(c) termination of the service of a workman on the ground of continued ill-health;

“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 when a workman is re-employed after the age of retirement for a specific term, such term will not be governed by the meaning of retrenchment.

Retrenchment means discharge of surplus labour or staff in a continuing industry. It means the removal of “the deed weight of uneconomic surplus.” It is not necessary that removal of surplus must only be when the establishment runs in losses. It may operate at any level of profits. If the termination of service is by way of disciplinary action as a punishment, then it is not retrenchment.

The legislature has used the expression ‘for any reason whatsoever’ which means, “that the employer may take action of retrenchment for any reason.” It does not matter why you are discharging the surplus if the other requirements of the definition are fulfilled, then it is retrenchment.” It has been held by the Supreme Court that every termination would amount to retrenchment.

Settlement [Section 2(P)]

“Settlement” means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the conciliation officer;

The definition of settlement may be divided into two parts:—

(i) It is settlement arrived at in the course of conciliation proceeding. The conciliation proceeding under the Act may be held by a conciliation officer or Board of Conciliation.

(ii) it includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding.

It is necessary that the agreement should be signed by the parties in the prescribed manner. It is also necessary that a copy should be filed with an officer authorised for this purpose by the appropriate Government and the conciliation officer. A solution of the problem which is acceptable to a majority of the workers should be taken to be just and fair. The Tribunal should not interfere in the matter on the basis of a subjective or opposition of a minority of workers.

The Supreme Court has held that there is no bar in having conciliation proceedings on a holiday and to arrive at a settlement. A holiday atmosphere would be rather more conducive because of relaxed feelings.

Strike [Section 2(Q)]

"Strike" means cessation of work. It may be resorted to:

(i) by a body of persons employed in any industry acting in combination; or

(ii) a concerted refusal; or

(iii) a refusal under a common understanding of any number of persons who are or have been employed to continue to work or to accept employment.

Ingredients

The following are the ingredients of an industrial strike:

(i) Existence of a set of employees and employer maintaining their employment relationships during the period of strikes or lock outs.

(ii) The existence of a dispute (between the strikers and the stricken usually but not always, *eg.,* in sympathy strikes or jurisdictional strikes) the settlement of which becomes the object, cause or motive of a strike or a lock out.

(iii) Cessation of work by the employees for achieving the object or cause or propelled by the motive stated above.

Cessation of Work

Strike is the most effective weapon in the hands of labour in its struggle with capital for securing economic justice. The basic strength of a strike lies in the labour's priviledge to quit work and thus bring a forced re-adjustment of conditions of employment. Cessation of work is the most significant characteristic of the concept of strike and it is often described as 'abandonment'; 'stoppage'; 'omission of performance of duties of their posts', 'hampering or deducing normal work', 'hindrance of the working', 'suspension of work', 'discontinuing the employment', *etc.*

The cessation of work may take any form and it may be of any duration of time but it must be temporary and not forever. If the cessation is as a result of renunciation of work or relinquishment of the strikers' status or relationship, it is not strike.

The cessation must be of work and it may be nominal for a few minutes only or it may be even inside the very establishment as is in sit down and stay in strikes or even on their seats. Mere passing of a resolution of a strike by a properly constituted union cannot be a strike. Similarly, a mere apprehension or threat of a strike is not a strike because if falls short of actual cessation of work.

Refusal to Accept an Engagement

A study of the relevant judgments indicates that the fair view would be to proceed with the motion of employment as a state of things rather than a contract, and where the work done thereunder is continuous and the contractual engagement merely a habitual and off-repeated incident therein, then the refusal to accept a particular engagement legally constitutes a strike.

Partial Refusal to Work

A partial refusal to work constitutes a strike. Doing half of the allotted work only in concert would also amount to a strike.

Refusal to Work Overtime

Whether refusal to work overtime constitutes a strike or not would depend upon whether overtime work “was habitually worked in that industry.” However, the case would be different where the legal obligation is cast upon the employees to do overtime work although such obligations usually are not imposed by awards.

Notices and Strikes

Mass resignations may still be strike if other essentials of a strike exist. Any combination which would otherwise be a strike does not cease to be so merely because the men give notice of termination of their individual contracts of service by whatever length of notice is required by law. The effect of giving notices may be that the strikers are not liable for breach of contract.

Objects of Strikes

The following are the usual objects of strike

(i) achievement of some economic gains,

(ii) defence of mutual interests, or

(iii) promotion of union objectives.

Form of Strike

A strike may be implied from attending circumstances. The simultaneous stoppage of work is a clear indication that the strikers must have resolved to do so. Refusal to do work which is not the usual work or normal work but which is assigned to by a change not agreed upon by the workers, would be a strike.

Stay-in-strikes, tools-down strike, etc., in which the workers, though physically present, virtually withhold their

labour, are as much strikes as where the workers are physically absent;

Classes of Strikes

Strikes can be variously classified. When classified from the measure and degree of withdrawal of services of work by the workmen, strikes may take the following forms:

(i) Where services are withdrawn totally but on particular times: Alternate days' strikes, Sunday strikes, *etc.*

(ii) Where services are withdrawn partially for, *e.g.* slow-down, bumper strikes, sectional strikes, slow-gear strikes, token strikes, sit-down strikes, pen down strikes, tool-down strikes *etc.*

(iii) Where strikers remain on jobs but adopt irritative methods, for, e.g., irritation strikes, pearl strikes, *etc.*

When classified from union point of view, there occur following types of strikes:

(i) offensive strikes: Where unions initiate strikes for satisfaction of their demands,

(ii) defensive: Where unions strike to resist some changes or innovations or industrial matters initiated by the management.

(iii) official: Strikes for which the unions officially resolve.

(iv) unofficial: Where workers strike without union's vote.

Jurists have classified strikes as lawful, unlawful, justified or unjustified strikes.

When classified from the point of view of the industries affected, they may be classified as public utility strikes and strikes in non public utility services.

Strikes may be individual as well as collective ones.

When classified from the objective standards the strikes are of two types:

(i) economic strikes—which are launched for satisfaction of economic demands by the workmen, or

(ii) political strikes—which are organised for registering protests against the policies of ruling parties or demonstrating power behind some opinions and policies, or

(iii) individual strikes—which are carried on by individuals for achieving their goals.

From the coverage point of view, strikes may be classified as general strikes or particular strikes.

Section 22 of the I D Act deals with prohibition of strikes and lock-outs, which is discussed later in this chapter.

Trade Union [Section 2(QQ)]

A trade union, for the purposes of this Act, has been given the same meaning as is applicable to it under the *Trade Unions Act, 1926* . The definition occurs under s. 2(h) of that Act. The essence of the definition is that it symbolises a combination. It may be temporary or permanent. But it should be formed for the purpose of regulating relations between workmen and employers or mutual relations between workmen or employers. It may also be formed for the purpose of imposing restrictive conditions on the conduct of any trade or business. It also includes any federation of trade unions.

Tribunal [Section 2(R)]

Tribunal has been defined to include an industrial tribunal constituted under s. 7A. [For notes see under that section].

Unfair Labour Practices [Section 2(RA)]

The Fifth Schedule to the Act (added by the amendment of 1982 and enforced with effect from 21.8.1984) specifies the recognised unfair labour practices.

Village Industries [Section 2(RB)]

Village industry has been given the same meaning as in clause (h) of *s. 2 of the Khadi and Village Industries Commission Act, 1956* (61 of 1956).

Wages [Section 2(RR)]

The term “wages” means any remuneration which is capable of being expressed in terms of money. It is payable when the terms of employment, whether express or implied, are fulfilled. It includes the following:—

(i) dearness allowance and other allowances payable to the workman;

(ii) the value of facilities provided by the employer like house accommodation, supply of water, light, medical attendance, concessional supply of foodgrains or other articles or any other amenity or service;

(iii) any travelling concession provided by the employer;

(iv) any commission which is payable on sales or business or both.

Wages do not include the following:—

(i) bonus.

(ii) contributions to pension or provident funds.

(iii) gratuity payable on termination of services. An *ex gratia* payment of Rs. 100 per month was not allowed to be included for the purpose of computing wages.

Workmen or Employees [Section 2(S)]

Statutory Definition

Section 2(s) of the original *Industrial Dispute Act, 1947* defined the word ‘workmen’ as follows:—

Workman means any person employed (including an apprentice) in any industry to do any skilled, manual or clerical work for hire or reward and includes a workman discharged during an industrial dispute but does not include any person employed in the naval, military or air service of the crown.

But after the amendment of 1956 the definition of ‘workmen’ was changed as a new clause was inserted by s. 3 of the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956.

The break-up of the new definition is as follows:—

(i) “Workman” means any person including an apprentice,

(ii) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work,

(iii) for hire or reward,

(iv) the terms of employment may be express or implied, and

(v) in relation to any industrial dispute, it includes any such person who has been dismissed, discharged, retrenched in connection with that dispute or as a consequence of that dispute, he has been dismissed, discharged or retrenched. Alternatively, it also includes any such person whose dismissal, discharge or retrenchment has led to that dispute.

(vi) But it does not include any such person—

(a) who is subject to the *Air Force Act, 1950*, or the *Army Act, 1950*, or the *Navy Act, 1957*; or

(b) who is employed in the police service or as an officer or other employee of a prison; or

(c) who is employed in a managerial or administrative capacity; or

(d) who is employed in a supervisory capacity and draws wages exceeding ten thousand rupees or more per mensem or exercises functions mainly of a managerial nature which may be due to the nature of duties attached to the office or by reason of powers vested in him.

Employee Employer Relationship

To determine the employee-employer relationship, i.e.; employment relationship various tests have been applied from time to time. The more commonly known and accepted elements of an employment contract are

(i) Power of selection;

(ii) Remuneration;

(iii) Control of work; and

(iv) Power of discipline.

The relation of employee and employer exists between two persons where by agreement between them, express or implied, the employee is under the control of the employer. With the progress of organisational techniques and modern management methods, further liberal approach has now been adopted. If a person is part and parcel of organisation, he may be an employee. Where no relationship of employer-employee was found to exist, demand of persons engaged as ‘retainers’ for absorption was rejected. The burden to prove that a claimant was in the employment of a particular management primarily lies on the person who claims to be so but the degree of proof varies from case to case. It is neither feasible nor advisable to lay down an abstract rule to determine the employee-employer relationship. It is essentially a question of fact to be determined by having regard to the cumulative effect of the entire material placed before the adjudicatory forum by the claimant and the management.

Test of Control

An employee is paid to be under the control of an employer if he is bound to obey the order of the employer:

(i) for the work which he shall execute,

(ii) as to the details of the work, and

(iii) the manner of its execution.

Nature of Control

It is not necessary that the control should be exercised continuously. It is the right or power to control that creates the relationship. Power to control though terminable at any time nevertheless creates the relationship of a service at will. The power to control should flow from the employment contract and not from the extraneous agencies. The nature and extent of control which is necessary to establish the relationship must necessarily vary from business to business and is by its nature incapable of precise definition. The fact that rules regarding hours of work *etc.* applicable to other workmen may not be conveniently applied to them and the nature as well as the manner and method of their work would be such as cannot be regulated by any directions given by the Industrial Tribunals, is no deterrent against holding the persons to be workmen within the meaning of the definition if they fulfil its requirements. It is a question of fact whether a person is under the control of another.

Test of Economic Control

The Supreme Court has laid the following test in the case of *Hussainibhai v. Alah Factory The Zhilali Union, Kozhikode* —

"The true test may, with brevity, be indicated once again. Where a worker or group of workers labour 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-contract is of consequence when, on lifting the veil or looking at the conspectus of factors governing employment, we discern the naked truth, though draped is different, perfect paper arrangement, that the real employer is the management, not the immediate contractors. Myrid 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 *Arts. 38*, *39*, *42*, *43* and *43-A* of the *Constitution*. The Court must be astute to avoid the mischief and achieve the purmaya of legal appearances."

No Single Test is Decisive

The above mentioned factors are not conclusive in determining the employment relationship yet they are relevant evidence to show existence or absence of control. The other factors which may be considered for determining the relationship are :

(i) the nature of industry,

(ii) the activities of labourers,

(iii) the nature and quantum of control,

(iv) the terms of engagement,

(v) the method of remuneration,

(vi) the power of controlling and dismissing workers,

(vii) the time at the disposal of the management, and

(viii) the degree of discretion to be exercised and left to the person to be exercised.

The Supreme Court observed in the case of *Silver Jubilee Tailoring House v. Chief Inspector of Shops and Establishment:*

"During the last two decades the emphasis in the field has shifted and no longer rests so strongly upon the question of control. Contract is obviously an important factor and in many cases it may still be the decisive factor. But it is wrong to say that in every case it is decisive. It is now more than a factor, although an important one."

Hire or Reward

Any reward or hire which is given for the work in question to create the relationship is sufficient. Hire or reward may take any form. It may be remuneration on the basis of a rate per maund of salt prepared, or commission.

If a person is to be named as workman under sec. 2(5), the question whether he is on temporary or permanent basis or on probation is irrelevant. The minimum employment period of two hundred and forty days is also not relevant except only to claim benefit under sec. 25-F.

Once the test of employment for hire or reward for doing the specified type of work is satisfied, employee would fall within the definition of "workmen." Other criteria like source of employment, method of recruitment, terms and conditions of employment, contract of service, quantum of wages or pay and mode of payment are not at all relevant for deciding whether or not a person is workman.

Employees of Co-operatives

In the case of co-operatives, the employment relationship is not ruled out only because the paid employee is also a member or shareholder.

Contractors and their Employees

A contractor is a person who has entered into a contract to execute a certain specific work. In modern industrial activity, apart from servants and employees, considerable work is executed by contractors. The contractor is subject to the orders of his employer only to the extent that the terms of his contract so provide and unlike a servant a contractor is not under the control of his employe.

A person in respect of whom the contract of employment governed by section 2(k) and (s) has come to an end is also a 'workman.' In respect of compensation payable to such workman a valid dispute can exist even after the conclusion of the contract period.

Distinction between Contractor and Workman

It is a question of fact whether a person is a contractor or an employee. The Supreme Court has observed, "The broad distinction between workman and independent contractor lies in this that while the former agrees himself to work, the latter agrees to get other persons to work. Now a person who agrees himself to work and does so work and is therefore a workman does not cease to be such by reason merely of the fact that he gets other persons to work along with him and those persons are controlled and paid by him."

Independent Contractors

The following have been held to be independent contractors:

(i) The management entrusted the execution of work to a contractor who employed workers and paid them, though the workmen of the contractor were given benefits under the *Factories Act* by the management.

(ii) The employer obtained tobacco in his name and stored it in his godowns. He entered into agreements with persons to the effect that materials for manufacture of bidis would be supplied by him and that the bidis would be prepared by the other parties on their own responsibility. It was held that there was no responsibility of master and servant between the employer and the workman employed by the contractors.

When an Employee of a Contractor becomes Employee of Undertaking

The following conditions must be satisfied before an employee of a contractor could be regarded as employee of the owner of the undertaking:

(i) He must be employed by the contractor to do any work for him;

(ii) Such employment must be in the execution of a contract by the contractor with the owner of the undertaking, and

(iii) The contract with the owner of the undertaking must be for the execution by or under the contractor of the whole or any part of the work which is ordinarily a part of the undertaking.

Employees in Canteens run by the Contractors

Where the mills give a licence to the contractor or society to run the canteen and the society or contractor kept all the profits earned by the canteen to itself, the employees of contractor or society could not be held to be employees

of the mills.

Where no master and servant relationship exists between the employees of the canteen and the management of the company, the question of seeking parity with the pay scales of employees of the company does not arise. It was held by the Supreme Court that simply because the canteen workers were discharging same duties as those of the employees of the VIP House or the Tea Club, that would not serve the purpose of upholding the claim of equal pay scales when the canteen in question was run and managed by welfare committee and not by the company.

Where employees in the Karnataka Government Secretariat Departmental canteen sought regularisation of their service and parity of pay with other employees of the Government, it was observed by the Supreme Court that the State had no intention to run the canteen as a department and it had no statutory compulsion to run any canteen by its employees. Even in the case where the employer was required to run a canteen under a statute, the law did not appear settled. Regarding the remedy of regularisation granted in the judgment under appeal, the Supreme Court observed the State was obligated to make appointments only in fulfilment of its constitutional obligation under *Articles 14* to *16* of the *Constitution of India, 1950* and as per the rules framed under proviso to Article 309 thereof. The High Court or for that matter any authority howsoever, high, had no jurisdiction to frame or direct framing of a scheme for regularisation of services of *ad hoc* employees or daily wage employees who had not been appointed in accordance with service rules under a statute or under the proviso to *Article 309 of the Constitution of India, 1950* . The Supreme Court held that the claim the employees that at least for the period they had worked they were entitled to pay of Government employees could not be entertained as they did not hold any post sanctioned by the State.

Employees Appointed by Treasurers of a Bank were Employees of the Bank

It has been held that “if the treasurers, relation to the bank was that of servants to a master, simply because the servants were authorised to appoint and dismiss the ministerial staff of the cash department, this would not make the employees in the cash department independent of the bank. In that situation the ultimate employer would be the bank through the agency of the treasurers. It is not always correct to say that persons appointed and liable to be dismissed by an independent contractor can in no circumstances be the employees of the third party.”

Basic and primary duties determine whether a person is a workman or not. If a workman is asked to do incidentally or casually any supervisory or managerial duties or is given a covenanted cadre or called officer, he is a workman.

Part-time Employee-Whether Workman

The definition of workman does not make any distinction between a full-time employee and a part-time employee. In the case of *Yashwant Singh Yadav v. State of Rajasthan* it was held that the definition of workman does not lay down that only a person employed full time will be taken to be a workman and that one who is only a part-time employee should not be taken to be a workman. What is required is that the person should be employed for hire to discharge the work manual, skilled or unskilled *etc.* in an industry. When this test is fulfilled, a part-time employee will also be held to be a workman.

Other Types of Worker

Temporary workmen, casual workmen paid weekly, an employee filling post of a supervisory character but receiving a salary below Rs. 500/-p.m., a firebrigade superintendent doing the work of a fireman and a clerk, a jamadar, a

guard, a salesman, persons employed in sales promotion and technical service, a depot-keeper whose duties were to see the packing and dispatch of goods, sweepers, scavengers, a time-keepers, gardeners working outside the factory at the residence of the company's officers but were paid salaries by the factory and whose names were registered in the company, gardeners attached to the quarters of the officers of the mill but paid by the mill and were subject to the discipline of the mill, head clerks accounts, head cashiers, cameramen, transport engineer, an accountant made a branch manager out of exigencies, a group leader would be covered within the meaning of the "workman" in the Act. Where the substantial part of the work assigned to consisted of looking after the security of factory but he was also signing identity cards, issuing stores, recommending leave, promotions *etc.,* it was held that the work was not of managerial or administrative nature but only that of a security inspector, hence "workman" under sec. 2(8) of the Act.

Work-charged employees constitute a distinct class and they cannot be equated with any other category or class of employees much less regular employees. Work-charged employees are not entitled to service benefits which are admissible to regular employees under relevant rules or policy framed by the employer.

Artists.—Certain persons were acting as artists in an organisation working as a trust for promotion of art and preservation of artistic talent. They were held to be not workmen. The activities of the organisation did not involve production of any goods or rendering of services and their activity was not for business. Their activities involved mere expression of creative talent. Other works were merely ancillary to the main work of promotion of art.

Supervisory Personnel

Under section 2(s) the word 'supervisory' means supervision by one person of work of another person. It is not used in the sense of supervisory of an automatic machine or checking. Supervision contemplates direction and control. The primary duties performed by the person employed in supervisory capacity need to be ascertained in order to bring him in exclusionary clause of section 2(s). Undue importance should not be given to the designation of the employee.

Whether an 'apprentice' is a workman or an employee is a question which can be determined only in conjunction with the *Apprentice Act*, 1961. An apprentice appointed under the *Apprentice Act*, 1961 would not become an employee for the purpose of *sec 2(s) of the Industrial Disputes Act, 1947*. Having enrolled as an apprentice on a stipend basis, the apprentice cannot even during the course of his training say that he became a regular employee merely because he was put in charge of some work. There would be no master and servant relationship between the apprentice and the employer. Where the service of a person appointed as Apprentice Development Officer was terminated, it was held that termination was not open to challenge as the person had not proved that he is a 'workman' and as 'apprentice' under *section 18 of the Apprentice Act* is different from workman as defined in other labour laws.

Predominant Nature of Function

The Supreme Court has observed that designation alone is not decisive. One has to examine the nature of the employees' duties, powers and functions. Predominant nature of the service would seem to be the proper test. It was held that an inspector in the Bombay Iron & Steel Labour Board was not a workman. The court added that the functions of a Government character or incidental thereto could not be regarded as industrial in nature so as to bring the persons discharging such functions within the meaning of "workman." The question whether a person is workman or not depends on nature of duties, principal duty in particular assigned to him and not necessarily on designation. Therefore, the refusal of the State Government to refer dispute for adjudication merely on the ground

of designation of concerned employee was held erroneous by the Supreme Court. When promotion of workmen puts them in the executive cadre, it takes them out of settlement which they made when they were workmen.

Dismissed or Discharged or Retrenched Employees

The earlier judicial controversy whether a dismissed or discharged or retrenched employee is covered by the definition of 'workman' or not has now been removed by making a specific provision in the definition of workman. Now such persons are included in the definition of workman.

Sales Representatives and Development Staff

The earlier view was that sales representatives were not workmen or employees but now they are considered as workmen or employees. The *Sales Promotion Employees (Conditions of Service) Act, 1976* extended to pharmaceutical industry deems them as workmen. The development staff including development inspectors, officers are now also governed by Sales Promotion Act and are given protection as of workman. The development officers and inspectors in insurance industry have been held to be the workman.

Person Appointed on Ad Hoc/Daily Wages

Where a person is employed on an ad hoc basis or on daily wage basis, such person cannot claim regularisation of his employment as 'a rule of thumb' merely on the basis of certain years of service. It is for the employer to decide on regularisation of service of such employee.

A practicing lawyer retained by a company as an advisor is not a workman within the meaning of section 2(8) as no master and servant relationship exists.

Where since creation of UP Jal Nigam, irrespective of source of recruitment, the employees of the Nigam were treated alike for the purpose of superannuation and were allowed to superannuate at the age of 58 as per the Regulation 31 of the UP Jal Nigam (Retirement on Age of Superannuation) Rules, 2005. It was held by the Supreme Court that the High Court was right that solely on the basis of source of recruitment no discrimination can be made and differential treatment would not be possible in the matter of condition of service including the age of superannuation.

Canteen Employees

A company set up a canteen in its factory. The running of the canteen was handed over to a contractor. It was held that the canteen would be deemed to be run by the factory itself and as such employees in the canteen were workmen of the company.

The employees of a canteen set up in discharge of the statutory mandates namely *S. 46 of the Factories Act, 1948* do not necessarily become employees of the establishment. It will depend upon factors like this as to how the obligation to set up a canteen was discharged by the management, *i.e.,* whether by direct recruitment or by employment of contractor. It was held on the facts that the finding of the Labour Court that the canteen workers were not employees of the establishment could not be termed perverse.

Commission Agents and Deposit Collectors

Commission agents and deposit collectors of Banks, although not regularly employed, were held nonetheless to be covered by the definition.

Medical Officers

Medical doctors discharging functions of medical officers are not workmen. They are entrusted with task of examining and diagnosing patients and prescribing medicines. They are basically and mainly engaged in professional and intellectual activities to treat patients. It was held that persons performing such functions cannot be seen as workmen under s. 2(s).

Conditions of Service for Change of which Notice is Requisite

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;
9. To know about different penalties that can be imposed for violation of the provisions of the Act.

CHAPTER 2 Notice of Change (Sections 9A & 9B)

CONDITIONS OF SERVICE FOR CHANGE OF WHICH NOTICE IS REQUISITE— Updated On 08-01-2019

Section 9A of the Industrial Disputes Act, 1947 contains provisions about notice of change. It says

that for making any change in conditions of service about matters enumerated in the Fourth Schedule, a notice has to be given by the employer. The matters given in the Fourth Schedule are as follows:—

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

An employer who proposes to effect any change in the abovestated condition of service has to fulfill two essential conditions which are as follows:—

1. He has to give notice to the workman likely to be affected by the change in the prescribed manner of the nature of change proposed to be effected.
2. After giving the notice the employer has to wait for twenty one days before effecting the notified change.

However, for effecting the following changes, no notice is required to be given:—

(a) Where the change is effected in pursuance of any settlement or award.

(b) Where the workmen likely to be affected by the change are persons to whom anyone of the following Rules, Regulations or Code apply:—

(i) The Fundamental and Supplementary Rules;

(ii) Civil Services (Classification, Control and Appeal) Rules;

(iii) Civil Service (Temporary Service Rules);

(iv) Revised Leave Rules;

(v) Civil Service Regulations;

(vi) Civilians in Defence Services (Classification, Control and Appeal) Rules;

(vii) The Indian Railway Establishment Code; or

(viii) Any other Rules or Regulations that may be notified in this behalf by the appropriate Government in the Official Gazette.

A corporation took over State run Electricity Board adopting rules and regulations framed by the State. As per the earlier Government circular of erstwhile State Electricity Board, a workman who was acquitted from the criminal charges was entitled to reinstatement and pay. It was held that earlier circulars of the erstwhile State Electricity Board will be applicable to present case also and the concerned workman will be entitled to full back wages for period of dismissal and suspension allowance during the period of suspension.[1]

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1 *Jaipur Vidyut Vitran Nigam Ltd. v. Nathu Ram,* (2010) 1 SCC 428 [*LNIND 2009 SC 2020*].

Power of Government to Exempt [Section 9B]

Avtar Singh: Introduction to Labour and Industrial Law

PART I THE INDUSTRIAL DISPUTES ACT, 1947

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CHAPTER 2 Notice of Change (Sections 9A & 9B)

Power of Government to Exempt [Section 9B]— Updated On 08-01-2019

The appropriate Government has the power to exempt any class of industrial establishment or any class of workmen employed in any industrial establishment from the applicability of the provisions of section 9A. The

provisions may not apply either completely or apply subject to certain conditions which may be specified in the notification. The ground for exemption is the opinion of the appropriate Government. Where it is of the opinion that the application of these provisions affects the employers so prejudicially that such application may cause serious repercussion on the industry concerned and that public interest so requires, it may exempt any industrial establishment or class of workmen from application of these provisions.

End of Document

Legality of Change

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CHAPTER 2 Notice of Change (Sections 9A & 9B)

LEGALITY OF CHANGE— Updated On 08-01-2019

Provisions of section 9A are mandatory. Where notice of change is necessary but has not been served, it will render the change illegal. It has been held that liberal construction should be given to section 9A so as to include all worthwhile changes. For example, change of date for Diwali holiday, fixation of working hours, change of place of

business, settlement arrived at in the course of conciliation proceeding have been held to be legal changes whereas unilateral withdrawal of compensation allowance,[2] change of weekly rest days from Sunday to some other day[3] *etc.* have been held to be illegal changes.

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2 *I.O. Corpn. v. Workmen,* 1975 II LLJ 319 SC.

3 *TISCO v. Workmen,* 1971 II LLJ 259 (SC) : AIR 1972 SC 1917 [*LNIND 1972 SC 300*] : 1972 LIC 1128 .

End of Document

Requirement of Notice

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CHAPTER 2 Notice of Change (Sections 9A & 9B)

REQUIREMENT OF NOTICE— Updated On 08-01-2019

The requirement of notice arises only if workmen are likely to be affected prejudicially. The section is not intended to cover a case in which the proposal is, for instance, to enhance pay scales or to make the terms of employment better by a unilateral decision. The whole object is to prevent a unilateral action for changing the conditions of

service to the prejudice of the workmen. Section 9A also has no application where an option is given to employees to accept the change or to continue on the existing system.[4] Terms and conditions of employment applicable at the commencement of employment cannot be examined under this section. Section is mandatory.[5]

Withdrawal of Benefits

Withdrawal of overtime allowance without issuing notice has been held to be illegal. Where medical benefits were available as a part of service conditions, withdrawal of such benefits on the ground that the workmen in question were enjoying the benefit of ESI Scheme was held to be impermissible.

The *sine qua non* for the applicability of s. 9A read with 4th Schedule is that there should be a change in the service conditions in respect of matters specified in the Schedule. The mere withdrawal of a privilege will not amount to a change in service conditions unless such privilege having been allowed to be enjoyed by the employees over a long stretch of time as a matter of custom or usage has an effect become an accepted conditions of service. The State Bank of India imposed certain conditions for any staff member to participate in any local body or Municipal elections. This was held to be something different from concessions or privileges set out in Sch. 4 relating to conditions of service or work. Participation in elections is not a customary privilege connected with conditions of service or work.

Accordingly, the circular of the State Bank did not bring about any change in conditions of service of the award staff. A change of the date of a holiday is not a deprivation because the number of holidays is not reduced. Taking work for less than 8 hours during construction period and subsequent enlargement to full working hours has been held to be not a change. A mere change of promotion is not a condition of service.

Duty Relief

Duty relief is not a part of the conditions of service or work. Section 9A will have no application.

Beneficial Changes

No notice was considered necessary when weekly hours of work were reduced from 66 to 54. Such a change is not covered by items No. 4, 6, or 8 of Sch. IV.

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4 *Tamil Nadu Electric Workers Federation v. Madras State Electricity Board,* (1962) 2 Lab LJ 136 (Mad). The section has been held to apply to minority educational institutions protected under *Article 30(1) of the Constitution* , *Hospital Employees Union v. Christian Medical College,* (1987) 4 SCC 691 [LNIND 1987 SC 997].

5 *Navbharat v. Shramik Sangh,* (1985) 1 Lab LJ 474.

Prejudicial Changes

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CHAPTER 2 Notice of Change (Sections 9A & 9B)

PREJUDICIAL CHANGES— Updated On 08-01-2019

Modernisation, etc.

A prior notice of change in respect of item No. 10 of Sch. IV would be necessary where installation or introduction of rationalisation, standardisation, or improvement of plant or technique is likely to lead to retrenchment of workmen.

Rationalisation and standardisation effected by a transport corporation resulted in conductor surplus. Some conductors were, therefore, retrenched. The court said that this attracted s. 9A and, therefore, notice was necessary. The number of conductors was reduced and it amounted to a change in the conditions of service as enumerated in item II of the 4th Schedule. It was necessary to give notice and wait for 21 days before dealing with the staff surplusage.

A notice of change in cases of rationalisation or modernisation is necessary only when the same is likely to lead to retrenchment. Emphasis is not on rationalisation, etc., but on its effect upon employment of workers. Explaining the meaning of the word 'likely', the court said that it is a word of general usage and common understanding. 'Likely' means to make something possible and having better chances of existing or occurring than not, where, in a given case the employer, on a proper appreciation of the situation, not only forms an opinion that there is no likelihood of the proposed rationalisation leading to retrenchment but also assures the workmen categorically that no retrenchment in any event shall be effected, it would be difficult to hold that it is likely to lead to retrenchment.

Overtime

Where workers working for more than the prescribed working hours were entitled to overtime payment, it was held that any alteration of working hours in such a way that the workers would suffer loss of overtime benefit was a prejudicial change.

Cancellation of the direct system of wages payment and introduction of a contractor for the purposes of payment of wages was held to be an alteration of the mode of payment to the disadvantage of employees and, being violative of s. 9A, was illegal and wholly ineffective. Conversion of casual workers into contract labour workers without complying with the requirements of the section was held to be void.

Termination, Retrenchment

Employment of contract labour does not affect the service conditions of any workmen. Termination of services in accordance with the law does not attract the provisions of s. 9A. Similarly, the exercise of retrenchment has to follow its own procedure and, therefore, notice under s. 9A is not necessary. Retrenchment does not amount to any change in the conditions of employment. Where a voluntary retirement scheme contemplated reduction of staff but was not made public, it was held that *prima facie* such a scheme would attract Item Nos. 9, 10 and 11 of the IV Schedule and s. 9A would become applicable. Employees of non-statutory unrecognised canteen are not employees of principal employer.

Promotional Avenue

A notice of change is required only when a change is made in the conditions of service relating to matters specified in 4th Schedule. The section has been held to have no application to the closing of the cadre of superintendents. Clause 11 was not attracted. What was changed was merely the channel of promotion.

Other Changes

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CHAPTER 2 Notice of Change (Sections 9A & 9B)

OTHER CHANGES— Updated On 08-01-2019

The requirement of notice has been held to be limited only to the eleven conditions of service mentioned in Sch. IV and does not extend to other changes. The conditions of service not mentioned in the schedule can be brought

within the scheduled items by the process of interpretation.[27]

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27 *Harmohinder Singh v. Kharga Canteen, Ambala Cantt.,* (2001) 5 SCC 540 .

End of Document

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CHAPTER 2 Notice of Change (Sections 9A & 9B)

Management and workers entered into a settlement under which the management agreed to pay a fixed amount every month in lieu of bonus to such workers who were outside the purview of the *Payment of Bonus Act, 1965* . Subsequently, the union terminated the agreement. The management

did not make any further payments after the expiry of the period of settlement. This action on the part of the management was held to be violative of the provisions of s. 9A. A petition for writ of mandamus was held to be maintainable against a private employer also in such a case.[28]

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28 *Mettur Chemicals Podhu Thoztilalar Sangam v. Chemplast Sanmar Ltd., Mettur,* *(1997) 2 Lab LJ 963* (Mad).

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Works Committee [Section 3]

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CHAPTER 3 Authorities under the Act

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.

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1. Works Committee (section 3)
2. Grievance Settlement Authority (section 9C)
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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)

Works Committee [Section 3]— Updated On 08-01-2019

Section 3 provides for the composition of the Works Committee. The power to constitute works committee rests with the appropriate Government. It may by a general or special order applicable to industrial establishments in which 100 or more workmen are employed or were employed on any day in the proceeding 12 months require them to constitute a Works Committee.

The manner of constituting the Works Committee has to be provided by the appropriate Government. The membership has to consist of representatives of employers and employees in equal numbers but representatives of employees can be in greater number. The representatives of workers have to be chosen in the prescribed manner from among the workers of the establishment in consultation with their registered trade union, if any, the total number has not to exceed 20.[1] The offices of the secretary and joint secretary are not to be held by the representatives of one or the other for more than two consecutive years.[2]

Rule 42 of the Central Rules provides that where a trade union has membership of more than 50% of the employees, then there is no need for any division of constituencies and election should be held by general vote of workers in the industry. The decision of the commandant of the respondent depot to hold elections on the basis of multiple constituencies was in violation of Rule 42.[3]

The member of representatives of workmen should be equal or more than that of employer. They should be elected, and not nominated.[4]

Function of Works Committee

It is the duty of the Works Committee to promote measures for securing and preserving amity and good relations between the employer and workmen. It has to comment upon matters of their common interest or concern and endeavour to compose any material difference of opinion in respect of such matters.

The Works Committees are concerned with the day-to-day working of the concerns and to settle the grievances of the employees.

In our country many difficulties have been experienced in the smooth functioning of works committees. Following are some of them:

(i) Lack of appreciation on the part of the management and workmen's representatives of the functions and significance of the committees;

(ii) Illiteracy and lack of understanding amongst the workers especially those employed in backward areas;

(iii) disinclination or workers' representatives in the works committees to participate in the deliberations of the committees;

(iv) too much expectation by the workers from these representatives and they being unable to deliver the goods become unpopular and are not inclined to serve on the committees;

(v) lack of co-operation and in some cases even opposition of the trade union leaders to the *constitution* and functioning of the works committees. They fear that their representative character will cease if work committees function. There have also been instances in which it was reported that the trade unions regarded works committees as their rivals;

(vi) opposition of trade unions towards the formation of works committees due to inter-union rivalry.

Following factors have been found helpful for the successful functioning of the works committees:

(a) existence of co-operation and cordial relations between the workers and managements and also with the trade unions;

(b) sympathetic attitude by the managements especially in encouraging workers to put forward their grievances and suggestions;

(c) foresight of the managements in having prior consultation with the works committees before bringing any changes in respect of welfare measures, service and conditions etc;

(d) higher educational standards amongst the workers;

(e) model *constitution* and bye-laws for the works committees must be framed.

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1 Rule 39, Industrial Dispute (Central) Rules, 1957. If the trade union is not consulted, whether required by Rules or not, the election is liable to be set aside, *Prafulla Mohan Das v. Steel Authority of India,* *(1992) 1 Lab LJ 621* (Ori) (Rule 41).

2 Rule 51, *ibid.*

3 *Delhi Ammunition Depot Workers Union v. Union of India,* *(1994) 2 Lab LJ 342* (Bom—DB); *Union of India v. MTSSD Workers' Union,* (1998) 1 SCC 640 [*LNIND 1997 SC 1651*] F.

4 Rules 38 to 43 of the Central Rules. *Bangali Raje v. Union of India,* *(1994) 1 Lab LJ 1017* (Cal—DB).

Grievances Settlement Authority [Section 9C]

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   (b) Industrial Tribunals (section 7A)

   (c) National Tribunals (section 7B)

7. Arbitrational Machinery (section 10A)

Grievances Settlement Authority [Section 9C]— Updated On 08-01-2019

Section 9C deals with the setting up of Grievance Settlement Authorities and reference of certain industrial disputes to such authorities.

According to section 9C,[6] every establishment employing twenty or more workers will have to constitute one or more Grievance Redressal Committee for the resolution of disputes arising out of individual grievances.

The Committee will consist of equal number of members from the employer and the workmen subject to maximum of six members in total. In case the Committee has two members, one of them should be a woman, as far as practicable and where it has more than two members, the number of women members may be increased proportionately. However, the chairperson of the Committee shall be selected from the employer and from workmen alternatively on rotation basis every year.

The setting of Grievance Settlement Committee will not affect the right of the workman to raise industrial dispute on the same matter under the provisions of the Act.

The Committee may complete its proceedings within thirty days of the receipt of written application by or on behalf of the aggrieved person. The workman aggrieved by the decision of the Committee may prefer an appeal to employer and the employer within one month from the date of receipt of the appeal dispose of the same and inform his decision to the workman concerned.

This section will not apply to the workmen for whom there is an established Grievance Redressal Machinery in the establishment concerned.

Where the grievance committee held that the employee even after removal from service is deemed to be still in service on the ground that a contract of personal service is subsisting and directed for reinstatement of the employee, it was held to be inappropriate direction by the Supreme Court on the basis of [7]established grounds of reinstatement.

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6 Substituted by Industrial Disputes (Amendment) Act, 2010.

7 *APD Jain Pathshala v. Shivaji Bhagwat More,* [(2011) 13 SCC 99 *LNIND 2011 SC 590*].

Conciliation [Sections 4 & 5]

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7. Arbitrational Machinery (section 10A)

Conciliation [Sections 4 & 5]— Updated On 08-01-2019

Conciliation is the oldest recognised process of settling mutual conflicts not only between individuals and groups but also between nations.

In the words of Alfred Stenger, “conciliation implies a compromise—a basically voluntary process the success of which depends upon the citizen’s willingness to relinquish certain individual liberties as part of his duty to and respect for his fellow men and to accept the other party as equal partner in conciliation proceedings.”

Conciliation through statutory government machinery quite clearly signifies the abandonment of the doctrine of *laissez faire* in the industrial relations field in favour of government control in the interests of the welfare of all citizens.[8]

Governmental or Public Conciliation

Following are the principles underlying conciliation

(i) the community at large has a rightful interest in the settlement of industrial disputes;

(ii) absolute compulsion cannot be used as a means of settling industrial disputes; it must be the last resort;

(iii) Government conciliation has to take place before a strike or lock out occurs, though the recommendation of the conciliation Authority may not be accepted;

(iv) no strike or lockout should be allowed during the period for which a collective agreement is concluded;

(v) the time needed for conciliation is “cooling off” period and during such period there should not be any strike or lockout;

(vi) the publication of the conciliation report exposes both parties to the dispute to the pressure of public opinion.

Essence of Conciliation

The essence of conciliation procedure is the exertion or channalising of pressures on one or both the parties to the dispute to obtain the necessary concessions for the settlement of their differences. It is the method of persuasion and the art of using pressures, some of which are intrinsic in labour disputes and some of which are created by the mediator. These pressures may be personal, social, political or economic. It is the function of mediation (conciliation included) to exert, channel or control these pressures in different forms.

Conciliation consists of two authorities: Conciliation Officers and Board of Conciliation.

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8 It is the duty of the parties to see that during the pendency of the conciliation proceeding the conditions of service in regard to any matter connected with the dispute should not be altered to the prejudice of workmen, *Gujarat Petroleum Employees Union v. Oil & Natural Gas Commission Ltd.,* (1998) 3 Lab LJ (Supp) 145 (Guj).

Conciliation Officers [Section 4]

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   (c) National Tribunals (section 7B)

7. Arbitrational Machinery (section 10A)

Conciliation Officers [Section 4]— Updated On 08-01-2019

The appropriate Government has the power to appoint such number of persons as it thinks fit to be conciliation officers by notification in the Official Gazette. The appropriate Government can charge them with the duty of mediating in and promoting the settlement of industrial disputes.

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

Conciliation and Reference

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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;
9. To know about different penalties that can be imposed for violation of the provisions of the Act.

CHAPTER 3 Authorities under the Act

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)

CONCILIATION AND REFERENCE— Updated On 08-01-2019

Section 10 of the Industrial Disputes Act, 1947 deals with reference of disputes for adjudication, etc., whereas section 12 deals with the duties of the conciliation officers and both sections are independent of each other. It is not necessary that before reference of a dispute to adjudication, conciliation procedure must be complied with.

Duties of Conciliation Officers [Section 12]

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;
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Duties of Conciliation Officers [Section 12]— Updated On 08-01-2019

Section 12 lays down the following duties of conciliation officers:

(1) Where any industrial dispute is existing or is apprehended in the future, the conciliation officer may hold conciliation proceedings in the prescribed manner. Where the dispute relates to a public utility service and a notice under section 22 has been given, he has to hold conciliation proceedings in the prescribed manner.

(2) The conciliation officer has to investigate the dispute and all matters affecting the merits and rights for the purpose of bringing about settlement of the dispute without delay. He may do all such things as he thinks necessary for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

(3) The whole of the dispute anyone matter of the dispute may be settled in the conciliation proceedings. In both the cases the conciliation officer has to send a report of it to the appropriate Government or an officer authorised by the appropriate Government together with a memorandum of settlement signed by the parties to the dispute.[9] A memorandum of understanding entered into by and between the management and the employees having regard to the provisions contained in s. 12(3) is binding on both the employer

and the employee. In case any of such parties commit breach of any of its provisions, an industrial dispute has to be raised.[10]

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

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

(6) A report under this section has to be submitted within fourteen days of the commencement of a conciliation proceeding or within such shorter period as may be fixed by the appropriate Government. If the conciliation officer approves, the time for the submission of the report may be extended by such period as may be agreed upon in writing by all the parties to the dispute.

It is obligatory on the conciliation officer to hold conciliation proceedings in public utility services where an industrial dispute exists or is apprehended or where notice of strike lock-out has been given under section 22. In non-public utility services where notice of strike or lock out is not given it is optional and he may hold conciliation proceedings. Rule 10 of the Industrial Disputes (Central) Rules, 1957 says that conciliation proceedings are deemed to have started on the date on which the notice of strike or lock-out under s. 22 is received by the conciliation officer. After receipt of a notice of a strike or lock-out, the conciliation officer must forthwith arrange to interview both the employer and the workmen concerned at such places and at such times as he deems fit. In cases where it is in the discretion of the conciliation officer to hold conciliation proceedings, the proceedings commence on the date stated in the formal notification given by him to the parties.

Where the Government refuses to make a reference on irrelevant grounds, the court can direct it to perform its statutory duty.[11] A writ of mandamus can be issued for the purpose.[12] The court can direct the Government to reconsider the matter on germane grounds and not to dispose it of on irrelevant, extraneous or non-germane grounds.[13] The Government can go into the *prima facie* merits of the case for the purpose of deciding whether to make a reference or not. The High Court cannot sit in appeal over the decision of the Government in refusing to make a reference.[14] A writ of mandamus would, however, lie where it is shown to the court that the decision is not of a *bona fide* nature.[15] Where the dispute affected a group of mills, reference should be of the whole group. A mill or two should not be left out just only because some kind of a settlement is prevailing there.[16]

There is no legal obligation on the part of the conciliation officer to issue notice to the unions before certification of settlement. There is no provision in the Act which makes it obligatory for a conciliation officer to issue notice to any party before a settlement is signed under s. 12(3) of the Act between the management and the workmen. So far as individual workmen are concerned, it is not necessary that each individual workman should know the implications of a settlement which is being negotiated by a recognised union. This is because industrial jurisprudence is based on collective bargaining and in the matter of collective bargaining, the workmen as individuals do not come into the picture at all.[17]

The conciliation proceedings should be conducted expeditiously and a discretion has been vested in the officer to conduct in the manner as he deems fit.[18] The party representing the workmen of a public utility service or a non-public utility service is required to forward a statement of its demand along with a copy of the notice prescribed.[19]

According to Rule 12 of the Industrial Disputes (Central) Rules, 1957, the rule framed under section 38 provide that the conciliation proceedings should be conducted expeditiously and a discretion is vested in the officer to conduct those in such a manner as he deems fit. The party representing the workmen of a public utility service or a non-public utility service is required to forward a statement of its demands along with a copy of the notice prescribed under Rule 71 to the conciliation officer concerned.

Duties of Conciliator are Administrative

“The duty of a conciliation officer is not judicial but administrative. He has to investigate the dispute and do all such things as he thinks fit for the purpose of inducing the parties to arrive at a fair and amicable settlement of the disput. The main task of the conciliation officer is to go from one camp to the other and to find out the greatest common measure of agreement. That being so, the grievance that the investigations have not been carried on in the manner that a judicial proceeding should be carried on is without substance.”

Failure of Conciliation and Duties of Officers

On failure of conciliation, the officer tries to ascertain and secure agreement of the parties for reference to voluntary arbitration.

If he fails to get the parties to agree to arbitration, the conciliation officer attempts to persuade them to agree to refer the dispute to adjudication by sending in a joint or separate application for such a reference under Section 10(2) of the Act. Reference to adjudication is made if the Government is satisfied that persons applying for reference represent the majority. There is an administrative instruction that in cases where both parties agree to refer a dispute for adjudication, the report of the conciliation proceedings should be accompanied by a joint application under section 10(2) of the Act specifying the addresses of the parties and including a certification from the Conciliation Officer or Regional Labour Commissioner, as the case may be, that the union which is concerned represents a majority of the workmen in the establishment in question.

The failure report is required to be submitted within two days. It is factual in nature and its contents include history of the dispute and circumstances leading to the dispute, efforts made to resolve it, arguments of the disputant parties, and an indication whether there have been any breaches of the Code of Discipline. In 1959 the Ministry instructed that the copies of the report should be supplied as a matter of course to the parties.

Powers of Conciliation Officers

Conciliation proceedings are conducted in private. The officer is empowered to enter the premises after giving reasonable notice to the parties and inspect the same or any work, machinery, appliances or articles or to interrogate any person in respect of anything situated there or any matter relevant to the subject matter of the conciliation. He can call for and inspect any documents which he has grounds for considering to be relevant to the dispute or necessary for the purpose of verifying the implementation of any award. In this connection he enjoys many powers that are vested in a Civil Court under the *Code of Civil Procedure* . The conciliation officer must keep certain matters confidential.

A conciliation officer cannot decide on the merits of the case. If there are any laches and lapses on the part of employees or employer, it is the function of the Government to keep such factors in mind in finalising its policy over the matter. Where the dismissal, etc., of a workman which is a deemed industrial dispute under s. 2A comes before a conciliation officer, he has to deal with it in the manner of an industrial dispute and to submit a positive or a failure

report. There is no time-limit prescribed under section 2A or section 12. The matter in this case did not seem to be state or grossly belated. It was held that the conciliation officer had failed to exercise the jurisdiction vested in him under the law.

The Labour Commissioner could prevent a conciliation officer from exercising his powers under the Act just only because the employer was a Government company.

Dismissal by a bank official of his personal driver was held to be not an industrial dispute to enable the labour commissioner to make a reference for conciliation.

Conclusion of Conciliation Proceedings

A conciliation proceeding is deemed to have concluded under the following circumstances:

(a) where a settlement is arrived at, when a memorandum of the settlement is signed by the parties to the dispute;

(b) where no settlement is arrived at, when the report of the conciliation officer is received by the appropriate Government or when the report of the Board is published under Section 17, as the case may be; or

(c) when a reference is made to a Court, Labour Court, Tribunal or National Tribunal during the pendency of conciliation proceedings.

Proceedings before an arbitrator or before a Labour Court, Tribunal or National Tribunal are deemed to have commenced on the date of the reference of the dispute for arbitration or adjudication, as the case may be, and such proceedings are deemed to have been concluded on the date on which the award becomes enforceable under section 17A.

A conciliation proceeding, in which a settlement is arrived at, is concluded when a memorandum of a settlement is signed by the parties to the dispute. In cases of no settlement, it is concluded when the report of the conciliation officer is received by the Government or when a reference is made to a Labour Court, Tribunal or National Tribunal during the pendency of conciliation proceedings.

The Supreme Court held in a case that conciliation proceedings resulting in a report come to a conclusion only on the actual receipt of the report by the appropriate Government. The conciliation officer cannot direct the parties to act in a particular manner nor give a final decision in the matter.

Report by Conciliation Officer

According to section 12, the report must be submitted within 14 days of the commencement of conciliation proceedings or within such shorter period as may be fixed by the appropriate Government. The timing for the

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.