two decisions, viz., ***churakulam tea estate*** and ***crompton greaves*** that the view taken there is not that the employees are entitled to wages for the strike period merely because the strike is legal. The view is that for such entitlement the strike has both to be legal and justified. In other words, if the strike is illegal but justified or if the strike is legal but unjustified, the employees would not be entitled to the wages for

The strike period. Since the question whether the employees are entitled to wages, if the strike is justified, did not fall for consideration in the latter case, viz., in ***t.s. Kelawala***, there is, as stated in the beginning, only an apparent conflict in the decisions. ***Ca no. 2710 of 1991****:*

3. On 10-4-1989 a memorandum of settlement was signed by the indian banks' association and the all indian bank employees' unions including the national confederation of bank employees as the fifth bipartite settlement. The appellant-bank and the respondent-state bank staff union through their respective federations were bound by the

Said settlement. In terms of clauses 8(*d*) and 25 of the memorandum of the said settlement, the appellant-bank and the respondent-staff union had to discuss and settle certain service conditions. Pursuant to these discussions, three settlements were entered into between the parties on 9-6-1989. These settlements were under section 2(*p*) read with section 18(1) of the industrial disputes act, 1947 (the 'act'). Under these settlements, the employees of the

Appellant-bank were entitled to certain advantages over and above those provided under the all india bipartite settlement of 10-4-1989. The said benefits were to be given to the employees retrospectively with effect from 1-11-1989. It appears that the appellant-bank did not immediately implement the said

settlement. Hence, the employees' federation sent telex message to the appellant-bank on 22-6-1989 calling upon it to implement the same without

Further loss of time. The message also stated that the employees would be compelled to launch agitation for implementation of the settlement as a consequence of which the working of the bank and the service to the customers would be affected. In response to this, the bank in its reply dated 27-6-1989 stated that it was required to obtain the government's approval for granting the said extra benefits and that it was making efforts to obtain the government's approval as soon as possible. Hence the employees' federation should, in the meanwhile, bear

It with. On 24-7-1989 the employees' federation again requested the bank by telex of even date to implement the said settlement forthwith, this time, warning the bank that in case of its failure to do so, the employees would observe a day's token strike after 8-8-1989. The bank's response to this message was the same as on the earlier occasion. On 18-8-1989, the employees' federation wrote to the bank that the settlements signed were without any

Precondition that they were to be cleared by the government and hence the bank should implement the settlement without awaiting the government's permission. The federation also, on the same day, wrote to the bank calling its attention to the provisions of rule 58.4 of the industrial disputes (central) rules, 1957 (the 'rules') and requesting it to forthwith forward copies of the settlements to the functionaries mentioned in the said rule. By its reply

Of 23-8-1989 the bank once again repeated its earlier stand that the bank is required to obtain government's approval for granting the said extra benefits and it was vigorously pursuing the matter with the government for the purpose. It also informed the federation that the government was actively considering the proposal and an amicable solution would soon be reached and made a request to the employees' federation to exercise restraint and bear with it so that their efforts with the government may not be adversely affected. By another letter of

The same date, the bank informed the federation that they would forward copies of the agreements in question to the authorities concerned as soon as the government's approval regarding implementation of the agreement was received. The federation by the letter of 1-9- 1989 complained to the bank that the bank had been indifferent in complying with the requirements of the said rule 58.4 and hence the federation itself had sent copies of the

Settlements to the authorities concerned, as required by the said rule.

4. On the same day, i.e., 1-9-1989 the federation issued a notice of strike demanding immediate implementation of all agreements/ understandings reached between the parties on 10-4-1989 and 9-6-1989 and the payment of arrears of pay and allowances pursuant to them. As per the notice, the strike was proposed to be held on three different days beginning from 18-9-1989. At this stage, the deputy chief labour commissioner and conciliation officer (central), bombay wrote both to the bank and the federation stating that he had received information that the workmen in the bank through the employees' federation had given a strike call for 18-9-1989. No formal strike notice in terms of section 22 of the act had, however, been received by him. He further informed that he would be holding conciliation proceedings under section 12 of the act in the office of the regional labour commissioner,

Bombay on 14-9-1989 and requested both to make it convenient to attend the same along with a statement of the case in terms of rule 41(*a*) of the rules.

5. The conciliation proceedings were held on 14-9-1989 and thereafter on 23-9-1989. On the latter date, the employees' federation categorically stated that no dispute as such existed.

The question was only of implementation of the agreements/understandings reached between the parties on 10-4-1989 and 9-6-1989. However, the federation agreed to desist from direct action if the bank would give in writing that within a fixed time they will implement the agreements/understandings

and pay the arrears of wages etc. Under them. The bank's representatives stated that the bank had to obtain prior approval of the government for
Implementation of the settlements and as they were the matters with the government for obtaining its concurrence, the employees should not resort to strike in the larger interests of the community. He also pleaded for some more time to examine the feasibility of resolving the matter satisfactorily. The conciliation proceedings were thereafter adjourned to 26-9-1989. On this date, the bank's representatives informed that the government's approval had not till then been obtained, and prayed for time till 15-10-1989. The next meeting was held on 27-9-1989. The conciliation officer found that there was no meeting ground and no settlement could be arrived at. However, he kept the conciliation proceedings alive by stating that in order to explore the possibility of bringing about an understanding in the matter, he would further hold discussions on 6-10-1989.
6. On 1-10-1989, the employees' federation gave another notice of strike stating that the employees would strike work on 16-10-1989 to protest against the inaction of the bank in implementing the said agreements/settlements validly arrived at between the parties. In the meeting held on 6-10-1989, the conciliation officer discussed the notice of strike. It appears that in the meanwhile on 3-10-1989 the employees' federation had filed writ petition no.
13764 of 1989 in the high court for a writ of mandamus to the bank to implement the three settlements dated 9-6-1989. In that petition, the federation had obtained an order of interim injunction on 6-10-1989 restraining the bank from giving effect to the earlier settlement dated 10-4-1989 and directing it first to implement the settlements dated 9-6-1989. It appears further that the employees had in the meanwhile, disrupted normal work in the bank and had
Resorted to gherao. The bank brought these facts, viz., filing of the writ petition and the interim order passed therein as well as the disruption of the normal work and resort to gheraos by the employees, to the notice of the conciliation officer. The meeting before the conciliation officer which was fixed on 13-10-1989 was adjourned to 17-10-1989 on which date, it was found that there was no progress in the situation. It was on this date that the employees' federation gave a letter to the conciliation officer requesting him to treat the conciliation proceedings as closed. However, even thereafter, the conciliation officer decided to keep the conciliation proceedings open to explore the possibility of resolving the matter amicably.
7. On 12-10-1989 the bank issued a circular stating therein that if the employees went ahead with the strike on 16-10-1989, the management of the bank would take necessary steps to safeguard the interests of the bank and would deduct the salary for the days the employees would be on strike, on the principle of "no work, no pay". In spite of the circular, the employees went on strike on 16-10-1989 and filed a writ petition on 7-11-1989 to quash the circular of 12-10-1989 and to direct the bank not to make any deduction of salary for the day of the strike.

8. The said writ petition was admitted on 8-11-1989 and an interim injunction was given by the high court restraining the bank from deducting the salary of the employees for 16-10-1989.
9. Before the high court, it was not disputed that the bank was a public utility service and as such section 22 of the act applied. It was the contention of the bank that since under the provisions of sub-section (1)(*d*) of the said section 22, the employees were prohibited from resorting to strike during the pendency of the conciliation proceedings and for seven days after the conclusion of such proceedings, and since admittedly the conciliation
Proceedings were pending to resolve an industrial dispute between the parties, the strike in question was illegal. The industrial dispute had arisen because while the bank was required to take the approval of the central government for the settlements in question, the contention of the employees was that no

such approval was necessary and there was no such condition incorporated in the settlements. This being an industrial dispute within the meaning of the
Act, the conciliation proceedings were validly pending on the date of the strike. As against this, the contention on behalf of the employees was that there could be no valid conciliation proceedings as there was no industrial dispute. The settlements were already arrived at between the parties solemnly and there could be no further industrial dispute with regard to their implementation. Hence, the conciliation proceedings were *non est*. The provisions of
Section 22(1)(*d*) did not, therefore, come into play.
10. The learned single judge upheld the contention of the bank and held that the strike was illegal, and relying upon the decision of this court in ***t.s. Kelawala*** case dismissed the writ petition of the employees upholding the circular under which the deduction of wages for the day of the strike was ordered. Against the said decision, the employees' federation preferred letters patent appeal before the division bench of the high court and the division
Bench by its impugned judgment reversed the decision of the learned single judge by accepting the contention of the employees and negativing that of the bank. The division bench, in substance, held that the approval of the central government as a condition precedent to their implementation was not incorporated in the settlements nor was such approval necessary. Hence, there was no valid industrial dispute for which the conciliation proceedings could be held. Since the conciliation proceedings were invalid, the provisions of section 22(1)(*d*) did not apply. The strike was, therefore, not illegal. The court also held that the strike was, in the circumstances, justified since it was the bank management's unjustified attitude in not implementing the settlements, which was responsible for the strike. The bench then relied upon two decisions of this court in ***churakulam tea estate*** and ***crompton greaves*** cases and held that since the strike was legal and justified, no deduction of wages for the strike day could be made from the salaries of the employees. The bench thus allowed the appeal and quashed the circular of the 12-10-1989.
11. Since the matter has been referred to the larger bench on account of the seeming difference of opinion expressed in ***t.s. Kelawala*** and the earlier decisions in ***churakulam tea estate*** and ***crompton greaves***, we will first discuss the facts and the view taken in the earlier two decisions.
12. In ***churakulam tea estate*** which is a decision of three learned judges, the facts were that the appellant-tea estate which was a member of the planter's association of kerala (south india), from time to time since 1946, used to enter into agreements with the representatives of the workmen, for payment of bonus. In respect of the years 1957, 1958 and 1959, there was a settlement dated 25-1-1960 between the managements of the various plantations and their workers relating to payment of bonus. The agreement provided that it would not apply to the appellant-tea estate since it had not earned any profit during the said years. On the ground that it was not a party to the agreement in question, the appellant declined to pay any bonus for the said three years. The workmen started agitation claiming bonus. The conciliation proceedings in that regard failed. All 27 workers in the appellant's factory struck work on the afternoon of 30-11-1961. The management declined to pay wages for the day of the strike to the said factory workers. The management also laid off without compensation all the workers of the estate from 1-12-1961 to 8-12-1961. By its order dated 24-5-1962, the state government referred to the industrial tribunal three questions for adjudication one of which was whether the factory workmen were entitled to wages for the day of the strike.
13. The tribunal took the view that the strike was both legal and justified and hence directed the appellant to pay wages. This court noted that at the relevant time, conciliation proceedings relating to the claim for bonus had failed and the question of referring the dispute for adjudication to the tribunal was under consideration of the government. The labour minister had called for a conference of the representatives of the management and workmen and the conference had been fixed on 23-11-1961.

The representatives of the workmen attended the conference, while the management boycotted the same. It was the case of the workmen that it was to protest against the recalcitrant attitude of the management in not attending the conference that the workers had gone on strike from 1 p.m. On the day in question. On behalf of the management, the provisions of section 23(*a*) of the act were pressed into service to contend that the strike resorted to by the factory workers was illegal.
The said provisions read as follows:
23. 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;
This court noted that there were no conciliation proceedings pending on 30-11-1961 when the factory workers resorted to strike and hence the strike was not hit by the aforesaid provision. The court further observed that if the strike was hit by section 23(*a*), it would be illegal under section 24(1)(*i*) of the act. Since, however, it was not so hit, it followed that the strike in this case could not be considered to be illegal. We may quote the exact observations
Of the court which are as follows:
Admittedly there were no conciliation proceedings pending before such a board on 30-11-1961, the day on which the factory workers went on strike and hence the strike does not come under section 23(*a*). No doubt if the strike, in this case, is hit by section 23(*a*), it will be illegal under section 24(1)(*i*) of the act; but we have already held that it does not come under section 23(*a*) of the act. It follows that the strike, in this case, cannot be considered to be illegal.
Alternatively, it was contended on behalf of the management that in any event, the strike in question was thoroughly unjustified. It was the management's case that it had participated in the conciliation proceedings and when those proceedings failed, the question of referring the dispute was pending before the government. The workmen could have made a request to the government to refer the dispute for adjudication and, therefore, the strike could not be
Justified. Support for this was also sought by the management from the observations made by this court in ***chandramalai estate, ernakulam*** **verses** ***workmen***. In that case, this court had deprecated the conduct of workmen going on strike without waiting for a reasonable time to know the result of the report of the conciliation officer. This court held that the said decision did not support the management since the strike was not directly in connection with the demand for bonus but was as a protest against the unreasonable attitude of the management in boycotting the conference held on 23-11-1961 by the labour minister of the state. Hence, this court held that the strike was not unjustified. In view of the fact that there was no breach of section 23(*a*) and in view also of the fact that in the aforesaid circumstances, the strike was not unjustified, the court held that the factory workers were entitled for wages for that day and the tribunal's award in that behalf was justified.
14. In ***crompton greaves ltd.*** The facts were that on 27-12-1967, the appellant- management intimated the workers' union its decision to reduce the strength of the workmen in its branch at calcutta on the ground of severe recession in business. Apprehending mass retrenchment of the workmen, the union sought the intervention of the minister in charge of labour and the labour commissioner, in the matter. Thereupon, the assistant labour commissioner arranged a joint conference of the representatives of the union and of the company in his office, with a view to explore the avenues for an amicable settlement. Two conferences were accordingly held on 5-1-1968 and 9-1-1968 in which both the parties participated. As a result of these conferences, the company agreed to hold talks with the representatives of the union at its calcutta office on the morning of 10-1-1968. The talk did take place but no agreement could be arrived at. The assistant labour commissioner continued to use his good offices to bring about an amicable settlement through another joint conference which was scheduled for 12-1-1968. On the afternoon of 10-1-1968, the company without informing the labour commissioner

that it was proceeding to implement its proposed scheme of retrenchment, put up a notice of retrenching 93 of the workmen in its calcutta office. Treating this step as a serious one demanding urgent attention and immediate action, the workmen resorted to strike w.e.f. 11-1-1968 after giving notice to the appellant and the labour directorate and continued the same up to 26-6-1968. In the meantime, the industrial dispute in relation to the retrenchment of the workmen was referred by the state government to the industrial tribunal on 1-3-1968. By a subsequent order dated 13-12-1968, the state government also referred the issue of the workmen's entitlement to wages for the strike period, for adjudication to the industrial tribunal. The industrial tribunal accepted the workmen's demand for wages for the period from 11-1-1968 to the end of february 1968 but rejected their demand for the remaining period of the strike observing that "the redress for retrenchment having been sought by the union itself through the tribunal, there remained no justification for the workmen to continue the strike".

15. In the appeal filed by the management against the award of the tribunal in this court, the only question that fell for determination was whether the award of the tribunal granting the striking workmen wages for the period from 11-1-1968 to 29-2-1968 was valid. In paragraph 4 of the judgment, this court observed as follows: 4. It is well settled that in order to entitle the workmen to wages for the period of strike, the strike should be legal as well as justified. A strike is legal if it does not violate any provision of the statute. Again, a strike cannot be said to be unjustified unless the reasons for it are entirely perverse or unreasonable. Whether a particular strike was justified or not is a question of fact which has to be judged in the light of the facts and circumstances of each case. It is also well settled that the use of force or violence or acts of sabotage resorted to by the workmen during a strike disentitles them to wages for the strike period. After observing thus, the court formulated the following two questions, viz., (1) whether the strike in question was illegal or unjustified? And (2) whether the workmen resorted to force or violence during the said period, that is, 11-1-1968 to 29-2-1968. While answering the first question, the court pointed out that no specific provision of law has been brought to its notice which rendered the strike illegal during the period under consideration. The strike could also not be said to be unjustified as before the conclusion of the talks for conciliation which were going on through the instrumentality of the assistant labour commissioner, the company had retrenched as many as 93 of its workmen without even intimating the labour commissioner that it was carrying out its proposed plan of effecting retrenchment of the workmen. Hence, the court answered the first question in the negative. In other words, the court held that the strike was neither illegal nor unjustified. On the second question also, the court held that there was no cogent and disinterested evidence to substantiate the charge that the striking workmen had resorted to force or violence. That was also the finding of the tribunal and hence the court held that the wages for the strike period could not be denied to the workmen on that ground as well.

16. It will thus be apparent from this decision that on the facts, it was established that there was neither a violation of a provision of any statute to render the strike illegal nor in the circumstances it could be held that the strike was unjustified. On the other hand, it was the management, by taking a precipitatory action while the conciliation proceedings were still pending, which had given a cause to the workmen to go on strike.

18. In ***kairbetta estate, kotagiri*** **verses.** ***Rajamanickam***, this court observed as follows:

Just as a strike is a weapon available to the employees for enforcing their industrial demands, a lockout is a weapon available to the employer to persuade by a coercive process the employees to see his point of view and to accept his demands. In the struggle between capital and labour, the weapon of strike is available to labour and is often used by it, so is the weapon of lockout available to the employer and can be used by him. The use of both the weapons by the respective parties must, however, be subject to the relevant provisions of the act. Chapter v which deals with strikes and lockouts clearly brings out the

antithesis between the two weapons and the limitations subject to which both of them must be exercised.

19. In ***chandramalai estate*** the facts were that on 9-8-1955, the workers' union submitted to the management a charter of fifteen demands. Though the management agreed to fulfil some of the demands, the principal demands remained unsatisfied. On 29-8-1955, the labour officer, trichur, who had in the meantime been apprised of the situation both by the management and the workers' union, advised mutual negotiations between the representatives of the management and the workers. Ultimately, the matter was recommended by the labour officer to the conciliation officer, trichur for conciliation. The conciliation officer's efforts proved in vain. The last meeting for conciliation was held on 30-11-1955. On the following day, the union gave a strike notice and the workmen went on strike w.e.f. 9-12-1955. The strike ended on 5-1-1956. Prior to this, on 5-1-1956, the government had referred the dispute with regard to five of the demands for adjudication to the industrial tribunal, trivandrum. Thereafter, by its order dated 11-6-1956, the dispute was withdrawn from the trivandrum tribunal and referred to the industrial tribunal, ernakulam. By its award dated 19-10-1957, the tribunal granted all the demands of the workmen. The appeal before this court was filed by the management on three of the demands. One of the issues was: "are the workers entitled to get wages for the period of the strike?". On this issue, before the tribunal, the workmen had pleaded that the strike was justified while the management contended that strike was both illegal and unjustified. The tribunal had recorded a finding that both the parties were to blame for the strike and ordered the management to pay the workers 50% of their total emoluments for the strike period.

20. This court while dealing with the said question held that it was clear that on 30-11-1955, the union knew that the conciliation attempts had failed and the next step would be the report by the conciliation officer to the government. It would, therefore, have been proper and reasonable for the workers' union to address the government and request that a reference be made to the industrial tribunal. The union did not choose to wait and after giving notice

To the management on 1-12-1955 that it had decided to strike work from 9-12-1955, actually started the strike from that date. The court also held that there was nothing in the nature of the demands made by the union to justify the hasty action. The court then observed as under: the main demands of the union were about the cumbly allowance and the price of rice. As regards the cumbly allowance they had said nothing since 1949 when it was first stopped till the union raised it on 9-8-1955. The grievance for collection of excess price of rice was more recent but even so it was not of such an urgent nature that the interests of labour would have suffered irreparably if the procedure prescribed by law for settlement of such disputes through industrial tribunals was resorted to. After all it is not the employer only who suffers if production is stopped by strikes. While on the one hand it has to be remembered that strike is a legitimate and sometimes unavoidable weapon in the hands of labour it is equally important to remember that indiscriminate and hasty use of this weapon should not be encouraged. It will not be right for labour to think that for any kind of demand a strike can be commenced with impunity without exhausting reasonable avenues for peaceful achievement of their objects. There may be cases where the demand is of such an urgent and serious nature that it would not be reasonable to expect labour to wait till after asking the government to make a reference. In such cases, strike even before such a request has been made may well be justified. The present is not however one of such cases. In our opinion the workmen might well have waited for some time after conciliation efforts failed before starting a strike and in the meantime to have asked the government to make a reference.

They did not wait at all. The conciliation efforts failed on 30-11-1955, and on the very next day the union made its decision on strike and sent the notice of the intended strike from the 9-12-1955, and on the 9-12-1955, the workmen actually struck work. The government appear to have acted quickly and referred

the dispute on 3-1-1956. It was after this that the strike was called off. We are unable to see how the strike in such circumstances could be held to be justified.

21. In ***india general navigation and railway co. Ltd.*** **Verses** ***workmen*** ,this court while dealing with the issues raised there, observed as follows:

In the first place, it is a little difficult to understand how a strike in respect of a public utility service, which is clearly, illegal, could at the same time be characterized as 'perfectly justified'. These two conclusions cannot in law coexist. The law has made a distinction between a strike which is illegal and one which is not, but it has not made any distinction between an illegal strike which may be said to be justifiable and one which is not justifiable. This distinction is not warranted by the act, and is wholly misconceived, specially in the case of employees in a public utility service. Every one participating in an illegal strike, is liable to be dealt with departmentally, of course, subject to the action of the department being questioned before an industrial tribunal, but it is not permissible to characterise an illegal strike as justifiable. The only question of practical importance which may arise in the case of

An illegal strike, would be the kind or quantum of punishment, and that, of course, has to be modulated in accordance with the facts and circumstances of each case. Therefore, the tendency to condone what has been declared to be illegal by statute, must be deprecated, and it must be clearly understood by those who take part in an

Illegal strike that thereby they make themselves liable to be dealt with by their employers. There may be reasons for distinguishing the case of those who may have acted as mere dumb driven cattle from those who have taken an active part in fomenting the trouble and instigating workmen to join such a strike, or have taken recourse to violence.

22. We may now refer to the decision of this court in the ***t.s. Kelawala*** case where allegedly a different view has been taken from the one taken in the aforesaid earlier decisions and in particular in ***churakulam tea estate*** and ***crompton greaves*** cases.

23. The facts in the case were that some demands for wage revision made by the employees of all the banks were pending at the relevant time and in support of the said demands, the all india bank employees association, gave a call for a countrywide strike. The appellant-bank issued a circular on 23-9-1977 to all its branch managers and agents to deduct wages of the employees who participate in the strike for the days they go on strike.

The employees' union gave a call for a four-hour strike on 29-12-1977. Hence, the bank on 27-12-1977 issued a circular warning the employees that they would be committing a breach of their contract of service if they participated in the strike and that they would not be entitled to draw the salary for the full day if they do so and consequently they need not report for work for the rest of the working hours of that day. Notwithstanding it, the employees went on four-hour strike from the beginning of the working hours on 29-12-1977. There was no dispute that banking hours for the public covered the said four hours. The employees, however, resumed work on that day after the strike hours and the bank did not prevent them from doing so. On 16-1-1978, the bank issued a circular directing its managers and agents to deduct the full day's salary of those of the employees who had participated in the strike. The employees' union filed a writ petition in the high court for quashing the circular. The petition was allowed. The bank's letters patent appeal in the high court also came to be dismissed. The bank preferred an appeal against the said decision of the high court. On these facts, the only questions relevant for our present purpose which were raised in the case before the high court as well as in this court were whether the bank was entitled to deduct wages of workmen for the period of strike and further whether the bank was entitled to deduct wages for the whole day or *pro rata* only for the hours for which the employees had struck work. The incidental questions were whether the contract of employment was divisible and whether when the service rules and the regulations did not provide for deduction of wages, the bank could do so by an administrative circular. We are not concerned with the

incidental questions in this case. What is necessary to remember is the question whether the strike was legal or illegal and whether it was justified or unjustified was not raised either before the high court or in this court. The only question debated was whether, even assuming that the strike was legal, the bank was entitled to deduct wages as it purported to do under the circular in question. It is while answering this question that this court held that the legality or illegality of the strike had nothing to do with the liability for the deduction of the wages. Even if the strike is legal, it does not save the workers from losing the salary for the period of the strike. It only saves them from disciplinary action, since the act impliedly recognizes the right to strike as a legitimate weapon in the hands of the workmen. However, this weapon is circumscribed by the provisions of the act and the striking of work in contravention of the said provisions makes it illegal. The illegal strike is a misconduct which invites disciplinary action while the legal strike does not do so. However, both legal as well as illegal strike invite deduction of wages on the principle that whoever voluntarily refrains from doing work when it is offered to him, is not entitled for payment for work he has not done. In other words, the court upheld the dictum "no work no pay". Since it was not the case of the employees that the strike was justified, neither arguments were advanced on that basis nor were the aforesaid earlier decisions cited before the court.

24. There is, therefore, nothing in the decisions of this court in ***churakulam tea estate*** and ***crompton greaves*** cases or the other earlier decisions cited above which is contrary to the view taken in ***t.s. Kelawala***. What is held in the said decisions is that to entitle the workmen to the wages for the strike period, the strike has both to be legal and justified. In other words, if the strike is only legal but not justified or if the strike is illegal though justified, the workers are not entitled to the wages for the strike period. In fact, in ***india general navigation*** case the court has taken the view that a strike which is illegal cannot at the same time be justifiable. According to that view, in all cases of illegal strike, the employer is entitled to deduct wages for the period of strike and also to take disciplinary action. This is particularly so in public utility services.

25. We, therefore, hold endorsing the view taken in ***t.s. Kelawala*** that the workers are not entitled to wages for the strike period even if the strike is legal. To be entitled to the wages for the strike period, the strike has to be both legal and justified. Whether the strike is legal or justified are questions of fact to be decided on the evidence on record. Under the act, the question has to be decided by the industrial adjudicator, it being an industrial dispute within the meaning of the act.

26. In the present case the high court, relying on ***churakulam tea estate*** and ***crompton greaves*** cases has held that the strike was both legal and justified. It was legal according to the high court because the reference to the conciliation proceedings was itself illegal and, therefore, in the eye of the law, no conciliation proceedings were pending when the employees struck work. The strike was, further justified according to the high court because

The bank had taken a recalcitrant attitude and had insisted upon obtaining the approval of the central government for the implementation of the agreements in question, when no such approval was either stipulated in the agreements or required by law. We are afraid that the high court has exceeded its jurisdiction in recording the said findings. It is the industrial adjudicator who had the primary jurisdiction to give its findings on both the said issues.

Whether the strike was legal or illegal and justified or unjustified, were issues which fell for decision within the exclusive domain of the industrial adjudicator under the act and it was not primarily for the high court to give its findings on the said issues. The said issues had to be decided by taking the necessary evidence on the subject. We find nothing in the decision of the high court to enlighten us as to whether notwithstanding the fact that the agreements in question had not stipulated that their implementation was dependent upon the approval of the central government; in fact, the bank was not duty-bound in law to take such approval. If it was obligatory for the bank to do so, then it mattered very little whether the agreements in question incorporated such a stipulation or not. If the approval was

necessary, then there did exist a valid industrial dispute between the parties and the conciliation proceedings could not be said to be illegal. It must be noted in this connection that the said agreements provided for

Benefits over and above the benefits which were available to the employees of the other banks. Admittedly, the employees struck work when the conciliation proceedings were still pending. Further, the question whether the implementation of the said agreements was of such an urgent nature as could not have waited the outcome of the conciliation proceedings and if necessary, of the adjudication proceedings under the act, was also a matter which had to be decided by the industrial adjudicator to determine the justifiability or unjustifiability of the strike.

27. It has to be remembered in this connection that a strike may be illegal if it contravenes the provisions of sections 22, 23 or 24 of the act or of any other law or of the terms of employment depending upon the facts of each case. Similarly, a strike may be justified or unjustified depending upon several factors such as the service conditions of the workmen, the nature of demands of the workmen, the cause which led to the strike, the urgency of the cause or the demands of the workmen, the reason for not resorting to the dispute resolving machinery provided by the act or the contract of employment or the service rules and regulations etc. An enquiry into these issues is essentially an enquiry into the facts which in some cases may require taking of oral and documentary evidence. Hence such an enquiry has to be conducted by the machinery which is primarily invested with the jurisdiction and duty to investigate and resolve the dispute. The machinery has to come to its findings on the said issue by examining all the pros and cons of the dispute as any other dispute between the employer and the employee.

28. Shri garg appearing for the employees did not dispute the proposition of law that notwithstanding the fact that the strike is legal, unless it is justified, the employees cannot claim wages for the strike period. However, he contended that on the facts of the present case, the strike was both legal and justified. We do not propose to decide the said issues since the proper forum for the decision on the said issues in the present case is the adjudicator under the act.

29. The strike as a weapon was evolved by the workers as a form of direct action during their long struggle with the employers. It is essentially a weapon of last resort being an abnormal aspect of the employer-employee relationship and involves withdrawal of labour disrupting production, services and the running of the enterprise. It is abuse by the labour of their economic power to bring the employer to see and meet their viewpoint over the dispute between them. In addition to the total cessation of work, it takes various forms such as working to rule, go slow, refusal to work overtime when it is compulsory and a part of the contract of employment, “irritation strike” or staying at work but deliberately doing everything wrong, “running-sore strike”, i.e., disobeying the lawful orders, sit-down, stay-in and lie-down strike etc. Etc. The cessation or stoppage of works whether by the employees or by the employer is detrimental to the production and economy and to the well-being of the society as a whole. It is for this reason that the industrial legislation while not denying the right of workmen to strike, has tried to regulate it along with the right of the employer to lockout and has also provided a machinery for peaceful investigation, settlement, arbitration and adjudication of the disputes between them. Where such industrial legislation is not applicable, the contract of employment and the service rules and regulations many times, provide for a suitable machinery for resolution of the disputes. When the law or the contract of employment or the service rules provide for a machinery to resolve the dispute, resort to strike or lockout as a direct action is prima facie unjustified. This is, particularly so when the provisions of the law or of the contract or of the service rules in that behalf are breached. For then, the action is also illegal.

30. The question whether a strike or lockout is legal or illegal does not present much difficulty for resolution since all that is required to be examined to answer the question is whether there has been a

breach of the relevant provisions. However, whether the action is justified or unjustified has to be examined by taking into consideration various factors some of which are indicated earlier. In almost all such cases, the prominent question that arises is

Whether the dispute was of such a nature that its solution could not brook delay and await resolution by the mechanism provided under the law or the contract or the service rules. The strike or lockout is not to be resorted to because the party concerned has a superior bargaining power or the requisite economic muscle to compel the other party to accept its demand. Such indiscriminate use of power is nothing but assertion of the rule of "might is right". Its consequences are lawlessness, anarchy and chaos in the economic activities which are most vital and fundamental to the survival of the society. Such action, when the legal machinery is available to resolve the dispute, may be hard to justify. This will be particularly so when it is resorted to by the section of the society which can well await the resolution of the dispute by the machinery provided for the same. The strike or lockout as a weapon has to be used sparingly for redressal of urgent and pressing grievances when no means are available or when available means have failed, to resolve it. It has to be resorted to, to compel the other party to the dispute to see the justness of the demand. It is not to be utilised to work hardship to the society at large so as to strengthen the bargaining power. It is for this reason that industrial legislation such as the act places additional restrictions on strikes and lockouts in public utility services.

31. With the emergence of the organised labour, particularly in public undertakings and public utility services, the old balance of economic power between the management and the workmen has undergone a qualitative change in such undertakings. Today, the organized labour in these institutions has acquired even the power of holding the society at large to ransom, by withholding labour and thereby compelling the managements to give in on their demands whether reasonable or unreasonable. What is forgotten many times, is that as against the employment and the service conditions available to the organised labour in these undertakings, there are millions who are either unemployed, underemployed or employed on less than statutorily minimum remuneration. The employment that workmen get and the profits that the employers earn are both generated by the utilisation of the resources of the society in one form or the other whether it is land, water, electricity or money which flows either as share capital, loans from financial institutions or subsidies and exemptions from the governments. The resources are to be used for the well-being of all by generating more employment and production and ensuring equitable distribution. They are not meant to be used for providing employment, better service conditions and profits only for some. In this task, both the capital and the labour are to act as the trustees of the said resources on behalf of the society and use them as such. They are not to be wasted or frittered away by strikes and lockouts. Every dispute between the employer and the employee has, therefore, to take into consideration the third dimension, viz., the interests of the society as a whole, particularly the interest of those who are deprived of their legitimate basic economic rights and are more unfortunate than those in employment and management. The justness or otherwise of the action of the employer or the employee has, therefore, to be examined also on the anvil of the interests of the society which such action tends to affect. This is true of the action in both public and private sector. But more imperatively so in the public sector. The management in the public sector is not the capitalist and the labour an exploited lot. Both are paid employees and owe their existence to the direct investment of public funds. Both are expected to represent public interests directly and have to promote them.

32. We are, therefore, more than satisfied that the high court in the present case had erred in recording its findings on both the counts viz., the legality and justifiability, by assuming jurisdiction which was properly vested in the industrial adjudicator. The impugned order of the high court has, therefore, to be set aside.

33. Hence we allow the appeal. Since the dispute has been pending since 1989, by exercising our power under article 142 of the constitution, we direct the central government to refer the dispute with regard to the deduction of wages for adjudication to the appropriate authority under the act within eight weeks from today. The appeal is allowed accordingly with no order as to costs.

34. In these two matters, arising out of a common judgment of the high court, the question involved was materially different, viz., whether when the employees struck work only for some hours of the day, their salary for the whole day could be deducted. As in the case of ***t.s. Kelawala***, in this case also the question whether the strike was justified or not was not raised. No argument has also been advanced on behalf of the employees before us on the said issue. In the circumstances, the law laid down by this court in ***t.s. Kelawala***, with which we concur, will be applicable. The wages of the employees for the whole day in question, i.e., 29-12-1977 are liable to be deducted. The appeals are, therefore, allowed and the impugned decision of the high court is set aside. There will, however, be no order as to costs.

Essorpe mills ltd. Verses. Presiding officer, labour court

(strike notice not conforming to time periods laid down in sections 22(1)(a) and (b) is no notice in the eye of law.)

Facts

The respondent workmen who were employed in a public utility service, went on illegal strike on 18.11.1990, for which they were placed under suspension. Subsequently, a union, representing the respondent workmen served a notice dated 14.3.1991 on the appellant employer that "strike would commence on or after 24.3.1991" (10 days time). A copy of the strike notice was also endorsed to the conciliation officer. The respondent workmen were thereafter dismissed from service for misconduct after holding a disciplinary enquiry. They challenged their dismissal *inter alia* on the ground that they were dismissed during pendency of the conciliation proceedings. Their contention was that dismissal was bad in law, *inter alia, for* the reason that the appellant management did not seek approval of the conciliation officer under proviso to section 33(2)(b) of the industrial disputes act 1947. The high court accepted the respondent workmen's plea.

Issues before the supreme court

1. Whether the notice dated 14.3.1991 could be considered as a valid notice in terms of section 22 of the act?

2. Whether valid conciliation proceedings could be considered to be pending under section 20 of the act?

Decision of the supreme court

Different stages enumerated in section 22(1) of the industrial disputes act, 1947 are: (1) six weeks' advance notice of strike, (2) fourteen days given to the employer to consider the notice, and (i) workmen giving notice

cannot go on strike before the indicated date of strike. The notice has to be given to the employer. According to rule 71 of the industrial tribunal (central) rules, 1957, notice has to be given in form *'j'.*

Section 22 presupposes a notice to employer before the workmen resort to notice. The employer is in turn required to give intimation to the government or the prescribe authority under section 22(6). There is nothing in section 22 which requires giving of intimation or copy of the notice under section 22 to the conciliation officer.

Section 22 was not complied-with when notice dated 14.3.1991 was given indicating the date of strike as "on or after 24.3.1991", for the reason that the period between the date of notice and the dote of strike was less than the mandatory period of six weeks. The notice dated 14.3. P991 could not therefore be treated as notice under section 22. In the absence of a valid notice, the employer is deemed to be not aware of the proceedings. The conciliation proceedings must be one meeting the requirements of law.

The expression "giving such notice" appearing in section 22(1)(b) refers to the notice under section 22(l)(a).(the workmen cannot therefore go on strike within the period of six weeks' notice as required under section 22(l)(a) and fourteen days thereafter in terms of section 22 (1)(b). The expression "such notice" occurring in section 22(1)(b), refers to six weeks' advance notice. Earlier illegal strike is not remedied by a subsequent strike as provided in section 22.

State of rajasthan verses ramesh war lal gahlot

(termination effected under the stipulation contained in terms of appointment is not deemed to be retrenchment under s. 2(oo) and hence s. 25-f is not attracted,)

Facts

The respondent was appointed for a period of three months or till the regularly selected candidates assumes office. He was appointed on january 28, 1988 and his appointment came to be terminated on november 19, 1988.

Issue

Whether the tennination was in violation of section 25-f of the industrial disputes act, 1947?

Decision of the supreme court

It was held that the tennination on expiry of the specified period for which the appointment was made is valid, unless found to be malafide or in colourable exercise of power. Hence, section 25-f is not attracted. Therefore, neither the relief of fresh appointment nor that of reinstatement could be granted.

The court said:

"when the appointment is for a fixed period, unless there is finding that power under clause (bb) of section 2(oo) was misused or vitiated by its *mala fide* exercise, it cannot be held that the termination is illegal. In its absence, the employer could terminate the services in terms of the letter of appointment unless it is a colourable exercise of power. It must be established in each case that the power was misused by the management or the appointment for a fixed period was a colourable exercise of power. Unfortunately, neither the learned single judge nor the division bench recorded any finding in this behalf. Therefore, where the termination is not in terms of letter of appointment saved by clause (bb), reinstatement nor fresh appointment could be made. Since the appellant has not filed any appeal against the order of the learned single judge and respondent came to be appointed afresh on june 27, 1992, he would continue in service, till the regular incumbent assumes office as originally ordered."



Punjab land development and reclamation corporation ltd. **Verses** ***presiding officer, labour court***

K.n. Saikia, j. –

13. Two rival contentions are raised by the parties. The learned counsel for the employers contend that the word 'retrenchment' as defined in section 2(oo) of the act means termination of service of a workman only by way of surplus labour for any reason whatsoever. The learned counsel representing the workmen contend that 'retrenchment' means termination of the service of a workman for any reason whatsoever, other than those expressly excluded by the definition in section 2(oo) of the act.

14. The precise question to be decided, therefore, is whether on a proper construction of the definition of "retrenchment" in section 2(oo) of the act, it means termination by the employer of the service of a workman as surplus labour for any reason whatsoever, or it means 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, and those expressly excluded by the definition. In other words, the question to be decided is whether the word "retrenchment" in the definition has to be understood in its narrow, natural and contextual meaning or in its wider literal meaning.

15. Mr. N.b. Shetye, mr. K.k. Venugopal, and the learned counsel adopting their arguments refer to the introduction of the provision of "retrenchment" in the act. Retrenchment was not defined either in the repealed trade disputes act, 1929, or in the industrial disputes act, 1947, as originally enacted. Owing to a crisis in the textile industry in bombay, apprehending large scale termination of services of workmen, the government of india issued an ordinance which later became the industrial disputes (amendment) act, 1953 which was deemed to have come into force on october 24, 1953. Besides introducing the definitions of "lay off" [clause 2(kkk)] and "retrenchment" [clause 2(oo)] this amendment act of 1953 also inserted chapter v-a in the act which dealt with "lay off" and "retrenchment". That chapter contained sections 25-a to 25-j. Section 25-a provided that sections 25-c to 25-e inclusive shall not apply

to certain categories of industrial establishments. Section 25-c dealt with right of workmen laid off for compensation. Section 25-d provided for maintenance of muster rolls of workmen by employers and section 25-e stated the cases in which the workmen were not entitled to lay off compensation. Section 25- f dealt with conditions precedent to retrenchment of workmen. Section 25-g dealt with procedure for retrenchment and section 25-h dealt with reemployment of retrenched workmen; and section 25-j dealing with the effect of laws inconsistent with this chapter said that 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); provided that nothing contained in this act shall have effect to derogate from any right which a workman has under any award for the time being in operation or any contract with the employer.

16. The statement of objects and reasons of the amendment act, 1953 was as under: the industrial disputes (amendment) bill, 1953 seeks to provide for payment of compensation to workmen in the event of their lay off or retrenchment. The provisions included in the bill are not new and were discussed at various tripartite meetings. Those relating to lay-off are based on an agreement entered into between the representatives of employers and workers who attended the 13th session of the standing labour committee. In regard to retrenchment, the bill provides that a workman who has been in continuous employment for not less than one year under an employer shall not be retrenched until he has been given one month's notice in writing or one month's wages in lieu of such notice and also a gratuity calculated at 15 days' average pay for every completed year of service or any part thereof in excess of six months. A similar provision has included in the labour relations bill, 1950, which has since lapsed. Though compensation on the lines provided for in the bill is given by all progressive employers, it is felt that a common standard should be set for all employers.

19. In ***pipraich sugar mills ltd.*** **Verses** ***pipraich sugar mills mazdoor union***, the appellant company could not work its mills to full capacity owing to short supply of sugarcane and got the permission of the government to sell its machinery but continued crushing cane under a lease from the purchaser. The workmen's union in order to frustrate the transaction resolved to go on strike and serving a strike notice did not cooperate with the management with the result that it lost heavily. On the expiry of the lease and closure of the industry, the services of the workmen were duly terminated by the company. The workmen claimed the share of profits on the basis of the offer earlier made by the company and accepted by the workers. The company having declined to pay and the dispute having been referred, the industrial tribunal held that the company was bound to pay and accordingly awarded a sum of rs. 45,000 representing their share of the profits and the award was affirmed by the labour appellate tribunal. Question before this court in appeal was whether the termination of the workmen on the closure of the industry amounted to retrenchment. It was held that the award was not one for compensation for termination of the services of workmen on closure of the industry, as such discharge was different from the discharge on retrenchment, which implied the continuance of the industry and discharge only of the surplusage, and the workmen were not entitled either under the law as it stood on the day of their discharge or even on merits to any compensation. 20. The contention of the workmen was that even before the enactment of industrial disputes (amendment) act, 1953, the tribunal had acted on the view that the retrenchment included discharge on closure of business and had awarded compensation on that footing and that the award of the tribunal in ***pipraich*** case could be supported in that view and should not be disturbed. This was based on the decision in ***employees*** **verses** ***india reconstruction corporation ltd***. And ***bennett coleman and company ltd.*** **Verses.** ***Employees***. But their lordships did not agree. Venkatarama ayyar, j. Speaking for the four-judge bench said:

Though there is discharge of workmen both when there is retrenchment and closure of business, the compensation is to be awarded under the law, not for discharge as such but for discharge on

retrenchment, and if, as is conceded, retrenchment means in ordinary parlance, discharge of the surplus, it cannot include discharge on closure of business.

21. As a result it was held that the award in ***pipraich*** was against the agreement and could not be supported as one of compensation to the workmen.

22. Thus this court in ***pipraich*** was dealing with the question whether the discharge of the workmen on closure of the undertaking would constitute retrenchment and whether the workmen were entitled on that account to retrenchment compensation; and it was observed that retrenchment connoted in its ordinary acceptation that the business itself was being continued but that a portion of the staff or the labour force was discharged as surplusage and the termination of services of all the workmen as a result of the closure of the business could not, therefore, be properly described as retrenchment, which in the ordinary parlance meant discharge from the service and did not include discharge on closure of business.

23. Under an agreement dated august 1, 1895 between the secretary of state for india in council and the railway company, the secretary of state could purchase and take over the undertaking after giving railway company a notice. On december 19, 1952 a notice was given to the railway company for and on behalf of the president of india that the undertaking of the railway company would be purchased and taken over as from january 1, 1954. On november 11, 1953, the railway company served a notice on its workmen intimating that as a result of the taking over, the services of all the workmen of the railway company would be terminated with effect from december 31, 1953. As a result of the closure, the services of all 450 workmen and 20 clerks were terminated and the appellant company claimed that the closure was bona fide being due to heavy losses sustained by the company. The principal respondent claimed retrenchment compensation for the workmen of the appellant under clause (b) of section 25-f of the act.

25. In both the appeals the question before the constitution bench was whether the claim of the erstwhile workmen both of the railway company and of sri dinesh mills ltd., to the compensation under clause (b) of section 25-f of the act was a valid claim in law. Observing that the act had a 'plexus of amendments', and some of the recent amendments had been quite extensive in nature and that section 25-f occurred in chapter v-a of the act which dealt with 'lay off and retrenchment' in the amending act, and analyzing section 25-f as it then stood, s.k. Das, j. Speaking for the constitution bench observed that in the first part of the section both the words 'retrenched' and 'retrenchment' were used and obviously they had the same meaning except that one was verb and the other was a noun and that to appreciate the true scope and effect of section 25-f one must first understand what was meant by the expression 'retrenched' or 'retrenchment'.

26. Analysing the definition of 'retrenchment' in section 2(oo) the court found in it the following four essential requirements: (a) termination of the service of a workman; (b) by the employer; (c) for any reason whatsoever; and (d) otherwise than as a punishment inflicted by way of disciplinary action. The court then said: it must be conceded that the definition is in very wide terms. The question, however, before us is - does this definition merely give effect to the ordinary, accepted notion of retrenchment in an existing or running industry by embodying the notion in apt and readily intelligible words or does it go so far beyond the accepted notion of retrenchment as to include the termination of services of all workmen in an industry when the industry itself ceases to exist on a bona fide closure or discontinuance of his business by the employer?

The court further said:

There is no doubt that when the act itself provides a dictionary for the words used, we must look into that dictionary first for an interpretation of the words used in the statute. We are not concerned with any presumed intention of the legislature; our task is to get at the intention as expressed in the statute.

Therefore, we propose first to examine the language of the definition and see if the ordinary, accepted notion of retrenchment fits in, squarely and fairly, with the language used.
The court reiterated the following observations in ***pipraich*:**
But retrenchment connotes in its ordinary acceptation that the business itself is being continued but that a portion of the staff of the labour force is discharged as surplusage and the termination of services of all the workmen as a result of the closure of the business cannot therefore be properly described as retrenchment. This was the ordinary accepted notion of 'retrenchment' in an industry before addition of section 2(oo) to the act, as retrenchment in that case took place in 1951. Replying to the argument that by excluding the bona fide closure of business as one of the reasons for termination of the service of workmen by the employer, one would be cutting down the amplitude of the expression 'for any reason whatsoever' and reading into the definition the words which did not occur there, the court agreed that the adoption of the ordinary meaning would give to the expression 'for any reason whatsoever' a somewhat narrower scope; one might say that it would get a colour in the context in which expression occurred; but the court did not agree that it amounted to importing new words in the definition and said that the legislature in using that expression said in effect: "it does not matter why you are discharging the surplus; if the other requirements of the definition are fulfilled, then it is retrenchment". In the absence of any compelling words to indicate that the intention was to include bona fide closure of the whole business, it would be divorcing the expression altogether from its context to give it such a wide meaning as was contended. About the nature of the definition it was said:
It is true that an artificial definition may include a meaning different from or in excess of the ordinary acceptation of the word which is the subject of definition; but there must then be compelling words to show that such a meaning different from or in excess of the ordinary meaning is intended. Where, within the framework of the ordinary acceptation of the word, every single requirement of the definition clause is fulfilled, it would be wrong to take the definition as destroying the essential meaning of the word defined.
27. The court in ***hariprasad*** dealt with two other contentions; one was that before the amending act of 1953 the retrenchment had acquired a special meaning which included the payment of compensation on a closure of business and the legislature gave effect to that meaning in the definition clause and by inserting section 25-f. The second was that section 25-ff inserted in 1956 by act 41 of 1956 was 'parliamentary exposition' of the meaning of
The definition clause and of section 25-f. Rejecting the contentions the court held that retrenchment meant the discharge of surplus workmen in an existing or continuing business; it had acquired no special meaning so as to include discharge of workmen on bona fide closure of business, though a number of labour appellate tribunals awarded compensation to workmen on closure of business as an equitable relief for variety of reasons. The court accordingly held:
That retrenchment as defined in section 2(oo) and as used in section 25 has no wider meaning than the ordinary, accepted connotation of the word: it means the *discharge of surplus labour or staff* by the employer for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, and it has no application where the services of all workmen have been terminated by the employer on real and bona fide closure of business as in the case of sri dinesh mills ltd. Or where the services of all workmen have been terminated by the employer on the
Business or undertaking being taken over by another employer in circumstances like those of the railway company.(emphasis in original)
28. It is interesting to note that the amending act 41 of 1956 inserted original section 25- ff on september 4, 1956. The objects and reasons were stated thus: 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 clearly by amending section 25-f of the act. ***Hariprasad*** case was decided on november 27, 1956. The industrial disputes (amendment) ordinance, 1957 (4 of 1957) was promulgated immediately thereafter with effect from december 1, 1956 and that ordinance was replaced by the industrial disputes (amendment) act, 1957 (18 of 1957). The following was the statement of objects and reasons:

In a judgment delivered on november 27, 1956, the supreme court held that no retrenchment compensation was payable under section 25-f of the industrial disputes act, 1947, to workmen whose services were terminated by an employer on a real and bona fide closure of business, or when termination occurred as a result of transfer of ownership from one employer to another. This has led and is likely to lead to a large number of workmen being rendered unemployed without any compensation. In order to meet this situation which was causing hardship to workmen, it was considered necessary to take immediate action and the industrial disputes (amendment) ordinance, 1957 (4 of 1957), was promulgated with retrospective effect from december 1, 1956. This ordinance was replaced by an act of parliament enacting the provisions contained in section 25-ff and 25-fff. These sections provide that 'compensation would be payable to workmen whose services are terminated on account of the

Transfer or closure of undertakings'. In the case of transfer of undertakings, however, if the workman is re-employed on terms and conditions which are not less favourable to him, he will not be entitled to any compensation. This was the position which existed prior to the decision of the supreme court. In the case of closure of business on account of the circumstances beyond the control of the employer, the maximum compensation payable to workmen has been limited to his average pay for three months. If the undertaking is engaged in any construction work and it is closed down within two years on account of the completion of its work, no compensation would be payable to workmen employed therein. ***Hariprasad*** having accepted the ordinary contextual meaning of retrenchment, namely,

Termination of surplus labour as the major premise it was surely open to the parliament to have amended the definition of retrenchment in section 2(oo) of the act. Instead of doing that the parliament added sections 25-ff and 25-fff. Thus, by this amendment act the parliament clearly provided that though such termination may not have been retrenchment technically so-called, as decided by this court, nevertheless the employees in question whose services were terminated by the transfer or closure of the undertaking would be entitled to compensation, as if the said termination was retrenchment. As it has been observed, the words "as if" brought out the legal distinction

Between retrenchment defined by section 2(oo) as it was interpreted by this court and termination of services consequent upon transfer of the undertaking. In other words, the provision was that though termination of services on transfer or closure of the undertaking may not be retrenchment, the workmen concerned were entitled to compensation as if the said termination was retrenchment.

29. Thus we find that till then the accepted meaning of retrenchment was ordinary, contextual and narrower meaning of termination of surplus labour for any reason whatsoever.

30. In ***anakapalle co-operative agricultural and industrial society ltd.*** **Verses** ***workmen***, a company running a sugar mill was suffering losses every year due to insufficient supply of sugarcane and wanted to shift the mill. The cane growers formed a cooperative society and purchased the mill. As agreed between the company and the society, the company terminated the services of the employees and paid retrenchment compensation to them under section 25-ff of the act. The society employed some of the old employees and refused to absorb some of them who raised an industrial dispute. The industrial tribunal having directed the purchaser-society by its award to re-employ them, the society contended that it was not a successor-in-interest of the company and hence the claim of re-employment was not sustainable and the services of the employees having been terminated upon payment of compensation

by the company under section 25-ff no claim could be made against the transferee society. This court held that the society was the successor-in-interest of the company as it carried on the same or similar business as was carried by the vendor-company at the same place and without substantial break in continuity. It was further held that the employees were not entitled to both compensation for termination of service and immediate
Re-employment at the hands of the transferee and section 25-h was not applicable to the case as the termination of service upon transfer or closure was not retrenchment properly so called and that termination of service dealt with in section 25-ff could not be equated with retrenchment covered by section 25-f. It was observed that the words 'as if' in section 25-ff clearly distinguished retrenchment under section 2(oo) and termination under section 25-ff.
32. In ***delhi cloth and general mills ltd.*** **Verses.** ***Shambhu nath mukherjee***, where the post of motion setter was abolished and the respondent was given a job of a trainee on probation for the post of assistant line fixer and the management found him unsuitable for the job even after extending his probation period up to nine months and offered him the post of fitter on the same pay and the respondent instead of accepting the offer wanted to be given another chance to show his efficiency in his job and the management struck off his name from the rolls without complying with the provisions of section 25-f(a) and (b) of the act and the labour court having given award in the respondent's favour and the appellant's writ petition was rejected by the high court, goswami, j. Speaking for three
Judges bench said: striking off the name of the workman from the rolls by the management is termination of his service. Such termination of service is retrenchment within the meaning of section 2(oo) of the act. There is nothing to show that the provisions of section 25-f(a) and (b) were complied with by the management in this case. The provisions of section 25-f(a), the proviso apart, and (b) are mandatory and any order of retrenchment, in violation of these two peremptory conditions precedent, is invalid.
The appeal was accordingly dismissed. The earlier decisions were not referred to.
33. Next comes the decision in ***state bank of india*** **verses.** ***N. Sundara money*** (y.v chandrachud, versesr. Krishna iyer and a.c. Gupta, jj.). In an application under article 226, the respondent on automatic extinguishment of his service consequent to the preemptive provision as to the temporariness of the period of his employment in his appointment letter claiming to have been deemed to have had continuous service for one year within the meaning of section 25(b)(2) of the act, the single judge of the high court having allowed his writ petition and the writ appeal of the appellant having also failed, this court in appeal found as fact that the appointment was purely temporary one for a period of 9 days but might be terminated earlier, without assigning any reason therefore at the petitioner's discretion; and the employment unless terminated earlier, would automatically cease at the expiry of the period i.e. November 18, 1972. This 9 days' employment added on to what had gone before ripened to a continuous service for a year "on the antecedent arithmetic of 240 days of broken bits of service" and considering the meaning of 'retrenchment' it was held that the expression for any reason whatsoever was very wide and almost admitting of no exception. The contention of the employer was that when the order of appointment carried an automatic cessation of service, the period of employment worked itself out by efflux of time, not by act of employer and such cases were outside the concept of retrenchment. This court observed that to retrench is to cut down and one could not retrench without trenching or cutting, but "dictionaries are not dictators of statutory construction where the benignant mood of a law and, more emphatically, the definition clause furnish a different denotation".
34. Accepting the literal meaning, krishna iyer, j. Observed: a breakdown of section 2(oo) unmistakably expands the semantics of retrenchment. 'termination… for any reason whatsoever' are the key words. Whatever the reason, every termination spells retrenchment. So the sole question is, has the

employee's service been terminated? Verbal apparel apart, the substance is decisive. A termination takes place where a term expires either by the active step of
The master or the running out of the stipulated term. To protect the weak against the strong this policy of comprehensive definition has been effectuated. Termination embraces not merely the act of termination by the employer, but the fact of termination howsoever produced. May be, the present may be a hard case, but we can visualise abuses by employers, by suitable verbal devices, circumventing the armour of section 25-f and section 2(oo). Without speculating on possibilities, we may agree that 'retrenchment' is no longer *terra incognita* but area covered by an expansive definition. It means 'to end, conclude, cease'. In the present case the employment ceased, concluded, ended on the expiration of nine days – automatically may be, but cessation all the same. That to write into the order of appointment the date of termination confers no *moksha* from section 25-f(b) is inferable from the
Proviso to section 25-f(1) [sic 25-f(a)]. True, the section speaks of retrenchment from section 25-f(b) is inferable from the proviso to section 25-f(1) [sic 25-f(a)]. True, the section speaks of retrenchment *by the employer* and it is urged that some act of volition by the employer to bring about the termination is essential to attract section 25-f and automatic extinguishment of service by effluxion of time cannot be sufficient. (emphasis in original)

36. The precedents including ***hariprasad*** do not appear to have been brought to the notice of their lordships in this case. It may be noted that since ***delhi cloth and general mills*** a change in interpretation of retrenchment in section 2(oo) of the act is clearly discernible.

37. Mr. Venugopal would submit that the judgment in ***sundara money*** case and for that matter the subsequent decisions in the line are *per incuriam* for two reasons: (1) that they failed to apply the law laid down by the constitution bench of this hon'ble court in ***hariprasad shukla*** case and (2) for the reason that they have ignored the impact of two of the provisions introduced by the amendment act of 1953 along with the definition of "retrenchment" in section 2(oo) and section 25-f namely, sections 25-g and 25-h. We agree with the learned counsel that the question of the subsequent decisions being *per incuriam* could arise only if the ratio of ***sundara money*** case and the subsequent judgments in the line was in conflict with the ratio in the ***hariprasad shukla*** case and ***anakapalle*** case.

The issue, it is urged, was, whether it was necessary for the court to interpret section 2(oo) as being restricted to termination of services of workmen rendered surplus for arriving at a decision in the case and if it was unnecessary to so interpret section 2(oo) for the purpose of arriving at a decision in that case, the interpretation of section 2(oo) would necessarily be rendered obiter. According to counsel, the long discussion on interpretation of section 2(oo) could not be brushed aside as either obiter or mere casual observations of the constitution bench.

40. We now deal with the question of *per incuriam* by reason of allegedly not following the constitution bench decisions. The latin expression *per incuriam* means through inadvertence. A decision can be said generally to be given *per incuriam* when this court has acted in ignorance of a previous decision of its own or when a high court has acted in ignorance of a decision of this court. It cannot be doubted that article 141 embodies, as a rule of law, the doctrine of precedents on which our judicial system is based. In ***bengal immunity company ltd.*** **Verses** ***state of bihar*** , it was held that the words of article 141, "binding on all courts within the territory of india", though wide enough to include the supreme court, do not include the supreme court itself, and it is not bound by its own judgments but is free to reconsider them in appropriate cases. This is necessary for proper development of law and justice.

43. As regards the judgments of the supreme court allegedly rendered in ignorance of a relevant constitutional provision or other statutory provisions on the subjects covered by them, it is true that the supreme court may not be said to "declare the law" on those subjects if the relevant provisions were not really present to its mind. But in this cases sections 25-g and 25-h were not directly attracted and even if they could be said to have been attracted in laying down the major premise, they were to be

interpreted consistently with the subject or context. The problem of judgment *per incuriam* when actually arises, should present no difficulty as this court can lay down the law afresh, if two or more of its earlier judgments cannot stand together. The question however is whether in this case there is in fact a judgment *per incuriam*. This raises the question of *ratio decidendi* in ***hariprasad*** and ***anakapalle*** cases on the one hand and the subsequent decisions taking the contrary view on the other.

48. Analysing the complex syllogism of ***hariprasad*** case we find that its major premise was that retrenchment meant termination of surplus labour of an existing industry and the minor premise was, that the termination in that case was of all the workmen on closure of business on change of ownership. The decision was that there was no retrenchment. In this context it is important to note that subsequent benches of this court thought to be the *ratio decidendi* of ***hariprasad***, and that matter of ***anakapalle*****.**

49. In ***santosh gupta*** **verses** ***state bank of patiala***, o. Chinnappa reddy, j. Sitting with krishna iyer, j. Deduced the *ratio decidendi* of ***hariprasad*** thus: in ***hariprasad shivshankar shukla*** **verses** ***a.d. Divikar***, the supreme court took the view that the word 'retrenchment' as defined in section 2(oo) did not include termination of services of all workmen on a bona fide closure of an industry or on change of ownership or management of the industry. In order to provide for the situations which the supreme court held were not covered by the definition of the expression 'retrenchment', the parliament added section 25-ff and section 25-fff providing for the payment of compensation to the workmen in case of transfer of undertakings and in case of closure of undertakings respectively.

50. In ***hariprasad*** the learned judges themselves formulated the question before them as follows: (scr p. 130)

The question, however, before us is - does this definition merely give effect to the ordinary, accepted notion of retrenchment in an existing or running industry by embodying the notion in apt and readily intelligible words or does it go so far beyond the accepted notion of retrenchment as to include the termination of services of all workmen in an industry when the industry itself ceases to exist on a bona fide closure or discontinuance of his business by the employer?

51. The question was answered by the learned judges in the following words: in the absence of any compelling words to indicate that the intention was even to include a bona fide closure of the whole business, it would, we think, be divorcing the expression altogether from the context to give it such a wide meaning as it contended for by learned counsel for the respondents… it would be against the entire scheme of the act to give the definition clause relating to retrenchment such a meaning as would include within the definition termination of service of all workmen

By the employer when the business itself ceases to exist. Rejecting the submission of dr. Anand prakash that "termination of service for any reason whatsoever" meant no more and no less than discharge of a labour force which was a surplusage, it was observed in ***santosh gupta*** that the misunderstanding of the observations and the resulting confusion stem from not appreciating the lead question which was posed and answered by the learned judges and that the reference to 'discharge on account of surplusage' was illustrative and not exhaustive on account of transfer or closure of business.

52. Mr. V a. Bobde submits, and we think rightly, that the sole reason for the decision in ***hariprasad*** was that the act postulated the existence and continuance of an industry and where the industry i.e. The undertaking, itself was closed down or transferred, the very substratum disappeared and the act could not regulate industrial employment in the absence of an industry. The true position in that case was that section 2(oo) and section 25-f could not be invoked since the undertaking itself ceased to exist. The ratio of ***hariprasad***, according to the learned counsel, is discernible from the discussion at pp. 131-32 of the report about the ordinary accepted notion of retrenchment 'in an industry' and ***pipraich*** case was referred to for the proposition that continuance of the business was essential; the emphasis was not on the discharge of surplus labour but on the fact that "retrenchment connotes in its ordinary acceptation that the business itself is being continued… the termination of services of all the workmen as a result of

the closure of the business cannot therefore be properly described as retrenchment". At page 134 in the last four lines also it was said: "but the fundamental question at issue is, does the definition clause cover cases of closure of business, when the closure is real and bona fide?" The reasons for arriving at the conclusion are given as "it would be against the entire scheme of the act to give the definition clause relating to retrenchment such a meaning as would include within the definition termination of service of all workmen by the employer when the business itself ceases to exist" and that the industrial dispute to which the provisions of the act applies is only one which arises out of an existing industry. Thus, the court was neither called upon to decide nor did it decide whether in a continuing business, retrenchment was confined only to discharge of surplus staff and reference to discharge of surplusage was for the purpose of contrasting the situation in that case, i.e. Workmen were being retrenched because of cessation of business and those observations did not constitute reasons for the decision. What was decided was that if there was no continuing industry the provision could not apply. In fact the question whether retrenchment did or did not include other terminations was never required to be decided in ***hariprasad*** and could not, therefore have been, or be taken to have been decided by this court.

We agree with mr. Bobde when he submits that ***hariprasad*** case is not an authority for the proposition that section 2(oo) only covers cases of discharge of surplus labour and staff. The judgments in ***sundara money*** and the subsequent decisions in the line could not be held to be *per incuriam* inasmuch as in ***hindustan steel*** and ***santosh gupta*** cases, the division benches of this court had referred to ***hariprasad*** case and rightly held that its ratio did not extend beyond a case of termination on the ground of closure and as such it would not be correct to say that the subsequent decisions ignored a binding precedent.

54. In ***hindustan steel ltd.*** **Verses** ***presiding officer, labour court***, the question was whether termination of service by efflux of time was termination of service within the definition of retrenchment in section 2(oo) of the act. Both the earlier decisions of the court in ***hariprasad*** and ***sundara money*** were considered and it was held that there was nothing in ***hariprasad*** which was inconsistent with the decision in ***sundara money*** case. It was observed that the decision in ***hariprasad*** was only that the words "for any reason whatsoever" used in the definition of retrenchment would not include a bona fide closure of the whole business because it would affect the entire scheme of the act. The decisions in which contrary view was taken, were over-ruled in ***santosh gupta*** holding that the discharge of the workman on the ground that she did not pass the test which would have enabled her to be confirmed was 'retrenchment' within the meaning of section 2(oo) and therefore, the requirement of section 25-f had to be complied with. The workman was employed in the state bank of patiala from july 13, 1973 till august 1974 when her services were terminated. According to the workman she had worked for 240 days in the year preceding august 21, 1974 and the termination of her services was retrenchment as it did not fall within any of the

Three accepted cases. The management's contention was that termination was not due to discharge of surplus labour but due to failure of the workman to pass the test which could have enabled her to be confirmed in the service and as such it was not retrenchment. This contention was repelled.

55. Both mr. Shetye and mr. Venugopal submit that judicial discipline required the smaller benches to follow the decisions in the larger benches. This reminds us of the words of lord hailsham of marylebone, the lord chancellor, "in the hierarchical system of courts which exists in this country, it is necessary for each lower tier… to accept loyally the decisions of the higher tiers". However, in view of the *ratio decidendi* of ***hariprasad*****,** as we have seen, there is no room for such a criticism.

56. In ***karnataka srtc*** **verses** ***m. Boraiah***, a division bench of a.n. Sen and ranganath misra, jj. Held that in the above series of cases that have come later, the constitution bench decision in ***hariprasad*** has been examined and the ratio indicated therein has been confined to its own facts and the view indicated by

the court in that case did not meet with the approval of parliament and, therefore, the law had been subsequently amended.

57. Speaking for the court, r.n. Misra, j. Significantly said: we are inclined to hold that the stage has come when the view indicated in ***money*** case has been 'absorbed into the consensus' and there is no scope for putting the clock back or for an anti-clockwise operation.

58. More than a month thereafter in ***gammon india ltd.*** **Verses** ***niranjan das***, a three judges bench (d.a. Desai, r.b. Misra and ranganath misra, jj.) Construing the one month's notice of termination in that case due to reduction of volume of business of the company said: on a true construction of the notice, it would appear that the respondent had become surplus on account of reduction in volume of work and that constitutes retrenchment *even in the traditional sense of the term* as interpreted in ***pipraich sugar mills ltd.*** **Verses** ***pipraich sugar mills mazdoor union***, though that view does not hold the field in view of the recent decisions of this court in ***state bank of india*** **verses** ***n. Sundara money; hindustan steel ltd.*** **Verses** ***presiding officer, labour court, orissa; santosh gupta*** **verses** ***state bank of patiala; delhi cloth and general mills ltd.*** **Verses** ***shambhu nath mukherjee; mohan lal*** **verses** ***bharat electronics ltd.*** **And** ***l. Robert d'souza*** **verses** ***executive engineer, southern railway***. The recitals and averments in the notice leave no room for doubt that the service of the respondent was terminated for the reason that on account of recession and reduction in the volume of work of the company, respondent has become surplus. Even apart from this, the termination of service for the reasons mentioned in the notice is not covered by any of the clauses (a), (b) and (c) of section 2(oo) which defines retrenchment and it is by now well settled that where the termination of service does not fall within any of the excluded categories, the termination would be *ipso facto* retrenchment. It was not even attempted to be urged that the case of the respondent would fall in any of the excluded categories. It is therefore indisputably a case of retrenchment.

59. In a fast developing branch of industrial and labour law it may not always be of particular importance to rigidly adhere to a precedent, and a precedent may need be departed from if the basis of legislation changes.

61. When we analyse the mental process in drafting the definition of "retrenchment" in section 2(oo) of the act we find that firstly it is to mean the termination by the employer of the service of a workman for any reason whatsoever. Having said so the parliament proceeded to limit it by excluding certain types of termination, namely, termination as a punishment inflicted by way of disciplinary action. The other types of termination excluded were (a) voluntary retirement; or (b) retrenchment of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation on that behalf; or (c) termination of service of a workman on the ground of continued ill health. Had the parliament envisaged only the question of termination of surplus labour alone in mind, there would arise no question of excluding (a), (b) and (c) above. The same mental process was evident when section 2(oo) was amended inserting another exclusion clause (bb) by the amending act of 49 of 1984, with effect from august 18, 1984, "termination of the service of workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry of such contract being terminated under a stipulation in that behalf contained therein".

62. This is literal interpretation as distinguished from contextual interpretation said tindal, c.j. In ***sussex peerage*** case:

The only rule of construction of acts of parliament is that they should be construed according to the intent of the parliament which passed the act. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do, in such case, best declare the intention of the lawgiver.

68. In the case before us the difficulty was created by defining 'retrenchment' to mean something wider than what it naturally and ordinarily meant. While naturally and ordinarily it meant discharge of surplus labour, the defined meaning was termination of service of a workman for any reason whatsoever except those excluded in the definition itself. Such a definition creates complexity as the draftsman himself in drafting the other sections using the defined word may slip into the ordinary meaning instead of the defined meaning.

71. Analysing the definition of retrenchment in section 2(oo) we find that termination by the employer of the service of a workman would not otherwise have covered the cases excluded in (a) and (b), namely, voluntary retirement and retirement on reaching the stipulated age of retirement. There would be no volitional element of the employer. Their

Express exclusion implies that those would otherwise have been included. Again if those cases were to be included, termination on abandonment of service, or on efflux of time, and on failure to qualify, although only consequential or resultant, would be included as those have not been excluded. Thus, there appears to be a gap between the first part and the exclusion part. Mr. Venugopal, on this basis, points out that cases of voluntary retirement, superannuation and tenure appointment are not cases of termination 'by the employer' and would, therefore, in any event, be outside the scope of the main provisions and are not really provisions.

72. The definition has used the word 'means'. When a statute says that a word or phrase shall "mean" – not merely that it shall "include" – certain things or acts, "the definition is a hard-and-fast definition, and no other meaning can be assigned to the expression than is put down in definition" [per esher, m.r., ***gough* verses *gough***]. A definition is an explicit statement of the full connotation of a term.

73. Mr. Venugopal submits that the definition clause cannot be interpreted in isolation and the scope of the exception to the main provision would also have to be looked into and when so interpreted, it is obvious that a restrictive meaning has to be given to section 2(oo).

74. It is also pointed out that section 25-g deals with the principle of 'last come, first go', a principle which existed prior to the amendment act of 1953 only in relation to termination of workmen rendered surplus for any reasons whatsoever. Besides, it is submitted, by its very nature the wide definition of retrenchment would be wholly inapplicable to termination simpliciter. The question of picking out a junior in the same category for being sent out in

Place of a person whose services are being terminated *simpliciter* or otherwise on the ground that the management does not want to continue his contract of employment would not arise. Similarly, it is pointed out that starting from ***sundara money*** where termination *simpliciter* of a workman for not having passed a test, or for not having satisfactorily completed his probation would not attract section 25-g, as the very question of picking out a junior in the same capacity for being sent out instead of the person who failed to pass a test or failed to satisfactorily complete his probation could never arise. If, however, section 25-g were to be followed in such cases, the section would itself be rendered unconstitutional and violative of fundamental rights of the workmen under articles 14, 19(1)(g) and 21 of the constitution. It would be no defence to this argument to say that the management could record reasons as to why it is not sending out the juniormost in such cases since in no single case of termination *simpliciter* would section 25-g be applicable and in every such case of termination *simpliciter,* without exception, reasons would have to be recorded. Similarly, it is submitted, section 25-h which deals with re-employment of retrenched workmen, can also have no application whatsoever, to a case of termination *simpliciter* because of the fact that the employee whose services have been terminated, would have been holding a post which '*eo instanti*' would become vacant as a result of the termination of his services and under section 25-h he would have a right to be reinstated against the very post from which his services have been terminated, rendering the provision itself an absurdity. It is urged that section 25-f is only procedural in character along with sections 25-g and 25-h and do not prohibit the

substantive right of termination but on the other hand requires that in effecting termination of employment, notice would be given and payment of money would be made and the later procedure under sections 25-g and 25-h would follow.

75. Mr. Bobde refutes the above argument saying that sections 25-f, 25-g and 25-h relate to retrenchment but their contents are different. Whereas section 25-f provides for the conditions precedent for effecting a valid retrenchment, section 25-g only provides the procedure for doing so. Section 25-h operates after a valid retrenchment and provides for reemployment in the circumstances stated therein. According to counsel, the argument is misconceived firstly for the reasons that section 2 itself says that retrenchment will be understood as defined in section 2(oo) unless there is anything repugnant in the subject or context; secondly section 25-f clearly applies to retrenchment as plainly defined by section 2(oo); thirdly section 25-g does not incorporate in absolute terms – the principle of 'last come, first go' and provides that ordinarily last employee is to be retrenched, and fourthly section 25-h upon its true construction should be held to be applicable when the retrenchment has occurred on the ground of the workman becoming surplus to the establishment and he has been retrenched under sections 25-f and 25-g on the principle 'last come, first go only then should he be given an opportunity to offer himself for reemployment.

In substance it is submitted that there is no conflict between the definition of section 2(oo) and the provisions of sections 25f, 25g and 25h. We find that though there are apparent incongruities in the provisions, there is room for harmonious construction.

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to there being anything repugnant in the subject or context. In view of this, it is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and the subject matter. Section 25-f prescribes the condition precedent to a valid retrenchment of workers as discussed earlier. Very briefly, the conditions prescribed are that giving of one month's notice indicating the reasons for retrenchment and payment of wages for the period of the notice. Section 25-ff provides for compensation to workmen in case of transfer of undertakings. Very briefly, it provides that every workman who has been in continuous service for not less than one year in an undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-f, *as if the workman had been retrenched"*. Section 25-h provides for re-employment of retrenched workmen. In brief, it provides that where any workmen are retrenched, and the employer proposes to take into his employment any person, he shall give an opportunity to the retrenched workmen to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to workman "deemed to be retrenched" a right to claim re-employment as provided in section 25-h. In such cases, as specifically provided in the relevant sections the workmen concerned would only be entitled to notice and

Compensation in accordance with section 25-f. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workmen is "as if the workmen had been retrenched" and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-f.

77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the standing orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by introduction of sections 2(oo), 25-f and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an

additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the affected workmen, perhaps for immediate tiding over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi*; the will of the people stands in place of a reason.

80. The definitions in section 2 of the act are to be taken 'unless there is anything repugnant in the subject or context'. The contextual interpretation has not been ruled out. In ***r.b.i.*** **Verses** ***peerless general finance and investment co. Ltd***: interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. It is by looking at the definition as a whole in the setting of the entire act and by reference to what preceded the enactment and the reasons for it that the court construed the expression 'prize chit' in ***srinivasa*** [***srinivasa enterprises*** **verses** ***union of india*** and we find no reason to depart from the court's construction.

81. As we have mentioned, industrial and labour legislation involves social and labour policy. Often they are passed in conformity with the resolutions of the international labour organisation. In ***duport steels*** **verses** ***sirs*** the house of lords observed that there was a difference between applying the law and making it, and that judges ought to avoid becoing involved in controversial social issues, since this might affect their reputation in impartiality. Lord diplock said:

A statute passed to remedy what is perceived by parliament to be a defect in the existing law may in actual operation turn out to have injurious consequences that parliament did not anticipate at the time the statute was passed; if it had, it would have made some provision in the act in order to prevent them… but if this be the case it is for parliament, not for the judiciary, to decide whether any changes should be made to the law as stated in the acts…

82. Applying the above reasoning, principles and precedents, to the definition in section 2(oo) of the act, we hold that "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever except those expressly excluded in the section.

Uptron india ltd. Verses shammi bhan

[in the absence of a fixed term contract, termination in pursuance of such stipulation is not saved by s. 2(oo) (bb).}

facts

Respondent 1 was appointed as an operator (trainee) on 13-5-1980 in the petitioner's establishment. On completion of training, she was absorbed on that post with effect from 13-7-1981 and was confirmed on 13-7-1982. She thus acquired the status of a permanent employee.

With effect from 7th of november, 1984, respondent 1 proceeded, and remained till 29th january, 1985, on maternity leave. Thereafter, she allegedly remained absent with effect from 31-1-1985 to 12-4-1985 without any application for leave and 1consequently, by order dated 12th april, 1985, the petitioner informed respondent 1

that her services stood automatically terminated in terms of clause (17(g) of the certified standing orders. Respondent 1 raised an industrial dispute for adjudication. Her application, filed before the deputy labour commissioner, lucknow was registered as c.b. Case no. 310-1985. The state government by its order dated 18-7-1990, referred the following questions for adjudication to the industrial tribunal, lucknow:

"whether the termination of the services of female smt. Shammi bhan, operator, daughter of c.n. Kaul, by the management by its letter dated 12-4-1-985 is proper and legal. If not, the relief which the employee will be entitled to?"

Clause i7(g) of the certified standing orders, which constitutes the bone of contention between the parties, is quoted below:

"the service of a workman are liable to automatic termination if she overstays on leave without permission for more than seven days. In case of sickness, the medical certificate must be submitted within a week."

Issue

Whether the stipulation for automatic termination of service of overstaying the leave would be legally bad or not?

Decision of the supreme court

Definition of retrenchment ip s. 2(oo) is conclusive in the sense that "retrenchment" has been defined to mean the termination of service of a workman by employer for any reason whatsoever. If the termination was by way of punishment as a consequence of d isplinary action, it would not amount to "retrenchment". Provision for automatic termination of services on account of absence is not covered by exception (bb) of s.2(oo).

The contract of employment referred to in the earlier part of s. 2(oo) (bb) has to be the same as is referred to in the latter part. This is clear by the use of the words "such contract" in earlier part of this clause. Section 2(oo) (bb) therefore means that there should have been a contract of employment for a fixed term between employer and workman containing stipulation that the services could be terminated even before the expiry of period of contract. If such contract, on expiry of its original period, is not renewed and services are terminated as a consequence of that period, if would not amount to "retrenchment". Similarly, if services are terminated even before the expiry of period of contract but in pursuance of a stipulation contained in that contract that the services could be so terminated, then in that case also, termination would not amount to "retrenchment".

There was no fixed term contract of service in the present case. There was, therefore, no question of service being terminated on expiry of that contract between the parties, the question relating to second contingency, namely, that the termination in pursuance of a stipulation to that effect in the contract of employment, does not arise. This case does not fall in either of the two situations contemplated by s. 2(oo) (bb). The "rule of exception", therefore, is not applicable in the instant case. Respondent's termination is therefore a retrenchment.

The concept of employment under industrial law involves, like any other employment, three ingredients:

(1) management/industry/factory/employer, who employs or, to put it differently, engages the services of the workman;

(2) employee/workman, that is to say, a person who works for the employer for wages or monetary compensation; and

(3) contract of employment or the agreement between the employer and the employee whereunder the employee/workman agrees to render services to the employer, in consideration of wages, subject to the supervision and control of the employer.

The general principles of the contract act applicable to an agreement between two persons having capacity to contract, are also applicable to a contract of industrial employment, but the relationship so created is partly contractual, in the sense that the agreement of service may give rise to mutual obligations, for examples, the obligation of the employer to pay wages and the corresponding obligation of the workman to render services, and partly non-contractual, as the states have already, by legislation, prescribed positive obligations for the employer

towards his workmen, as, for the example, terms, conditions and obligations prescribed by the payment of wages act, 1936; industrial employment (standing orders) act, 1946; minimum wages act, 1948; payment of bonus act, 1965; payment of gratuity act, 1972 etc.

Any clause in the certified standing orders providing for automatic termination of services of a permanent employee, not directly related to "production" in a factory or industrial establishment, would be bad if it does not purport to provide an opportunity of hearing to the employee whose services are treated to have come to an end automatically.

Note: the uptron decision was followed later in *haryana state ec. C. W. Store ltd. Verses ram niwas*.

S.m. Nilajkar verses telecom. District manager, karnataka

[*"undertaking" is a concept narrower than industry. Closure of a government project or scheme would attract the proviso to s.25-fff(1).]*

Facts

A number of workers were engaged as casual labourers for the purpose of expansion of telecom facilities in the district of belgaum, karnataka, during the years 1985-86 and 1986-87. The services of these workers were utilized for digging, laying cables, erecting poles, drawing lines and other connected works. It appears that the

services of these workmen were terminated sometime during the year 1987 and they were not engaged on work thereafter.

Issue

Whether the termination of services of the appellants casual labour was justified or not? If not, to what relief the workman is entitled?

Decision of the supreme court

The court said:

" 'retrenchment' in its ordinary connotation is discharge of labour as surplus though the business or work itself is continued. It is well-settled by a catena of decisions that labour laws being beneficial pieces of legislation are to be interpreted in favour of the beneficiaries in case of doubt or where it is possible to take two views of a provision. It is also well-settled in case of doubt or where it is possible to take two views of a provision. It is also well-settled that the parliament has employed the expression "the termination by the employer of the service of a workman^/- *any reason whatsoever*" while defining the term "retrenchment", which is suggestive of the legislative intent to assign the term 'retrenchment' a meaning wider than what is understood to have in common parlance. There are four exceptions carved out of the artificially extended meaning of the term 'retrenchment,' and therefore, termination of service of a workman so long as it is attributable to the act of the employer would fall within the meaning of 'retrenchment' *de hors* the reasons for termination. To be expected from within the meaning of 'retrenchment' the termination of service must fall within one of the four excepted categories. A termination of service which does not fall within the categories (a), (b), (bb) and (c) would fall within the meaning of 'retrenchment'.

The termination of service of a workman engaged in a scheme or project may not amount to retrenchment within the meaning of sub-clause (bb) subject to the following conditions being satisfied:

(1) that the workman was employed in a project or scheme of temporary duration;

(2) the employment was on a contract, and not as a daily-wages simlicitor, which provided *inter alia* that the employment shall come to an end on the expiry of the scheme or project; and

(3) the employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract.

(4) the workman ought to have been apprised or made aware of the above said terms by the employer at the commencement of employment. The engagement of a workman as a daily-wager does not by itself amount to putting the workman on notice that he was being envisaged in a scheme or project which was to last only for a particular length of time or upto the occurrence of some event, and therefore, the workman ought to know that his employment was short lived. The contract of employment consciously entered into the workman with the employer would result in a notice to the workman on the date of the commencement of the employment itself that his employment was short-lived and as per the terms of the contract the same was liable to termination on the expiry of the contract and the scheme or project coming to an end. The workman may not therefore complain that by the act of employer his employment was coming to an abrupt termination. To exclude the termination of a scheme or project employee from the definition of retrenchment it is for the employer to prove the above said ingredients so as to attract the applicability of sub-clause (bb) above said. In the case at hand, the respondent-employer has failed in alleging and proving the ingredients of sub-clause (bb), as stated hereinabove. All that has been proved is that the appellants were engaged as casual workers or daily-wagers in a project. For want to proof attracting applicability of sub-clause (bb), it has to be held that the termination of the services of the appellants amounted to retrenchment. The appropriate provision which should govern the cases of the appellants is section 25fff."

The court held that the appropriate provision which should govern the cases of the appellants in s. 25-fff, which deals with closing down of undertakings. The term "undertaking" is not defined in the act. The relevant provisions use the term "industry". Undertaking is a concept narrower than industry. An undertaking may be a

part of the whole, that is, industry. It carries a restricted meaning. Closure of a project or scheme by the state government would be covered by closing down of an undertaking within the meaning of s. 25-fff. The workman would therefore be entitled to notice and compensation in accordance with the provisions of s. 25-f though the right of the employer to close the undertaking for any reason whatsoever cannot be questioned. Compliance with s. 25-f shall be subject to such relaxations as are provided by s. 25-fff. The undertaking having being closed on account of unavoidable circumstances beyond the control of the employer i.e. By its own force as it was designed and destined to have a limited life only, the compensation payable to the workman under clause (b) of s. 25-f shall not exceed his average pay for three months. This is so because of failure on the part of the respondent employer to allege and prove that the termination of employment fell within sub-clause (bb) of clause (oo) of s. 2 of the act.



The workmen of m/s firestone tyre and rubber co. Of india (p) ltd. Verses . The firestone tyre & rubber co.

(lay-off strictly speaking, is not a temporary discharge of the workman or a temporary suspension of his contract of service.) Facts

Due to strike from 3rd march, 1967 to 16th may, 1967 and again from 4th october, 1967 in the bombay factory of the respondent company, the was a short supply of tyres etc to the distribution office at delhi. In the delhi office,

there were 30 employees at the relevant time. 17 workmen out of 30 were laid off by the management from 5th february, 1968 "due to much reduced production in the company's factory resulting from strike in one of the factory departments." the workmen were not given their wages or compensation for the period of lay-off. An industrial dispute was raised and referred by the delhi administration. The industrial tribunal held that the workmen were not entitled to any lay-off compensation. Therefore, the union of the workers appealed. Issue

"whether the action of the management to lay-off" 17 workmen with effect from 5th february, 1968 was illegal and or unjustified, and, if so, to what relief are these workmen entitled?" decision of the supreme court

Before the amendment in 1953 many a time when the lay-off was found to be justified workmen were not found entitled to any wages or compensation. But b> the amending act-act 43 of 1953—clause (kkk) in section 2 was added. By the same amending act, chapter va was introduced in the act to provide for lay-off and retrenchment compensation. Section 25-a excluded the industrial establishment in which less than 50 workmen on an average per working day had been employed in the proceeding calender month from the application of 25c to 25e. According to section 25c the laid-off workers are entitled to compensation and broadly speaking this is 50% of the total of basic wages and dearness allowance. The respondent company employed only 30 workmen at its delhi office at the relevant time. According to section 25j if a workman is entitled to benefits which are more favourable to him than those provided under the industrial disputes act (chapter. Va) he shall continue to be entitled to the more favourable benefits.

Lay-off means the failure, refusal or inability of employer on account of the reasons or contingencies mentioned in clause (kkk) of section 2 to give employment to a workman whose name is borne on the muster rolls of his industrial establishment. *Of contract of service concerning such right of lay off.* In such a situation the conclusion seem to be inescapable that the workmen were laid-off without any authority of law or the power in the management under the contract of service. *Industrial establishments where there is a power in the management to lay-off a workmen and to which the provisions of chapter va apply, the question of payment of compensation will be governed and determined by the said provisions. Otherwise chapter va is not a complete code as was argued on behalf of the respondent company in the matter of payment of lay-off compensation.* This case therefore, goes out of chapter va. Ordinarily and generally the workmen would be entitled to their full wages but in a reference made under section 16(1) of the act, it is open to the tribunal or the court to award a lesser sum finding the justifiability of the layoff."

U.p. State brassware corpn. Ltd. **Verses** ***uday narain pandey***

S.b. Sinha, j. - whether direction to pay back wages consequent upon a declaration that a workman has been retrenched in violation of the provisions of section 6-n of the u.p. Industrial disputes act, 1947 (equivalent to section 25f of the industrial disputes act, 1947) as a rule is in question in this appeal which

arises out of a judgment and order dated 6.2.2004 passed by a division bench of the high court of judicature at allahabad in civil misc. Writ petition no. 23890 of 1992 dismissing the appeal preferred by the appellant herein arising out of a judgment and order dated 8th july, 1992. The appellant is an undertaking of the state of uttar pradesh. The respondent herein was appointed on 23rd july, 1984 in a project known as project peetal basti by the appellant for looking after the construction of building, cement loading and unloading. He worked in the said project from 23.7.1984 till 8.1.1987. He was thereafter appointed in non- ferrous rolling mill. By an order dated 12/13.2.1987, the competent authority of the non- ferrous mill of the appellant passed the following order: "following two persons are hereby accorded approval for appointment in non- ferrous rolling mill on minimum daily wages for the period w.e.f. Date indicated against their name till 31-3-1987.

S no. Name date

1. Sh. Hori lal 7-1-1987

2. Sh. Uday narain pandey 8-1-1987"

The services of the respondent were terminated on the expiry of his tenure. An industrial dispute having been raised, the appropriate government by an order dated 14.9.1998 referred the following dispute for adjudication by the presiding officer, labour court, uttar pradesh:

Whether the employer's decision to terminate the workman sh. Uday narain son of pateshwari pandey w.e.f. 1-4-87 was illegal and improper? If yes whether the concerned workman is entitled to the benefit of retrenchment and other benefit? The project officer of the appellant-corporation appears to have granted a certificate showing the number of days on which the respondent performed his duties. The labour court in its award dated 31.10.1991 came to the finding that the respondent worked for more than 240 days in each year of 1985-1986. It was directed:

Therefore, i reached to the decision that the employer should reinstate the concerned workman uday narain pandey son of sh. Pateshwari pandey w.e.f. The date of retrenchment i.e. 1-4-87 and he should be paid entire back wage with any other allowances w.e.f. Same date within 30 days from the date of this order together with rs. 50/- towards cost of litigation to sh. Uday narain pandey. I decide accordingly in this industrial dispute.

The appellant herein filed a writ petition before the allahabad high court in may, 1992 which was marked as civil misc. Writ petition no. 23890 of 1992 inter alia contending that as the respondent had not rendered service continuously for a period of 240 days during the period of 12 calendar months immediately before his retrenchment uninterruptedly, he was not a workman within the meaning of section 2(z) of the u.p. Industrial disputes act. It was further contended that the appointment of the respondent was on contractual basis for a fixed tenure which came to an end automatically as stipulated in the aforementioned order dated 12/13.2.1987.

An application was filed by the respondent herein under the payment of wages act wherein an award was passed. The said order was also questioned by the appellant by filing a writ application before the high court and by an order dated 12.8.1993, the high court directed it to pay a sum of rupees ten thousand to the respondent. Pursuant to or in furtherance of the said order, the respondent is said to have been paid wages upto february, 1996. By reason of the impugned order dated 6.2.2004, the writ petition was dismissed holding:

Having heard the learned counsel for the petitioners and having perused the record, i am of the opinion that the aforesaid findings recorded by the labour court cannot be said to be perverse. The learned senior counsel then contended that the petitioner no. 1 i.e. U.p. State brassware corporation ltd. Has been closed down. Be that as it may, the position of the respondent workman would be the same as that all the similar employees and this cannot be a ground to set aside the award of the labour court.

Ms. Rachana srivastava, learned counsel appearing on behalf of the appellant would bring to our notice that the appellant's industries have been lying closed since 26.3.1993 and in that view of the matter, the

labour court as also the high court committed a serious error in passing the impugned judgment. The appointment of the respondent, the learned counsel would contend, being a contractual one for a fixed period, section 6-n of the u.p. Industrial disputes act would have no application.

Relying on or on the basis of the principle of 'no work no pay', it was urged that for the period the respondent did not work, he was not entitled to any wages and as such the grant of back wages by the labour court as also by the high court is wholly illegal, particularly, in view of the fact that no statement was made in his written statement filed before the labour court that he was not employed with any other concern. In any event, the respondent was also not interested in a job. In support of the aforementioned contention, reliance has been placed on ***kendriya vidyalaya sangathan*** **verses.** ***S.c. Sharma*** and ***allahabad jal sansthan*** **verses.** ***Daya shankar rai*** mr. Bharat sangal, learned counsel appearing on behalf of the respondent, on the other hand, would submit that section 2 (bb) of the industrial disputes act, 1947 applies to the workmen working in the state of uttar pradesh as there does not exist any such provision in the u.p. Industrial disputes act. It was conceded that in view of the fact that establishment of the appellant was sold out on 26.3.1993, the respondent may not be entitled to an order of reinstatement with full back wages but having regard to the fact that his services were wrongly terminated with effect from 1.4.1987, he would be entitled to back wages for the entire period from 1.4.1987 till 26.3.1993 besides the amount of compensation as envisaged under the u.p. Industrial disputes act.

Payment of back wages, mr. Sangal would urge, is automatic consequent upon a declaration that the order of termination is unsustainable for any reason whatsoever and in particular when it is found to be in violation of the provisions of section 6-n of the u.p. Industrial disputes act.

It is not in dispute that the respondent was appointed on daily wages. He on his own showing was appointed in a project work to look after the construction of building. The construction of the building, the learned labour court noticed, came to an end in the year 1988. The reference by the appropriate government pursuant to an industrial dispute raised by the respondent was made in the year 1990. A decision had been taken to close down the establishment of the appellant as far back on 17.11.1990 where for a government order, go no. 395/18 niryat-3151/90 dated 17.11.1990 was issued. In its rejoinder affidavit filed before the high court, it was contended that the said go was implemented substantially and all the employees including the regular employees save and except some skeleton staff for winding up were retrenched. The non ferrous mill of the appellant was sold on 26.3.1993. The labour court in its impugned award has not arrived at any finding that the order of appointment dated 8.1.1987 whereby the respondent was appointed afresh in the non ferrous rolling mill was by way of unfair labour practice. It is, however, true that the appellant relying on or on the basis of the aforementioned order dated 12/13.2.1987 in terms whereof the respondent's services were approved for appointment in the said mill on minimum daily wages for the period 8.1.1987 till 31.3.1987 terminated his services without giving any notice or paying salary of one month in lieu thereof. No compensation in terms of section 6-n of the u.p. Industrial disputes act was also paid. Before adverting to the decisions relied upon by the learned counsel for the parties, we may observe that although direction to pay full back wages on a declaration that the order of termination was invalid used to be the usual result but now, with the passage of time, a pragmatic view of the matter is being taken by the court realizing that an industry may not be compelled to pay to the workman for the period during which he apparently contributed little or nothing at all to it and/ or for a period that was spent unproductively as a result whereof the employer would be compelled to go back to a situation which prevailed many years ago, namely, when the workman was retrenched. It is not disputed that the respondent did not plead that he after his purported retrenchment was wholly unemployed.

Section 6-n of the u.p. Industrial disputes act provides for service of one month notice as also payment of compensation to be computed in the manner laid down therein. Proviso to clause (a) of the said

provision, however, excludes the requirement of giving such notice in the event the appointment was for a fixed tenure.

Section 25b(2)(a) of the industrial disputes act raises a legal fiction that if a workman has actually worked under the employer continuously for a period of more than 240 days during a period of twelve calendar months preceding the date with reference to which calculation is to be made, although he is not in continuous service, he shall be deemed to be in continuous service under an employer for a period of one year. The labour court although passed its award relying on or on the basis of the certificate issued by the appellant, it did not hold that during the preceding 12 months, namely, for the period 1st april, 1986 to 31st march, 1987 the workman had completed 240 days of service. Unfortunately, neither the labour court nor the high court considered this aspect of the matter in right perspective.

No precise formula can be laid down as to under what circumstances payment of entire back wages should be allowed. Indisputably, it depends upon the facts and circumstances of each case. It would, however, not be correct to contend that it is automatic. It should not be granted mechanically only because on technical grounds or otherwise an order of termination is found to be in contravention of the provisions of section 6-n of the u.p. Industrial disputes act.

Section 2(oo)(bb) of the central act as inserted by industrial disputes amendment act, 1984 is as under:

"2. Definitions- in this act, unless there is anything repugnant in the subject or context, '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 (bb) termination of the service of the workman as a result of the non-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 that behalf contained therein;" however, a similar provision has not been enacted in the u.p. Industrial disputes act. The contention of the appellant, as noticed hereinbefore, was that the respondent having been appointed for a fixed period was not entitled to any compensation under the provisions of section 6-n of the u.p. Industrial disputes act. But, in this connection our attention has been drawn to a 2-judge bench decision of this court in ***uttar pradesh state sugar corporation ltd.*** **Verses** ***om prakash upadhyay*** wherein it was held that in view of section 31(1) of industrial disputes (amendment and miscellaneous provisions) act, 1956, the provisions of section 2 (bb) of the central industrial disputes act would not be applicable. In that view of the matter, although no notice was required to be service in view of the proviso to clause (a) of section 6-n of the u.p. Industrial disputes act, compensation there for as provided for in clause (b) was payable. But, it is not necessary for us to go into the correctness or otherwise of the said decision as it is not disputed that before the provisions of section 6-n of the u.p. Industrial disputes act can be invoked, the concerned workman must work at least for 240 days during a period of twelve calendar months preceding the date with reference to which calculation is to be made.

However, as the question as regard termination of service of the respondent by the appellant is not in issue, we would proceed on the basis that the services of the respondent were terminated in violation of section 6-n of the u.p. Industrial disputes act. The primary question, as noticed by us herein before, is as to whether even in such a situation the respondent would be entitled to the entire back wages.

Before adverting to the said question in a bit more detail, let us consider the decisions relied upon by mr. Sangal.

In ***hindustan tin works pvt. Ltd.*** **Verses.** ***Employees of hindustan tin works pvt. Ltd.*** His court merely held that the relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It, therefore, does not lay down a law in absolute terms to the effect that right to claim back wages must necessarily follow an order declaring that the termination of service is

invalid in law. In ***hindustan tin works*** notice for retrenchment was issued *inter alia* for non availability of raw material to utilize the full installed capacity, power shedding limiting the working of the unit to 5 days a week and the mounting loss which were found to be factually incorrect. The real reason for issuing such a notice was held to be "the annoyance felt by the management consequent upon the refusal of the workmen to agree to the terms of settlement contained in the draft dated 5th april, 1974".

Laws proverbial delay, it was urged therein, is a matter which should be kept in view having regard to the fact situation obtaining in each case and the conduct of the parties. Such a contention was raised on the ground that the company was suffering losses. The court analysed factual matrix obtaining therein to the effect that a sum of rs. 2,80,000/- was required to be paid by way of back wages and an offer was made by way of settlement to pay 50% of the back wages observing: "now, undoubtedly the appellant appears to have turned the corner. The industrial unit is looking up. It has started making profits. The workmen have already been reinstated and, therefore, they have started earning their wages. It may, however, be recalled that the appellant has still not cleared its accumulated loss.

Keeping in view all the facts and circumstances of this case it would be appropriate to award 75% of the back wages to the workmen to be paid in two equal instalments."

It will, therefore, be seen that this court itself, having regard to the factual matrix obtaining in the said case, directed payment of 75% of the back wages and that too in two equal instalments.

In ***management of panitole tea estate*** **verses** ***the workmen***, a two judge bench of this court while considering the question as regard grant of relief or reinstatement, observed:

The general rule of reinstatement in the absence of special circumstances was also recognised in the case of ***workmen of assam match co. Ltd.*** **Verses.** ***Presiding officer, labour court, assam*** and has again been affirmed recently in ***tulsidas paul*** **verses** ***second labour court, w.b***. In ***tulsidas paul*** it has been emphasised that no hard and fast rule as to which circumstances would establish an exception to the general rule could be laid down and the tribunal must in each case decide the question in a spirit of fairness and justice in keeping with the objectives of industrial adjudication.

In ***surendra kumar verma*** **verses** ***central government industrial tribunal-cum- labour court, new delhi*** , this court refused to go into the question as to whether termination of services of a workman in violation of the provisions of section 25f is void ab initio or merely invalid or inoperative on the premise that semantic luxuries are misplaced in the interpretation of 'bread and butter' statutes. In that context, chinnappa reddy, j. Observed:

Plain common sense dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen. It is as if the order has never been, and so it must ordinarily lead to back wages too. But there may be exceptional circumstances which make it impossible or wholly inequitable vis-`-vis the employer and workmen to direct reinstatement with full back wages. For instance, the industry might have closed down or might be in severe financial doldrums; the workmen concerned might have secured better or other employment elsewhere and so on. In such situations, there is a vestige of discretion left in the court to make appropriate consequential orders. The court may deny the relief of reinstatement where reinstatement is impossible because the industry has closed down. The court may deny the relief of award of full back wages where that would place an impossible burden on the employer. In such and other exceptional cases the court may mould the relief, but, ordinarily the relief to be awarded must be reinstatement with full back wages. That relief must be awarded where no special impediment in the way of awarding the relief is clearly shown. True, occasional hardship may be caused to an employer but we must remember that, more often than not, comparatively far greater hardship is certain to be caused to the workmen if the relief is denied than to the employer if the relief is granted.

Yet again, no law in absolute terms had been laid down therein. The court proceeded on the basis that there may be situations where grant of full back wages would be inequitable. In the fact situation obtaining therein, the court, however was of the opinion that there was no impediment in the way of awarding the relief. It is interesting to note that pathak, j., as his lordship then was, however was of the view:

"ordinarily, a workman who has been retrenched in contravention of the law is entitled to reinstatement with full back wages and that principle yields only where the justice of the case in the light of the particular facts indicates the desirability of a different relief."

The expression 'ordinarily' must be understood given its due meaning. A useful reference in this behalf may be made to a 4-judge bench decision of this court in ***jasbhai motibhai desai verses roshan kumar, haji bashir ahmed*** wherein it has been held:

35. The expression “ordinarily” indicates that this is not a cast-iron rule. It is flexible enough to take in those cases where the applicant has been prejudicially affected by an act or omission of an authority, even though he has no proprietary or

Even a fiduciary interest in the subject-matter. That apart, in exceptional cases even a stranger or a person who was not a party to the proceedings before the authority, but has a substantial and genuine interest in the subject-matter of the proceedings will be covered by this rule. The principles enunciated in the english cases noticed above, are not inconsistent with it.

In ***j.n. Srivastava*** **verses** ***union of india*** again no law has been laid down in the fact situation obtaining therein. The court held that the workmen had all along been ready and willing to work, the plea of 'no work no pay' as prayed for should not be applied.

We may notice that in ***m.d., u.p. Warehousing corpn.*** **Verses** ***vijay narayan vajpayee*** and jitendra singh rathor verses. Shri baidyanath ayurved bhawan ltd. Although an observation had been made to the effect that in a case where a breach of the provisions of section 25-f has taken place, the workmen cannot be denied back wages to any extent, no law, which may be considered to be binding precedent has been laid down therein. In ***p.g.i. Of medical education & research, chandigarh*** **verses** ***raj kumar***, banerjee, j., on the other hand, was of the opinion: the learned counsel appearing for the respondents, however, placed strong reliance on a later decision of this court in ***pgi of m.e. & research chandigarh*** **verses** ***vinod krishan sharma*** wherein this court directed payment of balance of 60% of the back wages to the respondent within a specified period of time. It may well be noted that the decision in soma case has been noticed by this court in ***vinod sharma*** case wherein this court apropos the decision in soma case observed: "a mere look at the said judgment shows that it was rendered in the peculiar facts and circumstances of the case. It is, therefore, obvious that the said decision which centred round its own facts cannot be a precedent in the present case which is based on its own facts." we also record our concurrence with the observations made therein. Payment of back wages having a discretionary element involved in it has to be dealt with, in the facts and circumstances of each case and no straight-jacket formula can be evolved, though, however, there is statutory sanction to direct payment of back wages in its entirety. As regards the decision of this court in hindustan tin works (p) ltd. Be it noted that though broad guidelines, as regards payment of back wages, have been laid down by this court but having regard to the peculiar facts of the matter, this court directed payment of 75% back wages only.

The decisions of this court strongly relied upon by mr. Sangal, therefore, do not speak in one voice that the industrial court or for that matter the high court or this court would not have any discretionary role to play in the matter of moulding the relief. If a judgment is rendered merely having regard to the fact situation obtaining therein, the same, in our opinion, could not be a declaration of law within the meaning of article 141 of the constitution of india.

It is one thing to say that the court interprets a provision of a statute and lays down a law, but it is another thing to say that the courts although exercise plenary jurisdiction will have no discretionary

power at all in the matter of moulding the relief or otherwise give any such reliefs, as the parties may be found to be entitled to in equity and justice. If that be so, the court's function as court of justice would be totally impaired. Discretionary jurisdiction in a court need not be conferred always by a statute. Order vii, rule 7 of the code of civil procedure confers power upon the court to mould relief in a given situation. The provisions of the code of civil procedure are applicable to the proceedings under the industrial disputes act. Section 11-a of the industrial disputes act empowers the labour court, tribunal and national tribunal to give appropriate relief in case of discharge or dismissal of workmen.

The meaning of the word 'discharge' is somewhat vague. In this case, we have noticed that one of the contentions of the appellant was that the services of the respondent had been terminated in terms of its order dated 12/13.2.1987 whereby and whereunder the services of the respondent herein was approved till 31.3.1987. The industrial disputes act was principally established for the purpose of pre-empting industrial tensions, providing the mechanics of dispute-resolutions and setting up the necessary infrastructure so that the energies of partners in production may not be dissipated in counter-productive battles and assurance of industrial justice may create a climate of goodwill. [see ***lic* verses *d.j. Bahadur*** industrial courts while adjudicating on disputes between the management and the workmen, therefore, must take such decisions which would be in consonance with the purpose the law seeks to achieve. When justice is the buzzword in the matter of adjudication under the industrial disputes act, it would be wholly improper on the part of the superior courts to make them apply the cold letter of the statutes to act mechanically. Rendition of justice would bring within its purview giving a person what is due to him and not what can be given to him in law.

A person is not entitled to get something only because it would be lawful to do so. If that principle is applied, the functions of an industrial court shall lose much of its significance. The changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the government in the wake of prevailing market economy, globalization, privatization and outsourcing is evident.

In ***hindustan motors ltd.* Verses *tapan kumar bhattacharya***, this court noticed **raj kumar** and ***hindustan tin works*** but held:

As already noted, there was no application of mind to the question of back wages by the labour court. There was no pleading or evidence whatsoever on the aspect whether the respondent was employed elsewhere during this long interregnum. Instead of remitting the matter to the labour court or the high court for fresh consideration at this distance of time, we feel that the issue relating to payment of back wages should be settled finally. On consideration of the entire matter in the light of the observations referred to supra in the matter of awarding back wages, we are of the view that in the context of the facts of this particular case including the vicissitudes of long-drawn litigation, it will serve the ends of justice if the respondent is paid 50% of the back wages till the date of reinstatement...

The court, therefore, emphasized that while granting relief application of mind on the part of the industrial court is imperative. Payment of full back wages, therefore, cannot be the natural consequence.

The said decisions were, however, distinguished in ***mohan lal* verses *management of m/s. Bharat electronics ltd.*** Desai, j. Was of the opinion:

17. But there is a catena of decisions which rule that where the termination is illegal especially where there is an ineffective order of retrenchment, there is neither termination nor cessation of service and a declaration follows that the workman concerned continues to be in service with all consequential benefits. No case is made out for departure from this normally accepted approach of the courts in the field of social justice and we do not propose to depart in this case. In ***allahabad jal sansthan* verses *daya shankar rai***, in which one of us was a party, this court had taken into consideration most of the decisions relied upon by mr. Sangal and observed:

A law in absolute terms cannot be laid down as to in which cases, and under what circumstances, full back wages can be granted or denied. The labour court and/or industrial tribunal before which industrial dispute has been raised, would be entitled to grant the relief having regard to the facts and circumstances of each case. For the said purpose, several factors are required to be taken into consideration. It is not in dispute that respondent 1 herein was appointed on an ad hoc basis; his services were terminated on the ground of a policy decision, as far back as on 24-1-1987. Respondent 1 had filed a written statement wherein he had not raised any plea that he had been sitting idle or had not obtained any other employment in the interregnum. The learned counsel for the appellant, in our opinion, is correct in submitting that a pleading to that effect in the written statement by the workman was necessary. Not only no such pleading was raised, even in his evidence, the workman did not say that he continued to remain unemployed. In the instant case, the respondent herein had been reinstated from 27-2-2001.

It was further stated:

16. We have referred to certain decisions of this court to highlight that earlier in the event of an order of dismissal being set aside, reinstatement with full back wages was the usual result. But now with the passage of time, it has come to be realised that industry is being compelled to pay the workman for a period during which he apparently contributed little or nothing at all, for a period that was spent unproductively, while the workman is being compelled to go back to a situation which prevailed many years ago when he was dismissed. It is necessary for us to develop a pragmatic approach to problems dogging industrial relations. However, no just solution can be offered but the golden mean may be arrived at.

Yet again in ***general manager, haryana roadways*** **verses** ***rudhan singh***, a 3-judge bench of this court in a case where the workman had worked for a short period which was less than a year and having regard to his educational qualification, etc. Denied back wages although the termination of service was held to have been made in violation of section 25f of the industrial disputes act, 1947 stating: a host of factors like the manner and method of selection and appointment i.e. Whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment, namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors, which has to be taken into consideration, is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. From the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which requires to be taken into consideration is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily-wage employment though it may be for 240 days in a calendar year.

The only question is whether the respondent would be entitled to back wages from the date of his termination of service till the aforementioned date. The decision to close down the establishment by the state of uttar pradesh like other public sector organizations had been taken as far back on 17.11.1990 where for a go had been issued. It had further been averred, which has been noticed hereinbefore, that the said go has substantially been implemented. In this view of the matter, we are of the opinion that interest of justice would be sub served if the back wages payable to the respondent for the period 1.4.1987 to 26.3.1993 is confined to 25% of the total back wages payable during the said period. The judgments and orders of the labour court and the high court are set aside and it is directed that the

respondent herein shall be entitled to 25% back wages of the total back wages payable during the aforesaid period and compensation payable in terms of section 6-n of the u.p. Industrial disputes act. If, however, any sum has been paid by the appellant herein, the same shall be adjusted from the amount payable in terms of this judgment. For the reasons aforementioned, the appeal is allowed in part and to the extent mentioned hereinbefore. However, there shall be no order as to costs.

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