submission may be extended by such period as may be agreed upon in writing by all parties to the dispute.

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9 See *National Engg. Works v. State of Rajasthan,* AIR 2000 SC 469 [LNIND 1999 SC 1079]: (2000) 1 SCC 371 [LNIND 1999 SC 1079], a settlement arrived at in conciliation proceedings is in the nature of a package deal. It need not specifically mention the demands left out. The left out demands cannot constitute the subject-matter of a reference. There is a presumption that such a settlement is reasonable and fair. But a dispute that on facts that the settlement was not *bona fide* or that the same was arrived at because of fraud, misrepresentation, concealment of facts or corruption or other inducement, can be a subject-matter of a further industrial dispute, referable under S. 10. Clause relating to pension confining benefit of lifelong pension to those retiring after certain date was held to be not unfair, settlement reached in course of conciliation proceeding, being a product of collective bargaining, is entitled to due weight and consideration, such settlement can be ignored only if it is exceptional, that is, either it is *unj cest* or *mala fide, Workers' Welfare Assn. v. I.T.C. Ltd.,* (2002) I LLJ 848 (SC).

10 *SAIL v. Madusudan Das,* (2008) 15 SCC 560 [LNIND 2008 SC 2075].

11 *Sankari Cement Alai etc. Sangam v. Government of TN,* (1983) 1 SCC 304 [LNIND 1981 SC 415].

12 *State of Madras v. Swadesamitram Labour Union,* 3 Fac JR 431 (Mad).

13 *Ram Avtar Sharma v. State of Haryana,* (1985) 3 SCC 189 [LNIND 1985 SC 122].

14 *Bombay Union of Journalists v. State of Bombay, (1964) 1 Lab LJ 351* [LNIND 1963 SC 305].

15 *Hochitief Gammon v. State of Orissa,* (1975) 2 SCC 649 [LNIND 1975 SC 322] : AIR 1975 SC 2226 [LNIND 1975 SC 322]: *(1975) 2 LLJ 418* [LNIND 1975 SC 322].

16 *T.N. Joint Action Council and Textile Trade Union v. Govt. of T.N.,* (1986) 4 SCC 128 [LNIND 1986 SC 264]. Refusal by the Labour Commissioner to refer the matter of a Cooperative Bank employee on the ground that he was not a workman was held to be wrong, the Supreme Court ordered reference, *(1984) 2 Lab LJ 396* (SC). Failed conciliation, the Labour Commissioner accepted the failure report, the Government referred the matter for adjudication, held justified because irreconciliable dispute was there. *Village Papers Mazdoor Sangh v. State of H.P.,* (1995) 2 Lab LJ 628 (SC).

17 *Britania Biscuit Co. Ltd., Employees' Union v. Asstt Labour Commissioner,* *(1983) 1 Lab LJ 181* (Mad). A settlement as to bonus between management and workers, reference to Tribunal, held the latter could not impose a new solution contrary to the provisions of the Act, *(1987) 1 Lab LJ 53* (SC). A settlement between union and management is binding on all workmen even if they are not members of the union. The appellants, in this case, received benefits under the settlement, they became bound by that reason. *Ram Pukar Singh v. Heavy Engg. Corpn., (1995) 1 Lab LJ 214* (SC).

18 Rule 12, Industrial Disputes (Central) Rules, 1957.

19 Rule 71, industrial Disputes (Central) Rules, 1957.

Board of Conciliation [Section 5]

Avtar Singh: Introduction to Labour and Industrial Law

PART I THE INDUSTRIAL DISPUTES ACT, 1947

Learning Objectives

In Part I on *Industrial Disputes Act, 1947*, students will be able:

1. To know what is an 'industry' and what are 'industrial disputes' and 'deemed industrial disputes' and explore their meaning through different cases;
2. To understand what are the conditions where notice of change is required to be given by the employer to his workmen;
3. To know about the authorities provided by the Act to settle industrial disputes;
4. To explore about Reference of Disputes to Boards, Courts or Tribunals under the Act;
5. To understand procedure, powers and duties of authorities under the Act;
6. To understand and distinguish between strikes and lock-outs, retrenchments and lay-offs, transfers and closures as well as special provisions relating to them;
7. To know what are unfair labour practices that are prohibited under the Act;
8. To understand the procedure of inquiry and investigation in relation to industrial disputes;
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The *Industrial Disputes Act, 1947* provides for the following authorities:

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5. Courts of Inquiry (section 6)
6. Adjudication Machinery *viz.*

   (a) Labour Courts (section 7)

   (b) Industrial Tribunals (section 7A)

   (c) National Tribunals (section 7B)

7. Arbitrational Machinery (section 10A)

Board of Conciliation [Section 5]— Updated On 08-01-2019

The appropriate Government has been given the power to constitute a Board of Conciliation. Whenever the occasion arises, it may constitute such a Board by notification in the Official Gazette. The Board of Conciliation is constituted for promoting the settlement of an industrial dispute.

The Board consists of a Chairman and two or four other members, as the appropriate Government thinks fit. The Chairman shall be an independent person and the other members shall be persons appointed in equal numbers to represent the parties to the dispute. The person appointed to represent a party shall be appointed on the recommendation of that party. If any party fails to make a representation within the prescribed time, the appropriate Government shall appoint such persons as it thinks fit to represent that party.

When a Board has prescribed quorum, it may act in the absence of the Chairman or any of its members or even in any vacancy in its number. If the appropriate Government informs the Board that the services of the Chairman or of any other member have ceased to be available, the Board shall not act until a new Chairman or member has been appointed.

Duties of Board

Section 13 deals with the duties of the Board of Conciliation which are as follows:—

(i) Where a dispute has been referred to a Board under the Act, it shall be duty of the Board to endeavour to bring about a settlement of the same. It shall be the duty of the Board to investigate the dispute and all matters affecting the dispute and merits. It must bring the appropriate settlement of the dispute in such manner as it thinks fit and without delay. It may do all the things that are necessary for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

(ii) If a settlement of the dispute or a settlement of any matter related to the dispute has arrived at in the course of conciliation proceedings, the Board has to send a report to the appropriate Government together with the memorandum of settlement signed by the parties to the dispute.

(iii) Where any settlement is not arrived at, the Board has to send a full report to the appropriate Government as soon as practicable after the close of the investigation. The report has to give a full report of the proceedings and steps taken by it for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement. It also has to give full statement of such facts and circumstances, its findings and the reasons on account of which a settlement could not be arrived at in its opinion. It has to give its recommendation for the determination of the dispute.

If on the receipt of such a report in relation to a public utility service, the appropriate Government does not make a reference to a Labour Court, Tribunal or National Tribunal, it has to record its reasons and communicate the same to the parties concerned.

(iv) The Board has to submit its report within two months of the date on which the dispute was referred to it or within the shorter time fixed by the appropriate Government. The Government may from time to time extend the time for the submission of the report by such further periods not exceeding two months in the aggregate. The time for the submission of the report may also be extended by such period as may be agreed upon in writing by all the parties to the dispute.

Courts of Inquiry [Section 6]

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   (a) Labour Courts (section 7)

   (b) Industrial Tribunals (section 7A)

   (c) National Tribunals (section 7B)

7. Arbitrational Machinery (section 10A)

COURTS OF INQUIRY [SECTION 6]— Updated On 08-01-2019

The appropriate Government may constitute a Court of Inquiry for inquiring into any matter appearing to be connected with or relevant to an industrial dispute by notification in the Official Gazette.

A Court of Inquiry may consist of one independent person or such number of independent persons as the appropriate Government may think fit. Where a Court of Inquiry consists of two or more members, one of them shall be appointed as a chairman.

A court having the prescribed quorum may act in the absence of the Chairman or any member or any vacancy in its number but where the appropriate Government notifies the Court that the services of the Chairman have ceased to be available, the Court shall not act until the chairman has been appointed. It is the duty of the court to inquire into the matters referred to it and complete it within a period of six months from the commencement of its inquiry.

THE INDUSTRIAL DISPUTES ACT, 1947

Avtar Singh: Introduction to Labour and Industrial Law

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7. Arbitrational Machinery (section 10A)

ADJUDICATION MACHINERY

LABOUR COURTS [SECTION 7]— Updated On 08-01-2019

Constitution

The appropriate Government may constitute one or more Labour Courts for adjudication of industrial disputes relating to any matter specified in the Second Schedule and for performing such other functions as may be assigned to them under the Act, by notification in the Official Gazette. In the Second Schedule the following matters are stated to be falling within the jurisdiction of Labour Court:

(a) Propriety or legality of an order passed by on employer under the standing orders.

(b) The application and interpretation of standing orders.

(c) Discharge or dismissal of workmen including reinstatement of, or grant of relief to, workmen wrongfully dismissed.

(d) Withdrawal of any customary concession or priviledge.

(e) Illegality or otherwise of a strike or lock-out, and

(f) All matters other than those specified in the Third Schedule of the Act.

Civil Court will have no jurisdiction by implication to deal with industrial disputes when the special remedy provided by the statute is the only remedy for the reliefs which can be granted by the Labour Courts.

The Board constituted under *sections 3* and *11* of *Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955* is not a substitute for Labour Court. It is mainly for considering working conditions of newspaper employees and fixing rates of wages for working journalists. It was held that the award in dispute regarding retrenchment of newspaper employee given by Labour Court under *Industrial Disputes Act* is not without jurisdiction.

Qualifications of Presiding Officers of Labour Courts

A Labour Court consist of one person only to be appointed by the appropriate Government. A person shall not be qualified for appointment as the presiding officer of a Labour Court, unless:

(a) he is, or has been, a Judge of a High Court; or

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

(c) he has held any judicial office in India for not less than seven years; or

(d) he has been the presiding officer of a Labour Court constituted under any Provincial Act or State Act for not less than five years; or

(e) he is or has been a Deputy Chief Labour Commissioner (Central) or Joint Commissioner of the State Labour Department, having a degree in law and at least seven years' experience in the labour department including three years of experience as Conciliation Officer: Provided that no such Deputy Chief Labour Commissioner or Joint labour Commissioner shall be appointed unless he resigns from the service of the Central Government or State Government, before being appointed as the presiding officer; or

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

The phrase 'has held any judicial office' indicates that the office is primarily judicial in nature. Where the question was whether a magistrate holds a judicial office, it was held that although his duties are partly judicial and partly others, but acting as a magistrate he is a judicial officer. The expression 'holding a judicial office' signifies more than discharge of judicial functions while holding some other office.

Regarding the jurisdiction of the Labour Court the Supreme Court has observed, "If the termination of an industrial employer's services has been preceeded by a proper domestic enquiry which has been held in accordance with the rules of natural justice and the conclusions reached at the said inquiry are not perverse, the tribunal is not entitled to consider the propriety or the correctness of the said conclusions. If, on the other hand, in terminating the service of the employee, the management has acted maliciously or vindictively or has been actuated by a desire to punish the

employee for his trade union activities, the tribunal will be entitled to give adequate protection to the employee by ordering his reinstatement, or directing in his favour the payment of compensation, but if the inquiry has been proper and the conduct of the management in dismissing the employee is not *mala fide,* then the tribunal cannot interfere with the conclusions of the enquiry officer or with the orders passed by the management after accepting the said conclusions."

In a case, the respondent challenged his retrenchment from the post of reporter on the ground of non-compliance of the *Industrial Disputes Act, 1947* . The Labour Court gave decision in his favour which was challenged in the High Court but the High Court dismissed the appeal. The appellant preferred the appeal before the Supreme Court which observed that the appellant's contention that the respondent was a journalist and only the Board constituted under the *Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955* had jurisdiction to decide his case and not the Labour Court has no grounds. The Board constituted under the 1955 Act was not a substitute for Labour Court and it could decide only those cases which were referred to it. Therefore, the appeal was dismissed.

The Labour Court within whose local limits of jurisdiction the establishment is situated will have the jurisdiction to decide any dispute relating to subsistence allowance.

Regarding powers of Labour Court and Industrial Tribunals, a question arose whether they become *functus officio* after 30 days of publication of award and lose all powers to recall an *ex parte* award made on an application made by the aggrieved party beyond that period. Conflicting views were presented by the Division Benches of the Supreme Court. Therefore, the matter was referred to the larger Bench for determination. It was held by the Supreme Court in a case that an award without notice will be a nullity. Therefore, application for setting aside an *ex parte* award is not liable to be rejected on the ground that the labour court became *functus officio,* application not having been made within 30 days of publication of award.

The enquiry conducted by Labour Commissioner is of summary nature. He cannot decide and factual matters like validity of termination order or whether a person concerned is a workman or not.

THE INDUSTRIAL DISPUTES ACT, 1947

Avtar Singh: Introduction to Labour and Industrial Law

PART I THE INDUSTRIAL DISPUTES ACT, 1947

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7. Arbitrational Machinery (section 10A)

Adjudication Machinery

Industrial Tribunals [Section 7A]— Updated On 08-01-2019

Constitution

The appropriate Government may, by notification in the Official Gazette, constitute one or more Industrial Tribunals for the adjudication of industrial disputes and for performing such other functions as may be assigned to them under the Act. The industrial disputes may be relating to any matter, whether specified in the Second Schedule or the Third Schedule of the Act.

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

Qualifications for Appointment to Industrial Tribunal

A person shall not be qualified for appointment as the presiding officer of a Tribunal, unless:

(a) he is, or has been, a Judge of a High Court; or

(b) he has, for a period of not less than three years, been a District Judge or an Additional District Judge.

(c) he is or has been a Deputy Chief Labour Commissioner (Central) or Joint Commissioner of the State Labour Department, having a degree in law and at least seven years' experience in the labour department including three years of experience as Conciliation Officer: Provided that no such Deputy Chief Labour Commissioner or Joint labour Commissioner shall be appointed unless he resigns from the service of the Central Government or State Government, before being appointed as the presiding officer; or

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

Assessors

The appropriate Government may, if it so thinks fit, appoint two persons as assessors to advice the tribunal in the proceeding before it.

Matters of Jurisdiction

The following matters are within the jurisdiction of Industrial Tribunal:

1. Wages, including the period and mode of payment;
2. Compensatory and other allowances;
3. Hours of work and rest intervals;
4. Leave with wages and holidays;
5. Bonus, profit sharing, provident fund and gratuity;
6. Shift working otherwise than in accordance with standing orders;
7. Classification by grades;
8. Rules of discipline;
9. Rationalisation;
10. Retrenchment of workmen and closure of establishment; and
11. Any other matter that may be prescribed.

In a number of cases a question repeatedly arose that whether an objection to jurisdiction of a Tribunal could be raised before the tribunal itself or is it necessary to apply to the High Court to quash the proceedings before the Tribunal. Where the question of jurisdiction is clear from the admitted facts then there is no difficulty. The difficulty will arise where the question of jurisdiction is a mixed question of law and fact. In such cases the question should be raised before the Tribunal itself which will decide the question after considering the facts. If the Tribunal finds that it has no jurisdiction the proceeding before it comes to an end but where it finds that it has jurisdiction, it may proceed on to decide the dispute itself. Ordinarily the findings of the Industrial Tribunal regarding its jurisdiction are not interfered with by the courts but where it is found that the Tribunal has misapplied any principle of law while

interpreting the facts, the courts may set aside the findings of the Tribunal.

The Industrial Tribunal has no jurisdiction to adjudicate upon any matter relating to salaries of employees who are not workmen under the *Industrial Disputes Act* , or to inquire and decide whether the closure of the business was done by the management itself or not.

Powers

The Tribunals are constituted when any industrial dispute arises and they function till the dispute is disposed of. Tribunals can be constituted for deciding a specified number of disputes or for a limited period of time. Whenever in any proceeding any prejudice is likely to be caused to any party, the newly appointed Tribunal may start hearing the case from the beginning. Either party to the dispute can convince the Tribunal that the prejudice will be caused if the trial is not held *de novo.*

There are many powers which the Labour Court or Industrail Tribunal enjoy which a civil court does not have. For example, the power to enforce contracts of personal service, to create contracts and to change contracts etc.

Where the services of a probationer are terminated before the expiry of the probationary period without assigning any reasons, it was held that the Tribunal can investigate the validity of termination order. The Tribunal has to find out whether the order of termination has been passed with ulterior motive and is not in *bonafide* exercise of the power arising out of the contract.

It has been held that the Industrial Tribunal deciding upon wage scale of the employees of an industrial establishment would have the discretion to grant ad hoc increase of salary as part of the revision of wages.

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Adjudication Machinery

National Tribunals [Section 7B]— Updated On 08-01-2019

Constitution

The Central Government may constitute one or more National Industrial Tribunals for adjudication of industrial disputes by notification in the Official Gazette. National Tribunals are constituted to adjudicate upon such industrial disputes which, in the opinion of the Central Government, involve questions of national importance or are of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, such disputes.

A National Tribunal shall consist of one person only to be appointed by the Central Government.

Qualifications for Presiding Officer of National Tribunal

A person shall not be qualified for appointment as the presiding officer of a National Tribunal unless he is, or has been, a judge of a High Court [section 7B(3)].

Assessors

The Central Government may, if it thinks fit, appoint two persons as assessors to advice the National Tribunal in the proceeding before it.

End of Document

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ADJUDICATION MACHINERY

DISQUALIFICATIONS FOR PRESIDING OFFICERS OF LABOUR COURTS, TRIBUNALS AND NATIONAL TRIBUNALS [SECTION 7C]— Updated On 08-01-2019

No person shall be appointed to, or continue in, the office of the presiding officer of a Labour Court, Tribunal or National Tribunal, if—

(a) he is not an independent person; or

(b) he has attained the age of sixty-five years.

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The *Industrial Disputes Act* is an Act to make provision for investigation and settlement of disputes. Different modes for settlement of disputes provided by the Act can be broadly categorised into three, *i.e.,* conciliation, adjudication and arbitration. Works Committee, Conciliation Officers and Board of Conciliation are the authorities which settle disputes through conciliation. Labour Court, Tribunal and National Tribunal are adjudicatory authorities which settle disputes through adjudication. The Act also has a provision for voluntary reference of disputes to arbitration. A court of inquiry can also be constituted for inquiring into any matter appearing to be connected with or relevant to an industrial dispute.

The *Industrial Disputes Act, 1947* provides for the following authorities:

1. Works Committee (section 3)
2. Grievance Settlement Authority (section 9C)
3. Conciliation Officers (section 4)
4. Boards of Conciliation (section 5)
5. Courts of Inquiry (section 6)
6. Adjudication Machinery *viz.*

   (a) Labour Courts (section 7)

   (b) Industrial Tribunals (section 7A)

   (c) National Tribunals (section 7B)

7. Arbitrational Machinery (section 10A)

ADJUDICATION MACHINERY

FILLING OF VACANCIES [SECTION 8]— Updated On 08-01-2019

If, for any reason a vacancy (other than a temporary absence) occurs in the office of the presiding officer of a Labour Court or Tribunal or in the office of the Chairman or any other member of a Board or Court, then the appropriate Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy. In case of such a vacancy in the office of the presiding officer of a National Tribunal, it will be filled by the Central Government in the same manner. The proceedings may then be continued before the Labour Court, Tribunal, National Tribunal, Board or Court, as the case may be, from the stage at which vacancy is filled.

THE INDUSTRIAL DISPUTES ACT, 1947

Avtar Singh: Introduction to Labour and Industrial Law

PART I THE INDUSTRIAL DISPUTES ACT, 1947

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ADJUDICATION MACHINERY

FINALITY OF ORDERS CONSTITUTING BOARDS, ETC. [SECTION 9]—

Updated On 08-01-2019

Any order of the appropriate Government or of the Central Government appointing any person as the Chairman, any other member of a Board or Court or as the presiding officer of a Labour Court, Tribunal or National Tribunal shall not be called in question in any manner. Any act or proceeding before any Board or Court shall not be called in question in any manner on the ground merely because of—

(i) any vacancy in such Board or Court, or

(ii) defect in the *constitution* of such Board or Court.

The settlement arrived at in the course of conciliation proceeding have also been protected by this section. A

settlement arrived at in the course of a conciliation proceeding shall not be invalid only due to the fact that such settlement was arrived at in a proceeding which continued beyond a period of 14 days or less as fixed by the Government [under section 12(6)] or that the proceedings before a Board were continued beyond a period of two months or less as fixed by the Government [under section 13(5)].

This section cannot cure the defect of want of jurisdiction. Where the Tribunal has not been duly constituted under the Act and was acting without jurisdiction, it was held that such defect of want of jurisdiction cannot be cured under this section.[53]

Where the report of any settlement arrived at in the course of conciliation proceeding before a Board is signed by the Chairman and all the other members of the Board, such settlement shall be invalid by reason only of the casual or unforeseen absence of any of the members (including the Chairman) of the Board during any stage of the proceeding.

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53 *Jaggannath Vinayak Kale v. M.I. Ahmedi,* (1953) II LLJ 50.

THE INDUSTRIAL DISPUTES ACT, 1947

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7. Arbitrational Machinery (section 10A)

Adjudication Machinery

Reconstitution of Tribunals— Updated On 08-01-2019

In *Bharat Bank of India Ltd. v. Their Employees,* [54] the Supreme Court held that the reconstitution of the Tribunal after the occurrence of a vacancy in the office of the Chairman or member is necessary under the Act.

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54 2 FJR 1 (SC).

Reference of Disputes to Boards, Courts or Tribunals [Section 10]

Avtar Singh: Introduction to Labour and Industrial Law

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CHAPTER 4 Reference of Disputes to Boards, Courts or Tribunals

Reference of Disputes to Boards, Courts or Tribunals [Section 10]— Updated On 08-01-2019

The provision under section 10 is an operative provision which provides for reference of an industrial dispute or any

matter relating to industrial dispute to authorities under the Act.[1]

Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time by order in writing—

(a) refer the dispute to a Board for promoting a settlement; or

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

(c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication;[2] or

(d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication.[3]

Where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court.

The purpose of reference of dispute to Court or Tribunal is to keep industrial peace. The power to make reference cannot be exercised at any time, after delay of seven years and there being no industrial dispute, existing or apprehended.[4] Delay in raising dispute should not be unreasonable. Delay of 14 years in seeking reference and in challenging order of termination was found to be unreasonable.[5]

Where the dispute relates to a public utility service and notice under section 22 regarding strike or lock-out has been given, the appropriate Government shall make a reference of the dispute not withstanding the fact that any other proceedings in respect of the dispute may have commenced under this Act. It is not necessary to make the reference where the appropriate Government considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do.

Where the dispute is in relation to a matter to which the Central Government is the appropriate Government, it shall be competent for the Government to refer the dispute to a Labour Court or an Industrial Tribunal constituted by the State Government.

Some of the important points regarding reference are as follows:—

(i) This section comes into play when the Central Government is of the opinion that an industrial dispute exists or is apprehended.

(ii) The dispute should involve a question of national importance or should be of such a nature that industrial establishments situated in more than one state are likely to be interested or affected. The Government, may therefore, feel that it should be decided by a National Tribunal.

(iii) The Central Government can make the reference even if it is not the appropriate Government.

(iv) Reference should be by order in writing.

(v) Reference may be of the whole dispute or of any matter appearing to be connected with the dispute or relevant to it.

(vi) The dispute may relate to any matter specified in the Second or Third Schedules.

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

(viii) An order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal should specify the period within which the award on the dispute has to be submitted to the appropriate Government. Where such industrial dispute is connected with an individual workman, the period is not to exceed three months.

(ix) The parties to an industrial dispute may apply in the prescribed manner, whether jointly or separately, to the Labour Court, Tribunal or National Tribunal for extension of the period or for any other reason. If the presiding officer of the Court, Tribunal or National Tribunal considers it necessary or expedient to extend the period, he may extend the period by such further period as he may think fit. For such extension of period he has to give reasons in writing.

(x) The period, for which, if the proceedings before the Labour Court, Tribunal or National Tribunal had been stayed by an injunction or order of a Civil Court, shall be excluded in computing any period as abovestated.

(xi) Any proceedings before a Labour Court, Tribunal or National Tribunal shall not lapse merely on the ground that any period specified (under sub-section 2A) had expired without such proceedings being completed.

(xii) Where an industrial dispute has been referred here, the appropriate Government may by order prohibit the continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of the reference.

(xiii) If in an order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal or in a subsequent order, the appropriate Government has specified the points of adjudication, then it (Labour Court, Tribunal or National Tribunal) has to confine its adjudication to those points and incidental matters.[6]

(xiv) Where a dispute concerning any establishment has been referred to or is to be referred to a Labour Court, Tribunal or National Tribunal, the appropriate Government may include in that reference some other establishment, group or class of establishments, if it is of the opinion that the dispute is of such a nature that the—

(a) other establishment, group or class of establishment will be interested in, or

(b) affected by the dispute.

But the inclusion has to be done at the time of making the reference or at any time after that but before the submission of the award.

This may be done whether or not at the time of such inclusion any dispute exists or is apprehended in that

establishment, group or class of establishments. The Government may form such an opinion on an application made to it or even otherwise.

(xv) While answering the questions referred to it, a tribunal is under a duty to confine its enquiry to questions referred and has no jurisdiction to travel beyond terms of reference.[7]

Limitation Act does not apply to reference made by appropriate Government to Labour Court or Industrial Tribunal of adjudication of existing industrial dispute. Labour Court was held to have erred in holding reference as time-barred without going into merits of the case, a workman cannot be denied relief only on the ground of delay in raising industrial dispute[8]

A second reference which has been necessitated by a new subsequent event is not barred by *res judicata*.[9]

In a case relating to proper exercise of power of reference under section 10, it was held by the Supreme Court that failure report of conciliation proceedings is not a sufficient material evidence to decline reference. Refusal to order in this case amounts to determination of existing dispute between the parties by the State Government in the absence of relevant and material evidence on record.[10]

The Supreme Court in a decision relating to reference of dispute discussed about the manner in which reference has to be made by the Government. The government is required to make fair statement of dispute without prejudging issues from either perspective.[11]

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1 Where permission was given in the Supreme Court's order to approach 'authority' in accordance with law in case of fresh dispute, it was held that 'authority' here meant authority under statute, namely, reference in terms of section 10 and not High Court, *Rourkela Shramik Sangh v. Steel Authority of India Ltd.,* (2003) I LLJ 849 : AIR 2003 SC 1060 [LNIND 2003 SC 120]: (2003) 4 SCC 317 [LNIND 2003 SC 120]; It is bounden duty of Government to make reference appropriately reflective of real nature of dispute between the parties, *TISCO Ltd. v. State of Jharkhand,* (2014) 1 SCC 536 [LNIND 2013 SC 822].

2 Where industrial dispute raised by employee was referred for adjudication but Panchayat did not disclose earlier facts before Labour Court, the Labour Court awarded reinstatement with back wages, it was held that the reference made by appropriate Government itself was incompetent, and therefore, not sustainable, *Taluka Panchayat v. Ichchaben Shivram Dave,* (2002) IV LLJ (Suppl) 994 (SC); Respondent worked on daily wages for more than 240 days and thereafter his services were discontinued, he pursued civil suit for 13 years to get relief and when ultimately matter was referred to Labour Court on serving a demand notice, the Labour Court directed his reinstatement with back wages, writ petition challenging this decision was dismissed and in appeal the Supreme Court set aside the direction for payment of back wages and confirmed the direction for reinstatement, *State ofpunjab v. Anil Kumar,* (2007) II LLJ 815 : (2007) 9 SCC 663 .Age of retirement should be determined upon a reference under s 10(1)(c), *Radhey Shyam Mishra v. Union of India,* (2010) 15 SCC 600 .

3 *Municipal Corporation of Delhi v. Female Workers (Muster Roll),* AIR 2000 SC 1274 [*LNIND 2000 SC 449*]: (2000) 1 SCC 224 : 2000 Lab IC 1033 , the corporation was ordered to provide maternity leave to muster rolled daily wages female labourers. It was a matter of social justice and also that of human rights under the Universal Declaration of Human Rights Act, 1948 and Convention on Elimination of all Forms of Discrimination against Women. Various international covenants and treaties also postulate such benefits to women employees.

4 *Nedungadi Bank Ltd. v. K.P. Madhavankutty*, (2000) I LLJ 561 : AIR 2000 SC 455 .

5 *State ofkarnataka v. Ravi Kumar,* (2009) 13 SCC 746 [*LNINDORD 2009 SC 245*]; *UP SRTC v. Ram Singh,* (2008) 17 SCC 627 .

6 Respondent—Chowkidar on daily wages succeeded before the labour court in his challenge of termination of his service. The High Court only affirmed the Labour Court's award. The Supreme Court observed that the long delay of 9 years in raising the dispute as well as the jurisdictional fact about applicability of the *I.D. Act* to the appellant which claimed to be not an 'industry' were not considered by the labour court, the matter was remitted back to labour court, *Director, Food & Supplies; Punjab v. Gurmit Singh,* (2007) II LLJ 813 (SC).

7 *Oshiar Prasad v. Sudamdih Coal Washery,* (2015) 4 SCC 71 [*LNIND 2015 SC 62*].

8 *Raghubir Singh v. Haryana Roadways,* (2014) 10 SCC 301 [*LNIND 2014 SC 782*].

9 *Karnataka Power Transmission Corpn. v. Amalgamated Electricity Supply Co.,* AIR 2001 SC 291 [*LNIND 2000 SC 394*]: (2001) 1 SCC 586 [*LNIND 2000 SC 394*].

10 *Ariane Orgachem (P.) Ltd. v. Wyeth Employees Union,* (2015) 7 SCC 561 [*LNIND 2015 SC 298*], order of the Deputy Labour Commissioner was held to be *void ab initio.*

11 *TISCO Ltd. v. State of Jharkhand,* (2014) 1 SCC 536 [*LNIND 2013 SC 822*].

Effect of Reference to National Tribunal

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CHAPTER 4 Reference of Disputes to Boards, Courts or Tribunals

Effect of Reference to National Tribunal— Updated On 08-01-2019

Where any reference has been made to a National Tribunal [sub-section (1A)] then notwithstanding anything

contained in the Act, any Labour Court or Tribunal will not have jurisdiction to adjudicate upon any matter which is under adjudication before the National Tribunal. Accordingly—

(a) if the matter under adjudication before the National Tribunal is pending in a proceeding before a Labour Court or Tribunal, such proceeding relating to such matter, shall be deemed to have been quashed on reference to the National Tribunal; and

(b) it shall not be lawful for the appropriate Government to refer the matter under adjudication before the National Tribunal during the pendency of the proceeding there to any Labour Court or Tribunal for adjudication.

'Labour Court' or 'Tribunal' here includes any Court or Tribunal or other authority constituted under any law relating to investigation and settlement of industrial disputes in force in any State (Explanation).

Where any industrial dispute, in relation to which the Central Government is not the appropriate Government, is referred to the National Tribunal, then notwithstanding anything contained in section 15, 17, 19, 33A, 33B and 36A the appropriate Government in reference to such dispute will be the Central Government. But, save as otherwise expressly provided, any reference in any other provision to the appropriate Government in relation to that dispute shall mean a reference to the State Government.

Proceedings not to Lapse on Death

The proceedings pending before a Labour Court, Tribunal or National Tribunal in relation to an industrial dispute shall not lapse merely by reason of the death of any of the parties to the dispute being a workman. The Labour Court, Tribunal or National Tribunal shall complete the proceedings and submit its award to the appropriate Government.

A reference by the Government in the question of termination of service also includes the aspect of abandonment of service by the workman. But in a case, the facts did not show any such conduct on the part of the workman. The court said that the Tribunal had approached the matter in a very technical way. Compensation was awarded to the legal representatives of the workman who died during the pendency of the proceedings.

No Dispute Award

An industrial dispute could not be closed even by reason of death of a workman. It is obligatory on the Tribunal to answer a reference made under section 10(1)(c) on merit after proper adjudication. It cannot pass a 'no dispute award' on failure of workman to appear before it.

Reference is an Administrative Act

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CHAPTER 4 Reference of Disputes to Boards, Courts or Tribunals

REFERENCE IS AN ADMINISTRATIVE ACT— Updated On 08-01-2019

The power of the appropriate Government to refer the industrial dispute or declining to refer the dispute, is an administrative power.[14] There are no statutory principles laid down in the

Industrial Disputes Act, 1947 for regulating the Government's discretion in the matter. Therefore, the disputes often arise about the propriety of exercise of this discretion. *State of Madras v. C.P. Sarathy,* [15] is the most important case on this object. It was held by the Supreme Court that the Government would not be justified in making a reference under section 10(1) without satisfying itself on the facts and circumstances brought to its notice that an industrial dispute existed or was apprehended in relation to an establishment or a definite group of the establishment engaged in a particular industry. The court said that it was also desirable that the Government should, wherever possible, indicate the nature of the dispute in the order of reference. It must be remembered that in making a reference under section 10(1) the Government performs an *administrative act* . The fact that it had to form an opinion as to the factual existence of an industrial dispute as a preliminary step to the discharge of its function did not make it any the less administrative in character. The court could not, therefore, canvass the order of reference closely to see if there was any material before the Government to support its conclusion, as if it was a judicial or *quasi*-judicial determination. No doubt, it would be open to a party seeking to impugn the resulting award to show that what was referred by the Government was not an industrial dispute within the meaning of the Act, and that, therefore, the Tribunal had no jurisdiction to make the award. But, if the dispute was an industrial dispute as defined in the Act, its factual existence and the expediency of making of a reference in the circumstances of a particular case were matters entirely for the Government to decide upon, and it would not be competent for the Court to hold the reference as bad and quash the proceedings for want of jurisdiction merely because there was, no material before the Government on which it could have come to an affirmative conclusion on those matters. The Government must have sufficient knowledge of the nature of the dispute to be satisfied that it is an industrial dispute within the meaning of the Act, as, for instance, that it relates to retrenchment or reinstatement. But beyond this no obligation could be held to lie on the Government to ascertain particulars of the disputes before making a reference under section 10(1) or to specify them in the order.

The Supreme Court has again emphasised in *Indian Tea Assn. v. Ajit Kumar Bros.,* [16] that an order of reference is in its nature an *administrative act* . It involves no *lis* and is made on subjective satisfaction of the Government. Unlike judicial or quasi-judicial orders, it cannot be examined by the High Court closely to see if there was any material before the Government to support its conclusion.

The Industrial Tribunal is the creation of a statute. It gets jurisdiction on the basis of the reference. It cannot go into the question of the validity of the reference. In this case during the pendency of a writ petition before a High Court for directing the State Government to make a reference, the State Government made the reference without hearing the management and without bringing it to the notice of the court, it was held that it was incumbent upon the State Government to recall the reference and to give due consideration to the High Court directions.[17]

The court which is competent to examine the validity of a reference is the High Court and not the Industrial Tribunal.[18]

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14 *Empire Industries Ltd. v. State of Maharashtra,* (2010) 4 SCC 272 [LNIND 2010 SC 251].

15 1953 SC 53 : (1952-53) 4 FJR 431 . It is open to High Court to examine whether relevant considerations in making reference had been taken note of or not, finding of High Court that relevant considerations have not been taken note of cannot be disputed, *Moolchand Khairati Ram Hospital K. Union v. Labour Commissioner,* (2000) II LLJ 1411 (SC).

Where service of a casual labour employed for a specific project was terminated on completion of the project, the Industrial Tribunal held the termination bad for violation of *section 25-F of the I.D. Act, 1947* . The Supreme Court remitted the matter back to the Tribunal as the effect of section 2(oo)(bb) of the *I.D. Act* was completely lost sight of by the Tribunal, *Microwave Project, Kota v. Ramesh Chand,* 2007 III LLJ 350 (SC).

16

AIR 2000 SC 915 [
LNIND 2000 SC 298]:
(2000) 3 SCC 93 [
LNIND 2000 SC 298] :
2000 Lab IC 706 .

17 *National Engg. Industries Ltd. v. State of Rajasthan,*
AIR 2000 SC 469 [
LNIND 1999 SC 1079]:
(2001) 1 SCC 371 .

18 *Ibid.*

Reference as a Remedy

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CHAPTER 4 Reference of Disputes to Boards, Courts or Tribunals

REFERENCE AS A REMEDY— Updated On 08-01-2019

For the enforcement of a right or an obligation under the *Industrial Disputes Act*, this remedy provided *uno flatu* is an exclusive remedy. It is an alternative to

other rights or remedies under general or common law.[19] In the latter case, civil courts will have jurisdiction.

Right of employer to challenge reference is not affected by High Court's direction to pass appropriate orders in case of failure report by conciliation officer.[20]

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19 *Premier Auto Mobiles Ltd. v. K.S. Wadke,* 1975 II LLJ 447 SC.

20 *Philips India Ltd. v. Philips Employees' Union,* (2006) I LLJ 741 (SC).

General Reference and its Validity

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CHAPTER 4 Reference of Disputes to Boards, Courts or Tribunals

General Reference and its Validity— Updated On 08-01-2019

In *Raju's Cafe, Coimbatore v. Industrial Tribunal Coimbatore,* [21] the Madras High Court held that general reference will be totally incompetent and invalid if it is of an industrial dispute between the workers and the

management of hotels in the whole district without specifying either the hotels by name or the matters in respect of which the dispute has arisen.

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21 1956 Mad 115 : 1956 I LLJ 498.

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Power to Amend, Modify, Vary or Withdraw Order of Reference

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CHAPTER 4 Reference of Disputes to Boards, Courts or Tribunals

Power to Amend, Modify, Vary or Withdraw Order of Reference— Updated On 08-01-2019

The Supreme Court held in the *Minerva Mills* case[22] that the power under s. 10(1) read with s. 7 of the Act includes

the power to modify the notification and withdraw an industrial dispute from the tribunal and refer it to another tribunal. In *Textile Worker's Union, Amritsar v. State of Punjab,* [23] it was held by the Punjab High Court relying on the above decision that the power to make notification under section 10(1) includes the power to add to, amend, vary or rescind any such notification.

A new section, 33B, was added by the Amendment Act, 36 of 1956, which specifically provides for powers to the Government to withdraw any proceeding under the Act before a Labour Court, Tribunal or a National Tribunal and transfer the same to another Labour Court, Tribunal or National Tribunal.

The question referred was whether the demand of *badli* workman for regularisation of their services in permanent employment of the company was justified and what relief they were entitled to. The Tribunal concluded that 92 out of 100 workman were entitled to be regularised and to have all the benefit and status of regular employees. A Division Bench of the High Court held that the Tribunal Committed error in enlarging the scope of the reference and that too without notice to the employer. The Supreme Court upheld the decision of the High Court and directed the Tribunal to consider the reference in accordance with the law.[24]

Where the question referred was such that it could not be decided without examining a question which was not referred, for example, the reference about the validity of a retrenchment but it was due to closure which was not referred. The retrenchment would have been justified if the closure was *bona fide.* It was held that the tribunal could look into the fact whether retrenchment was due to closure and whether the same was *bona fide.* [25]

A reference has to be decided on the basis of the real issue and not on the basis of the works used.[26]

Where the reference was as to the propriety of commission agents and deposit collectors of banks to pay scales, allowances and other service conditions available to regular clerical employees, it was held that the tribunal could not direct the employer to consider them for regular absorption.[27]

Where employees of Nationalised Insurance Company challenged categorisation and non-categorisation of workers by raising industrial dispute and the industrial tribunal rejected the reference stating that it cannot declare action of management as unjustified, it was held that the industrial tribunal should have applied General Insurance Company Scheme for rationalisation of pay with reference to concerned workman and found out whether categorisation was correct or not. The award of the industrial tribunal was set aside.[28]

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22 1953 SC 505 : 1954 I LLJ 119.

23 1957 Pun. 255.

24 *Gouri Shankar Chatterjee v. Taxmaco Ltd.,* (2001) 2 SCC 257 [LNIND 2000 SC 1891].

25 *J.K. Synthetics v. Rajasthan Trade Union Kendra,* (2001) 2 SCC 87 [LNIND 2000 SC 1855] : AIR 2001 SC 531 [LNIND 2000 SC 1855]: *(2001) 1 LLJ 561* [LNIND 2000 SC 1855].

26 *AP SRTC v. Presiding Officer, Industrial Tribunal,* (2001) 2 SCC 695 [LNIND 2001 SC 284] : AIR 2001 SC 1007 [LNIND 2001 SC 284]. It was a case involving transfer of the establishment, settlement of the position of the employees under the new employment was held to be a part of the reference.

27 *Indian Banks Assn. v. Workmen of Syndicate Bank,* AIR 2001 SC 946 [LNIND 2001 SC 405]: (2000) 3 SCC 36 : *(2001) 1 LLJ 1045* [LNIND 2001 SC 405].

28 *Workmen v. Oriental Fire & General Insurance Company Ltd.,* (2001) I LLJ 1326 : AIR 2001 SC 1492 [LNIND 2001 SC 712].

Validity of Reference for Workmen Working in Another State

PART I THE INDUSTRIAL DISPUTES ACT, 1947

Learning Objectives

In Part I on *Industrial Disputes Act, 1947*, students will be able:

1. To know what is an 'industry' and what are 'industrial disputes' and 'deemed industrial disputes' and explore their meaning through different cases;
2. To understand what are the conditions where notice of change is required to be given by the employer to his workmen;
3. To know about the authorities provided by the Act to settle industrial disputes;
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CHAPTER 4 Reference of Disputes to Boards, Courts or Tribunals

Validity of Reference for Workmen Working in Another State— Updated On 08-01-2019

The appropriate Government will be that Government in whose jurisdiction the employer has his registered office.

Where an employee was working outside the State and his services were terminated, it was held that the appropriate Government will be the Government in whose jurisdiction the company had its registered office and not that Government in whose jurisdiction the services were terminated. Whereas if a workman who is a party to the industrial dispute is employed in a branch office and the cause of action arose within the State in which the branch office is situated, the Government of the State would be the appropriate Government for making a reference.

Two Governments cannot be appropriate Governments within the meaning of section 10(1) when the reference arises in respect of a workman of an employer having more than one office in several States.[29]

In *Yoyan, India Cements Employees Union v. Mgt. of India Cements Ltd.,* [30] the services of 300 and odd workers employed by contractors were terminated. Since they were not been paid the same wages and not allowed the same working conditions allowed by the principal employer to its own workers, an industrial dispute was raised by the union for making the contract labour permanent by removing the intermediary contractors. The Government of Tamil Nadu referred this dispute for adjudication to the Labour Court, Madurai. The principal employer raised a preliminary objection that reference by Tamil Nadu Government was bad since the appropriate Government in relation to cement industry was the Central Government. The Labour Court upheld the preliminary objection and terminated the proceedings. Hence the employees' union filed a civil appeal by special leave. It was held by the Supreme Court that in view of the notification dated December 8, 1977 of the Government of India issued under *section 3(a) of the Industrial Disputes Act* , both the Central and State Governments are appropriate Governments under the Act. That being so, the notification issued by Government of Tamil Nadu referring the dispute for adjudication was a valid notification. The stand taken by the management was not tenable. The order of the Labour Court therefore, was set aside.

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29 *Fact Employees Association v. Fact Ltd.,* (1994) III LLJ (Suppl) 736 (Ker).

30 (1994) I LLJ 920 : AIR 1994 SC 558 [*LNIND 1993 SC 890*] : (1994) 1 SCC 572 [*LNIND 1993 SC 890*].

Exclusion of Civil Courts' Jurisdiction

Avtar Singh: Introduction to Labour and Industrial Law

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CHAPTER 4 Reference of Disputes to Boards, Courts or Tribunals

Exclusion of Civil Courts' Jurisdiction— Updated On 08-01-2019

It is well settled position of law that the jurisdiction of the Civil Court to try a suit of a civil nature is taken to be there unless statutorily it has been taken away either expressly or by necessary implication. If the provisions of the

Industrial Disputes Act are examined, it is clear that they impliedly exclude the jurisdiction of the Civil Court to try industrial dispute which could be referred to for adjudication under s., 10(1) of the Act. The *Industrial Disputes Act* is a self-contained code providing for settlement of Industrial Disputes by special forums. When such special forums are provided in the Act itself for adjudication of disputes arising under the Act, the jurisdiction of the Civil Court to try Industrial Disputes is impliedly taken away.[31] Nature of right sought to be enforced decides whether jurisdiction of civil court is excluded or not. If there is allegation of infringement of *Industrial Employment (Standing Orders) Act, 1946* , it was held by the Supreme Court that civil court's jurisdiction may be held to be barred but if the suit is based on violation of principles of common law or constitutional provisions or other grounds, civil court's jurisdiction may not held to be barred. In the present case, respondent's dismissal was in violation of natural justice principles without affording him an opportunity of hearing and defence. Therefore, it was held that such a right can be enforced only by industrial dispute and not in a civil suit.[32]

It was held that security guards of Thermal Power Station of State Electricity Board will be governed by *Industrial Employment (Standing Orders) Act, 1946* and relevant rules framed by State Electricity Board. In case of their dismissal from the Board they can raise industrial dispute. Civil suit seeking for their reinstatement will not be maintainable.[33]

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31 *P. Kulasekaran v. Union of India, Southern Railway.* (1993) III LLJ (Suppl) 656 (Mad).

32 *Rajasthan SRTC v. Deen Dayal Sharma,* (2010) 6 SCC 697 [*LNINDORD 2010 SC 167*].

33 *Bihar SEB v. Ram Deo Prasad Singh,* (2011) 12 SCC 632 [*LNIND 2011 SC 883*].

Power of Appropriate Government to Decline Reference

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CHAPTER 4 Reference of Disputes to Boards, Courts or Tribunals

Power of Appropriate Government to Decline Reference— Updated On 08-01-2019

Though the Government is entitled to form an opinion as to whether an Industrial Dispute "exists or is

apprehended," the power of the Government under section 10 read with section 12 is administrative and not judicial or guasi-judicial. In exercising the power the Government is required only to examine whether the industrial dispute exists or is apprehended. For this purpose the Government can *prima facie* examine the matter to find out whether a dispute exists or not. The Government can refuse to make a reference only if it finds that the dispute sought to be raised is vexatious or that the dispute if referred to adjudication will have great adverse consequences on the entire industry in the region. In the garb of *prima facie* examination of the issue of existence or apprehension of the dispute, the Government cannot delve into the merits of the dispute and make an adjudication. The Government cannot usurp the jurisdiction of the Labour Court/Industrial Tribunal to adjudicate the dispute. The power of reference is not the same thing as an adjudication of the dispute itself on merits. Appropriate Government cannot adjudicate the dispute on merits. In *Telco Convoy Drivers Mazdoor Sangh v. State of Bihar,* [34] the question before the court was whether the convoy drivers were workmen of TELCO and whether the master and servant relationship existed between convoy drivers and TELCO. It was held that there is no doubt that the appropriate Government was not justified in deciding the dispute. Where the dispute was whether the persons raising the dispute were workmen or not, the same could not be decided by the appropriate Government in exercise of its administrative function under *section 10(1) of the Industrial Disputes Act* . As has been held in *M.P. Irrigation Karamchari Sangh* v. *State of M. P.,* [35] there may be exceptional cases in which the State Government may, on proper examination of the demand, come to a conclusion that demands were either perverse or frivolous and did not merit a reference. The Government should be very slow to attempt an examination of the demand with a view to declining reference and the courts will always be vigilant whenever the Government attempts to usurp the powers of the Tribunal for adjudication of disputes. To allow the Government to do so would be to render section 10 and section 12(5) of the Act nugatory.

Appropriate Government cannot decline a reference on irrelevant and extraneous grounds and cannot decide disputed questions of law and fact.[36] Where the workers claimed that they were direct employees and not contract labour, but the Government refused to refer on the ground that their union failed to establish that there was employer-employee relationship, it was held that the Government, instead of deciding on its own, ought to have referred the dispute for adjudication.[37] The Government should be slow to examine the merits of the demand (dearness allowance in this case). It should not usurp the powers of the tribunal.[38] The Government cannot adjudicate dispute on merits. The question whether convoy drivers were workmen or not was an issue to be referred for adjudication.[39]

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34 (1989) II LLJ 558 : AIR 1989 SC 1565 [LNIND 1989 SC 268].

35 (1985) I LLJ 519. Refusal to make reference on the ground that the inquiry was proper and also in accordance with the proper procedure, has been held to be not valid and proper, *Workmen of Syndicate Bank v. Government of India, (1985) 1 Lab LJ 93* : AIR 1985 SC 1667 [LNIND 1984 SC 301].

36 *V. Veerarajan v. Govt. of* T.N., (1987) II LLJ 209 : AIR 1987 SC 695 [LNIND 1987 SC 49]. In this case there was refusal to provide employment to 7 out of 154 workmen found guilty of misconduct or wilful disobedience of lawful orders. The Government refused to refer the dispute. Holding the Government's refusal to be not justified, the Supreme Court said that the employer was a defence manufacturer and supplier and that there was industrial unrest followed by violence and stoppage of work were not germane and relevant for the purpose of deciding whether to refer the dispute for adjudication. The fact that the concerned workmen had accepted their guilt was an irrelevant factor when the case of the workers was that all of them had pleaded guilty. There was no justification for employer to discriminate between the 7 and remaining 154 who were taken back.