workman in moving against dismissal was not raised before the Labour Court and the High Court recorded a finding that the workman had not submitted any explanation for the delay which he should have done even if not pleaded by the management. The finding was held by the Supreme Court to be not justified. Article 137 of the Schedule to the *Limitation Act* is not applicable to proceedings under the *ID Act*.[41]

Where an industrial dispute was raised after 13 long years of the termination of the service and no reasonable explanation was given for the delay, it was held that the decision of the Industrial Tribunal to provide no relief was proper.[42]

When after termination of services in 1992, the employee was diligently pursuing the matter before employer and Government authorities and Government ultimately made reference in 1999, delay was held to be sufficiently explained.[43]

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40 *Mani Ram v. Presiding Officer, Labour Court,* *(1997) 2 Lab LJ 519* (P&H).

41 *Ajaib Singh v. Sirhind Coop Marketing-cum-Processing Service Society,* *(1999) 1 Lab LJ 1260* (SC).

42 *Indian Iron & Steel Co. Ltd. v. Prahlad Singh,* (2001) 1 SCC 424 [*LNIND 2000 SC 1424*] : AIR 2001 SC 69 [*LNIND 2000 SC 1424*]: (2001) Lab 1C 26.

43 *Kuldeep Singh v. Central Design Development and Facilities Center,* (2010) 14 SCC 176 [*LNIND 2010 SC 1180*].

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Dismissal for Offence Involving Moral Turpitude

Avtar Singh: Introduction to Labour and Industrial Law

PART I THE INDUSTRIAL DISPUTES ACT, 1947

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CHAPTER 4 Reference of Disputes to Boards, Courts or Tribunals

Dismissal for Offence Involving Moral Turpitude— Updated On 08-01-2019

A workman was dismissed on account of his conviction for an offence involving moral turpitude in outraging the modesty of a woman. The Central Government decided against reference. A single judge of the High Court directed

the Central Government to make reference. It was held by the Supreme Court that the directive was not in accordance with the law. The order of dismissal was rightly passed by the employer. Recommendation made in *Pawan Kumar v. State of Haryana,* [44] did not cover cases involving moral turpitude.[45]

44 (1996) 4 Scale 480 [LNIND 1996 SC 2868] : AIR 1996 SC 3300 [LNIND 1996 SC 2868]: (1996) 4 SCC 17 [LNIND 1996 SC 2868] : (1996) 2 LLJ 703 .

45 (1997) 1 Lab LJ 49 (SC).

End of Document

Duty of Tribunal to Confine itself to Issues Raised by Parties

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CHAPTER 4 Reference of Disputes to Boards, Courts or Tribunals

Duty of Tribunal to Confine itself to Issues Raised by Parties— Updated On 08-01-2019

In industrial adjudication, issues are of two types, those referred by Government for adjudication and set out in the

order of reference and incidental issues which are sometimes the issues of law or mixed issues of law and fact. The Tribunal may as well frame preliminary issues on the point on which the parties are at variance. This will help the Tribunal to go to the root of matter. But the Tribunal cannot travel beyond the pleadings and arrogate to itself the power to raise issues which the parties to the reference are precluded or prohibited from raising. If the employer does not question the status of the workman, the Tribunal *suo motu* cannot raise the issue and proceed to adjudicate upon the same and throw out the reference on the sole ground that the concerned workman was not a workman within the meaning of that expression in the Act and it is not obligatory upon the employer necessarily to raise the contention that the concerned workman was not within the meaning of that expression under the Act.[46]

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46 *Workmen v. Hindustan Lever Ltd.,* (1984) I LLJ 388 : AIR 1984 SC 576 .

End of Document

General Conclusions on Exercise of Power of Reference

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CHAPTER 4 Reference of Disputes to Boards, Courts or Tribunals

General Conclusions on Exercise of Power of Reference— Updated On 08-01-2019

General Conclusions on Exercise of Power of Reference

Some general principles regulating governmental power of reference may be stated as under:

1. Factual existence of a dispute is a prerequisite.[47]
2. Discretion is vested in the Government to choose the authority to whom the industrial dispute be referred when there are more than one authority to coordinate jurisdiction.
3. Reference is an executive and an *administrative act* and not a judicial or guasi-judicial act. Even after refusal, the Government can make reference.
4. The Government can refuse to refer a dispute. Where it concerns a Government project or a department, it should get the matter examined by a competent Tribunal rather than unilaterally decide on its own.
5. A reference can neither be withdrawn, nor cancelled or superseded.
6. Prior notice of reference to parties is not necessary.[48]
7. Power to amend or add to any reference lies with the Government.
8. It is within the competence of courts to test the validity of a reference and interfere with it if called for. It can issue a *mandamus* for reconsideration but not for reference.
9. A reference which is otherwise valid would not become invalid on account of any errors or omissions in naming the parties to the dispute or total number of workmen.
10. The Government has no power to decide on merits of reference.
11. The appropriate Government is precluded from considering the merits of the dispute while testing the question whether or not the same is to be referred to the Tribunal, when the demand for reference is neither perverse nor frivolous. Also, under sec. 12(5) of the Act, it is obligatory on the part of the Government to give reasons while rejecting the request for reference of a dispute to the Tribunal.

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47 Where the applicant did not joint the employment proposed to him, the reference of his matter under the category of "removal from service was held to be vitiated. The Government had in the first instance refused reference but subsequently revised its opinion, *Bongaigaon Refinery & Pharmaceuticals Ltd. v. Samajuddin Ahmed, (2001) 2 Lab LJ 1149* : (2001) 9 SCC 557 [LNIND 2001 SC 1934]. Existence or apprehension of an industrial dispute for an order of reference is necessary. *National Engineering Industries Ltd. v. State of Rajasthan,* (2000) 1 SCC 371 [LNIND 1999 SC 1079] : AIR 2000 SC 469 [LNIND 1999 SC 1079]. *Cement Corporation of India Ltd. v. Raghbir Singh,* AIR 2002 SC 809, date of birth, proper certificate produced two years after retirement, back wages allowed only from the date of application before the labour court and not for the entire period, interest also not allowed.

48 The Government is not obliged to issue notice to the employer or hear him or his objections before making reference after reconsidering its earlier decision not to make a reference, *Sultan Singh v. State of Haryana, (1996) 1 Lab LJ 879* :

AIR 1996 SC 1007 [
LNIND 1995 SC 1290].

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Right of Employer to Lead Evidence

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CHAPTER 4 Reference of Disputes to Boards, Courts or Tribunals

Right of Employer to Lead Evidence— Updated On 08-01-2019

The right of the employer to lead evidence in support of his action is not a statutory right. It is a part of the procedure laid down by the Supreme Court.[49] An employee was dismissed after a domestic enquiry. The labour

court held the domestic inquiry to be bad at this stage the employer sought permission to lead evidence to justify the action. The Supreme Court found that there was a conflict of decisions. The tino-judge Bench referred the matter to a five-judge Bench.[50]

Reference of Industrial Dispute: Who is Entitled to Raise Dispute

An industrial dispute can be raised by any person who can be categorised as workman under the *Industrial Disputes Act, 1947*. Before referring any industrial dispute to reference, the appropriate Government has to find out whether the concerned person can raise an industrial dispute or not. Appellant company recruited respondent under benevolent scheme of employment to candidates whose land was acquired by appellant company. Before the joining of the respondent, the company found out that two brothers of him were already given employment under scheme, so his letter of appointment was withdrawn and joining report was also not accepted. The respondent raised an industrial dispute and the Government refused to make reference on the ground that the respondent was not a workman as he did not actually joined service. Later on the Government referred the matter to industrial tribunal on orders of High Court. The appellant company challenged the order and the single judge quashed the order of reference holding reference to be misconceived. Division Bench again reversed the order of single judge and on appeal, the Supreme Court held that reference under *S. 10 of Industrial Disputes Act* was not valid as respondent had not entered employment of appellant. The Supreme Court held the reference to be wholly unwarranted and uncalled for and observed that court should not extend its helping hand to non-deserving claimant.

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49 *Karnataka SRTC v. Lakshmidevamma,* AIR 2001 SC 2090 [LNIND 2001 SC 1128]: (2001) 5 SCC 433 : *(2001) 2 LLJ 199* [LNIND 2001 SC 1128]. The conflict was in decisions between *Shambhu Nath Goyal v. Bank of Baroda,* (1983) 4 SCC 491 [LNIND 1983 SC 267] : AIR 1984 SC 289 [LNIND 1983 SC 267]: *(1983) 2 LLJ 415* [LNIND 1983 SC 267] and *Rajendra Jha v. Presiding Officer, Labour Court,* (1984) Supp SCC 520.

50 *Ibid.*

End of Document

Arbitrational Machinery or Voluntary Reference of Disputes to Arbitration [Section 10(A)]

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CHAPTER 4 Reference of Disputes to Boards, Courts or Tribunals

Arbitrational Machinery or Voluntary Reference of Disputes to Arbitration [Section 10(A)]— Updated On 08-01-2019

Arbitrational Machinery or Voluntary Reference of Disputes to Arbitration [Section 10(A)]

Section 10A provides that where any industrial dispute exists or is apprehended and the employer and the workmen agree to refer the dispute to arbitration, they may, at any time before the dispute has been referred under section 10 to a Labour Court or Tribunal or National Tribunal, by a written agreement, refer the dispute to arbitration. The reference shall be to such person or persons including the presiding officer of a Labour Court or Tribunal or National Tribunal as an arbitrator or arbitrators as may be specified in the arbitration agreement.

Where an arbitration agreement provides for a reference of the dispute to an even number of arbitrators, the agreement shall provide for the appointment of another person as umpire who shall enter upon the reference, if the arbitrators are equally divided in their opinion, and the award of the umpire shall prevail and shall be deemed to be the arbitration award for the purpose of this Act.

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

A copy of the arbitration agreement shall be forwarded to the appropriate Government and the conciliation officer and the appropriate Government shall, within one month from the date of the receipt of such copy, publish the same in the Official Gazette.

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

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

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

Nothing in the *Arbitration Act*, 1940 [now *Arbitration and Conciliation Act, 1996*] shall apply to arbitrations under this section.

When once the dispute is referred for arbitration under sec. 10A. appropriate Government cannot refer the same dispute for adjudication under section 10.[52]

Requirement of publication of agreement under sub-section (3) is mandatory and non-compliance with that requirement renders award invalid and unenforceable. Absence of penal provisions for non-compliance does not make a provision directory, Court should ascertain the underlying idea and pur5p3 ose to be achieved by a

provision to decide whether it is mandatory or directory.[53]

In *Nani Gopal Sarkar v. Heavy Engg. Corpn. Ltd.,*[54] the question before the Supreme Court was that whether the award passed by the expert-arbitrator was valid even if there was non-complying with the procedure prescribed under section 10-A of the Act. It was held by the Supreme Court that the High Court was in error in taking the view that the award was void, in as much as the respondents themselves had not taken the stand that such award was not binding on them or that they did not want to enforce the same. The expert-arbitrator had recommended that time bound promotion system be introduced in Heavy Engineering Corporation for all categories of employees and promotion be given in order of seniority and not on the basis of need or vacancy. While implementing this policy, promotion from supervisory level to executive level was given after 7 years of service in the supervisory level. In the case of office superintendents and personnel assistants alone the promotion could not be postponed to another 7 years. It was to remove this anamoly that the arbitrator had recommended these posts as wastage posts. In any view of the matter, promotion from supervisory level to executive level had to be given in 7 years and not 14 years.

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52 *Karnal Leather Karamchari Sangathan v. Liberty Footwear Co., (1989) 2 Lab LJ 550* [*LNIND 1989 SC 425*] : AIR 1990 SC 247 [*LNIND 1989 SC 425*].

53 *Karnal Leather Karamchari Sanghtan (Regd.) v. Liberty Foot Wear Co. (Regd.),* (1989) II LLJ 550 : AIR 1990 SC 247 [*LNIND 1989 SC 425*].

54 (1990) II LLJ 289 : AIR 1990 SC 1391 [*LNIND 1990 SC 174*].

End of Document

Alternative Remedy

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CHAPTER 4 Reference of Disputes to Boards, Courts or Tribunals

Alternative Remedy— Updated On 08-01-2019

The Supreme Court in its decision in *Jai Bhagwan v. Ambala Central Coop Bank Ltd.,* [55] stated the legal position as follows: Raising an industrial dispute is a well recognised and legitimate mode of obtaining redress

available to workmen, which has received statutory recognition under the *ID Act* . There is no reason why the statute recognised mode of redress should be denied to a workman by reason of the existence or availability of another remedy. Nor one can understand how an industrial tribunal to whom a dispute has been referred for adjudication can refuse to adjudicate upon it and surrender jurisdiction which it undoubtedly had to some other authority once a reference has been properly made to an Industrial Tribunal, the dispute has to be duly resolved by it and it has no discretion to decide whether to adjudicate or not. Such adjudication cannot be set aside on the ground that the workman had failed to pursue some other remedy.

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55 *(1984) 1 Lab LJ 52* : AIR 1984 SC 286 [*LNIND 1983 SC 274*].

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Procedure and Powers of Conciliation Officers, Boards, Courts and Tribunals [Section 11]

Avtar Singh: Introduction to Labour and Industrial Law

Avtar Singh: Introduction to Labour and Industrial Law > Introduction to Labour and Industrial Laws > PART I THE INDUSTRIAL DISPUTES ACT, 1947 > Procedure, Powers and Duties of Authorities

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CHAPTER 5 Procedure, Powers and Duties of Authorities

Procedure and Powers of Conciliation Officers, Boards, Courts and Tribunals [Section 11]— Updated On 08-01-2019

Procedure [Section 11]

Subject to any rules that may be made in this behalf, an Arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal has to follow such procedure as the arbitrator or other authority concerned may think fit.

A conciliation officer or a member of a Board or Court or the presiding officer of a Labour Court, Tribunal or National Tribunal may for the purpose of inquiry into any dispute may enter the premises occupied by any establishment to which the dispute relates. He has to give reasonable notice before exercising this power. The power may be exercised for the purpose of inquiry into any existing or apprehended dispute.

Powers

(1) Every Board, Court, Labour Court, Tribunal and National Tribunal has the same powers as are vested in a Civil Court under the *Code of Civil Procedure, 1908*, when trying a suit in respect of the following matters, namely:

(a) enforcing the attendance of any person and examining him on oath;

(b) compelling the production of documents and material objects;

(c) issuing commissions for the examination of witnesses;

(d) in respect of such other matters as may be prescribed.

Every inquiry or investigation by a Board, Court, Labour Court, Tribunal and National Tribunal shall be deemed to be a judicial proceeding within the meaning of *sections 193* and *228* of the *Indian Penal Code, 1860*.

(2) A conciliation officer may enforce the attendance of any person for the purpose of examination of such person or call for and inspect any document which he has ground for considering to be relevant to the industrial dispute or to be necessary for the purpose of verifying the implementation of any award or carrying out any other duty imposed on him under the Act. For such purposes, the conciliation officer shall have the same powers as are vested in a Civil Court under the *Code of Civil Procedure, 1908* in respect of enforcing the attendance of any person and examining him or of compelling the production of documents.

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

(4) All conciliation officers, members of a Board or Court and presiding officers of a Labour Court, Tribunal or National Tribunal shall be deemed to be public servants within the meaning of *section 21 of the Indian Penal Code, 1860*.

(5) Subject to any rules made under the Act, the costs of, and incidental to, any proceeding before a Labour Court, Tribunal or National Tribunal shall be in the discretion of that Labour Court, Tribunal National Tribunal. They shall have full power to determine by and to whom and to what extent and subject to what

conditions, if any, such costs are to be paid, and to give all necessary directions for such purposes. The costs may, on application made to the appropriate Government by the person entitled, be recovered by that Government in the same manner as an arrear of land revenue.

(6) Every Labour Court, Tribunal or National Tribunal shall be deemed to be Civil Court for the purposes of *sections 345*, *346* and *348* of the *Code of Criminal Procedure, 1973*.

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

(8) the Labour Court, Tribunal or National Tribunal shall transmit any award, order or settlement to a Civil Court having jurisdiction and such Civil Court shall execute the award, order or settlement as if it were a decree passed by it. Labour court and industrial tribunal while adjudicating an industrial dispute have the right to override contracts and create rights that are opposed to contractual rights

Reappreciation of Evidence by High Court

In connection with the award of a labour court, it has been held that the High Court cannot by reappreciating evidence come to a different conclusion. Where charges against workmen are not established, reappraisal of evidence cannot be made. The court also cannot go into the question as to whether the charges could have been established by better or further evidence. Such is not the function of the court or any guasi-judicial authority.

Where the respondent (since dead) who was removed from service for negligent driving raised an industrial dispute, the Labour Court found him guilty of negligent driving and modified the punishment to one of compulsory retirement, the High Court set aside that order and ordered his reinstatement. In appeal, the Supreme Court set aside the order of High Court and held that there is no justification for High Court to interfere with award of Labour Court based on evidence before it.

Where the workman himself accepted the opinion of the Medical Board as to assessment of his age, there was no necessity for the company to examine the Medical Officer. Labour Court's award in favour of workman was found by the High Court to be perverse and illegal, and therefore, was set aside by it. The Supreme Court in appeal held that when the judgment of the Labour Court was perverse and against facts, the High Court was entitled to exercise its jurisdiction under *Article 226 of the Constitution of India* and interfere with the perverse finding and set aside the same.

Power of Review and Amendment of Pleadings

The labour court has power to review its own decision on merits and more so when an order is only procedural circumstances in which parties can seek permission to adduce additional evidence were explained in *Amarnath v. Swatantra Bharat Mills.* The court said that the facts and circumstances of this case were clearly covered by the Supreme Court decision in *Shambu Nath Goel's* case. Majority of the judges held that an opportunity could be asked for at the stage of filing the written statement and not later. No such request was made in the instant case and the application filed at the belated stage did not explain the reasons for the delay.

Where an application was made even before the evidence of workmen was started, it was held to be not a belated application.

If the prayer to lead evidence in support of the order of dismissal was made by the employer before the closure of the proceedings in the Tribunal, denial of opportunity to the employer to lead evidence could not be justified.

End of Document

Powers of Labour Courts, Tribunals and National Tribunals to give appropriate Relief in case of Discharge or Dismissal of Workmen [Section 11A]

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CHAPTER 5 Procedure, Powers and Duties of Authorities

Powers of Labour Courts, Tribunals and National Tribunals to give appropriate Relief in case

of Discharge or Dismissal of Workmen [Section 11A]— Updated On 08-01-2019

Where an industrial dispute, relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Court Tribunal or National Tribunal is satisfied that the order of discharge or dismissal was not justified, it may, by its award—

(i) set aside the order of discharge or dismissal and direct re-instatement of the workman on such terms and conditions, as it thinks fit; or

(ii) give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances may require.

In any proceeding under the section the Court or Tribunal has to rely only on the materials on record and may not take fresh evidence in relation to the matter.

In *Rama Kant Misra v. State of U.P.,* [13] the Supreme Court converted the punishment of dismissal into one of withholding of two increments. The court said : The management has not shown that there was any blameworthy conduct on the part of the employee (Joint Secretary of the Union of Workmen) during the period of 7 years of service he rendered prior to the date of the misconduct and the misconduct consisted of language indiscreet, improper and disclosing a threatening posture. When it is said that the language discloses a threatening posture, it is the subjective conclusion of the person who hears the language because voice modulation of each person differs. Improper and abusive language may show lack of culture. But merely the use of such language on an occasion unconnected with the subsequent positive action and not preceded by blameworthy conduct could justify the extreme penalty of dismissal.

In *Baldev Singh v. Presiding Officer, Labour Court,* [14] the labour court found that the punishment of dismissal was harsh and, therefore, directed reinstatement but without back wages, Supreme Court upheld this conclusion. It was consistent with and not contrary to the provisions of s. 11A.

In still another case,[15] the Supreme Court laid down that in the case of a proven misconduct, the Labour Court could not order reinstatement with back wages. The workman was entitled either to get back wages without reinstatement or reinstatement without back wages.

There is no strait jacket formula for awarding back wages, discretion to award back wages has to be for cogent reasons and not arbitrary or fanciful.[16]

Where the discharge or dismissal was due to loss of the employer’s confidence, the court did not interfere because

it could not substitute its own confidence and direct reinstatement. The court found that a properly enquiry was held into the conduct of the store keeper in respect of the shortfall. The store keeper was not able to give any explanation about the shortage. The award of less punishment, like denial of 4 increments, was substituted by the labour court. The Supreme Court did not approve this approach. The court said that such interference was not called for because the case involved loss of confidence.[17]

In another case[18] of this kind a bank employee was dismissed from service on account of his admitted misconduct of withdrawing money unauthorisedly from a customer's account. The Industrial Tribunal ordered reinstatement without back wages. A writ petition the bank filed by the bank against the award of the Tribunal was dismissed by the High Court.[19] It was held that a bank employee deals with public money and therefore cannot be treated leniently as has been done by the Tribunal in the present case. Award of the Tribunal was therefore liable to be modified by inserting an additional condition that the employee would not get any increment for ten years with cumulative effect.

In still another case,[20] a conductor was dismissed for misconduct. The Labour court upheld the finding that the employee was guilty, yet directed reinstatement without back wages. This was set aside by a single judge of the High Court but the Division Bench reversed the judgment. The Supreme Court following one of its own earlier decisions[21] and held that the decision of the single judge was to be restored. The court said that a Labour Court is not entitled to interfere with punishment of dismissal. Discretion under S. 11-A is to be exercised judicially. The main duty of a conductor is to issue tickets, collect fare money and deposit it with the employer which he failed to do. It was a misplaced sympathy to under his reinstatement.

The principles of section 11-A cannot be engrafted into disciplinary proceedings of Government servant or other employees governed by rules and not by *Industrial Disputes Act*. Where a cashier of a bank was dismissed from service, it was held that the High Court erred in law in interfering with punishment and in re-appreciating materials in exercise of second appellate jurisdiction.[22]

Scope of Judicial Interference

The court should not interfere with the administration's decision unless it is illogical or suffered from procedural impropriety or is shocking to the conscience of the court.

Where a conductor in road transport service was removed from service on charges of not issuing tickets to passengers and failure to collect fare, it was held that when a person holding post of trust is found guilty of breach of trust, his removal from service is justified. The Supreme Court observed that the scope of interference with quantum of punishment has been the subject-matter of various decisions of this Court. Such interference cannot be a routine matter.

Lord Greene said in 1948 in the famous *Wednesbury case,* that when a statute gave discretion to an administrator to take a decision, the scope of judicial review would remain limited. He said that interference was not permissible unless one or the other of the following conditions was satisfied, namely the order was contrary to law, or relevant factors were not considered, or irrelevant factors were considered, or the decision was one which no reasonable person could have taken. These principles were consistently followed in the UK and in India to judge the validity of administrative action. It is equally well known that in 1983, Lord Diplock in *Council for Civil Services Union* v. *Minister of Civil Service,* (CCSU case) summarised the principles of judicial review of administrative action as based upon one or other of the following viz., illegality, procedural irregularity and

irrationality. He, however, opined that "proportionality" was a "future possibility".

In *Om Kumar* v. *Union of India,* this court observed, *interalia,* as follows:

The principle originated in Prussia in the nineteenth century and has since been adopted in Germany, France and other European countries. The European Court of Justice at Luxembourg and the European Court of Human Rights at Strasbourg have applied the principle while judging the validity of administrative action. But even long before that, the Indian Supreme Court has applied the principle of "proportionality" to legislative action since 1950, as stated in detail below.

By "proportionality", we mean the question whether, while regulating exercise of fundamental rights, the appropriate or least-restrictive choice of measures has been made by the legislature or the administrator so as to achieve the object of the legislation or the purpose of the administrative order, as the case may be. Under the principle, the Court will see that the legislature and the administrative authority "maintain a proper balance between the adverse effects which the legislation or the administrative order may have on the rights, liberties or interests of persons keeping in mind the purpose which they were intended to save." The Legislature and the Administrative Authority are, however, given an area of discretion or a range of choices but as to whether the choice made infringes the rights excessively or not is for the Court. That is what is meant by proportionality".

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13 *(1982) 2 Lab LJ 472* [LNIND 1982 SC 149] (SC).

14 (1995) 3 Lab LJ (Suppl) 462 : AIR 1987 SC 104 : (1986) 4 SCC 519.

15 *Mukund Engg. Works v. Bansi Purshottam, (1995) 2 Lab LJ 62* : 1994 Supp (2) SCC 725. A workman who violated standing orders by consuming liquor while on duty was allowed to be reinstated but without back wages. *Jaswant Singh v. Pepsu Roadways Transport Corpn., (1984) 1 Lab LJ 33* [LNIND 1983 SC 259] (SC). A driver was dismissed for making illegal demands on the conductor and inflicting grevious inujury on him. The order of the Tribunal reinstating him was held to be a misplaced sympathy, Rajasthan State *Road Transport Corpn. v. Habib Khan, (1993) 2 Lab LJ 328* (Raj—DB).

16 *Hindustan Motors Ltd. v. Tapan Kumar Bhattacharya,* (2002) II LLJ 1156 : (2002) 6 SCC 41 [LNIND 2002 SC 430].

17 *UPSRTC v. Mohan Lal Gupta,* (2000) 9 SCC 521 : *(2000) 2 LLJ 1597*.

18 *Asstt. GM, SBI v. Thomas Jose,* (2000) 10 SCC 280 : *(2000) 2 LLJ 1599* .

19 **Rel.** upon *Scooters India Ltd. v. Labour Court,* (1989) Supp 1 SCC 31.

20 *Regional Manager, RSRTC v. Ghanshyam Sharma,* *(2002) 1 Lab LJ 234* : (2002) 10 SCC 330 [*LNIND 2001 SC 1616*].

21 *Karnataka State Road Transport Corpn. v. B.S. Hullikatti,* *(2001) 1 Lab LJ 725* : (2001) 2 SCC 574 [*LNIND 2001 SC 202*].

22 *Tripura Gramin Bank v. Tarit Baram Roy,* (2001) I LLJ 1330 : (2001) 10 SCC 70 .

End of Document

Examples Regarding [Section 11A]

Avtar Singh: Introduction to Labour and Industrial Law

PART I THE INDUSTRIAL DISPUTES ACT, 1947

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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 5 Procedure, Powers and Duties of Authorities

Examples Regarding [Section 11A]— Updated On 08-01-2019

(1) *Neeta Kaplish* v. *Presiding Officer, Labour Court.*[29] In this case, it was held that the provisions of the

Industrial Disputes Act were amended by the Central Act 45 of 1971 and section 11-A was introduced w.e.f. December 15, 1971. This was done on the recommendation of the International Labour Organisation. Section 11-A was introduced in the *Industrial Disputes Act* by the Parliament, by which it was provided that the tribunal would have not only the power to set aside an order of dismissal and direct reinstatement of workman, but also power to award lesser punishment. The proviso to s. 11-A further provides that the Tribunal would rely only on the material already on record and shall not take any fresh evidence.

The jurisdiction of the Labour Court or Tribunal to itself decide the merits of charges on fresh evidence remains intact.

Proceedings of defective domestic inquiry would not constitute “fresh evidence” and “material on record”. Defective Inquiry Proceeding has to be ignored altogether. The workman would be entitled to relief as claimed since the management did not lead any fresh evidence on merits and the workman was justified in stating that he too would not lead any fresh evidence. It was held by the Supreme Court that the claim of the workman cannot be rejected for not leading evidence. Workman was entitled to be granted relief then and there.

(2) *Bharat Forge Company Limited* v. *A.B. Zodge,* [30] the Supreme court held in this case that if the prayer to lead evidence in support of the order of dismissal was made by the employer before the closure of the proceeding in the Tribunal, denial of opportunity to the employer to lead evidence before the Tribunal in support of the order of dismissal cannot be justified.

(3) *Chandra Shekara Chari H.S.* v. *Divisional Controller, KSRTC.* [31] In this memorable case, fortunes of litigation swayed for nearly a decade between the dismissed appellant-workman and the respondent-management and even then it showed no sign of abatement the Supreme Court remanding the whole case back to the single Judge to rehear it on merits, although the appellant-workman was not allowed to suffer during the further continuation of litigation. The appellant-workman challenged his dismissal from service and succeeded before the Labour Court, but failed in a writ petition filed by the respondent management challenging the Labour Court’s award. He also failed in a writ appeal preferred by him from the single Judge’s order in the writ petition. Hence the present appeal was preferred by the workman. The Supreme Court disposed of the appeal remanding the case to the single judge to rehear it on merits.

The Supreme Court observed that the single judge’s judgement as well as that of the Division Bench in writ appeal, could not be sustained for the simple reason that it was not open to the single Judge to re-appraise the evidence once the Labour Court had found that the charges against the appellant were not establishment. The single Judge had no jurisdiction, not even under *section 11-A of I.D. Act*, to enter into the question, which the single Judge purported to do as to, whether the charges could have been establishment by better or further evidence. That was not the function of the court or any guasi-judicial authority.

(4) *Palghat BPL & PSP Thozhilali Union* v. *BPL India Ltd.,* [32] It was held by the Supreme Court in this case that any act subversive of discipline committed outside the premises is also misconduct. Any act unrelatable to the service committed outside the factory would not amount to misconduct.

The Labour Court had discretion under *section 11-A of the I.D. Act* to consider the quantum of misconduct and the punishment. The Labour

Court was justified in taking a lenient view in setting aside the order of dismissal. The discretion exercised by the Labour Court was, in the opinion of the Supreme Court, proper and justified in the circumstance of the case.

Labour court was directed to decide whether the workmen were gainfully employed from the date of dismissal till reinstatement, in order that the management liability to pay back wages might be determined.

(5) *Hindustan Machine Tools Ltd., Bangalore* v. *Mohd Usman.* [33] It was held by the Supreme Court here that section 11-A confers powers on Labour Court to evaluate the gravity of misconduct and to assess whether punishment imposed by the employer is commensurate with the gravity of the misconduct. This power is specifically conferred on the Labour Court under s. 11-A. If the Labour Court after evaluating the gravity of the misconduct held that the punishment of termination of service is disproportionately heavy in relation to misconduct it can exercise its discretion. The Court, in the absence of any important legal principles, would not undertake to re-examine the question of adequacy or inadequacy of material for interference in the decision of the Labour Court.

(6) *Rama Kant Mishra* v. *The State of U.P.* [34] In this case, an employee, who was the joint secretary of the Union of workmen having a clean record of service of 14 years was found guilty of conduct likely to cause breach of peace threatening an employee within the premises and cause prejudice to good order and discipline, was dismissed from service. The employee is said to have committed the misconduct, while explaining about the deduction made from his wages for absence from the place of work, and late attendance. The Labour Court up held the dismissal. The writ petition filed under Article 227 was dismissed by the High Court. On appeal under Article 136, the Supreme Court held that to some extent misconduct is a civil wrong which is visited with civil and pecuniary consequences. In order to avoid the charge of vindictiveness, justice, equity and fair play demand that punishment must always be commensurate with the gravity of the offence charged. In the development of industrial relations norms, we have moved far form the days when quantum of punishment was considered a managerial function and the courts had no power to substitute their own decision in the place of that of the management. More often the Courts found that while the misconduct was proved the punishment was disproportionately heavy. As the situation then stood courts remained powerless and had to be passive sufferers incapable of curing the injustice. Parliament stepped in and enacted sec. 11-A of the I.D Act.

It was further held by the Supreme Court that at present this Court is exercising jurisdiction under Article 136 over the decision of the Labour Court. Therefore, this court can examine whether the Labour Court has properly approached the matter for exercising or refusing to exercise its power under section 11-A.

The Supreme Court while converting the punishment of dismissal into one of withholding of two increments with future effect, held, “that the management has not shown that there was any blameworthy conduct of the appellant during the period of 14 year service he rendered prior to the date of misconduct and the misconduct consists of language indiscreet, improper and disclosing a threatening posture...”

(7) *Janatha Bazaar South Kanara Central Co-operative Wholesale Stores Ltd.* v. *Secretary, Sahakari Noukarara Sangha,* [35] In this case, the Labour Court found the charges of misappropriation and breach of trust against dismissed workmen to be proved but directed reinstatement of workmen with 25% back wages and imposing penalty of stoppage of 5 increments with cumulative effect, it was held that the Labour Court erred in setting aside dismissal of workmen. Once misappropriation stood proved, it was held that showing sympathy was uncalled for.

(8) *ARSRTC* v. *K. Pochiah,* [36] Here the Labour Court upheld the order of dismissal issued to

workman but High Court upholding that award directed the employer to provide appointment in lower category as new entrant. It was held by the Supreme Court that the High Court has no jurisdiction to issue such direction after upholding order of dismissal. It can reduce severity of punishment only on finding that the punishment was disproportionate. It was further held by the Supreme Court that no jurisdiction is vested in High Court to direct employer to re-employ delinquent employee after upholding punishment.

(9) *State Bank of India* v. *Tarun Kumar Banerjee* [37] If industrial tribunal finds order of discharge or dismissal of workman not justified, it can reappraise evidence adduced in domestic enquiry and decide question of misconduct alleged against-workman. In this case, charge of misconduct was proved against workman and order of tribunal was held to be not sustainable.

(10) *Reserve Bank of India* v. *P.O. Central Government Industrial Tribunal-Cum-Labour Court, Bangalore,* [38] Interference with punishment by industrial tribunal is not available in all cases. The tribunal had found the respondent to be a habitual and chronic absentee. In the light of such conduct of the workman, no case was made out for invoking *section 11-A of the I.D. Act*. It was held by the High Court that interference thereunder in such matters would be misplaced sympathy affecting working of the Bank.

Powers Regarding Discovery, Inspection, *etc*.

Regarding the powers of the Tribunal with reference to discovery, production and inspection of documents, the Madras High Court held that the Tribunal is vested with the same powers as a Civil Court under the *Civil Procedure Code*. The Punjab High Court held in *PNB Ltd.* v. *Ram Kanwar,* that the minutes of the meeting of the Board of Directors of a Bank could not be ordered to be produced by the Industrial Tribunal as it could not be done by a Civil Court under the *C.P.C.*

Order XI and *section 30 of the CPC* govern the powers of the Industrial Tribunal relating to discovery, production and inspection. The Calcutta High Court held that until an affidavit of documents has been directed to be filed, the Court would have no jurisdiction to order inspection.

Under section 11-A, the Labour Court is the sole judge of facts including the question of quantum of punishment under the section. The Labour Court has the duly to consider whether the punishment is disproportionate to the charges proved, in addition to its primary duly to adjudicate the tenability of the charge itself.

Where the charges are grave in nature, the Labour Court cannot embarrass the management and affect the morale and discipline of the establishment by resorting to s. 11A and modifying the extent of punishment meted out by the management to an erring workman.

The Labour Court can entertain an application for protection of existing rights under s. 33C(2). Proceedings under this section are in the nature of execution proceedings. Whenever the question of determination of rights arises, the Government must necessarily make reference under s. 10 of the Act.

Applicability of Rules of Evidence to Authorities

It has been held that, there being no provision under the rules that the rules of evidence laid down in the *Indian Evidence Act* would be applicable to enquiries by an Industrial Tribunal. The Tribunal could on evidence gathered by it on a visit to a factory base its award on materials not on the record.

The labour court should follow the judicial procedure. It cannot choose to depend upon unverified statements made in the report of conciliation and other officers. Evidence tendered in the court should be based upon claim statements. Inconsistent stand of party in the court should not bring in any result.

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29 *(1999) 1 LLJ 275* : *(1999) 1 LLJ 275* .

30 (1996) II LLJ 643 : AIR 1996 SC 1556 [LNIND 1996 SC 428].

31 (1999) I LLJ 1322 : AIR 1999 SC 1843 [LNIND 1999 SC 1887].

32 (1996) II LLJ 335 : (1995) 6 SCC 237 [LNIND 1995 SC 886].

33 (1983) II LLJ 386 : AIR 1984 SC 23 [LNIND 1983 SC 221].

34 *(1982) 2 LLJ 472* [LNIND 1982 SC 149] : AIR 1982 SC 1552 [LNIND 1982 SC 149].

35 (2000) II LLJ 1395 : AIR 2000 SC 3129 [LNIND 2000 SC 1272].

36 (1999) II LLJ 976 : AIR 1999 SC 2638 [LNIND 1998 SC 649].

37 (2000) II LLJ 773 (SC).

38 2005 III LLJ 14 (Karn).

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Duties of Labour Courts, Tribunals and National Tribunals [Section 15]

Avtar Singh: Introduction to Labour and Industrial Law

PART I THE INDUSTRIAL DISPUTES ACT, 1947

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CHAPTER 5 Procedure, Powers and Duties of Authorities

Duties of Labour Courts, Tribunals and National Tribunals [Section 15]— Updated On 08-01-2019

Where an industrial dispute has been referred to a Labour Court, Tribunal or National Tribunal for adjudication, it

has to hold its proceedings expeditiously. It should submit its award to the Central Government within the period specified in the order referring dispute or within the further period extended under S. 10(2A) proviso.[49]

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49 See *Agra District Cooperative Bank Ltd. v. Presiding Authority, Labour Court,* AIR 2001 SC 2396, mere coverage of a dispute under s. 70 of the UP *Co-operative Societies Act*, 1965 does not bar the jurisdiction of the Labour Court. It was further held that objections, if any to jurisdiction should have been raised at the time when the matter was before the High Court and not when the matter was referred back to the labour court for reconsideration. *Hussan Mithu Mhasvadkar v. Bombay Iron & Steel Labour Board,* (2001) 7 SCC 394 [*LNIND 2001 SC 1973*], a larger issue should be considered first, *e.g.,* whether the given organisation is an industry or not.

End of Document

Form of Report or Award [Section 16]

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Avtar Singh: Introduction to Labour and Industrial Law > **Introduction to Labour and Industrial Laws** > **PART I THE INDUSTRIAL DISPUTES ACT, 1947** > **Procedure, Powers and Duties of Authorities**

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CHAPTER 5 Procedure, Powers and Duties of Authorities

Form of Report or Award [Section 16]— Updated On 08-01-2019

The report of a Board or a Court has to be in writing and signed by all the members of the Board or Court, as the

case may be.

Any member of the Board or Court is not prevented from recording any minute of dissent from a report or from any recommendation made in it.

The award of a Labour Court, Tribunal or National Tribunal has to be in writing and signed by its presiding officer.

End of Document

Publication of Reports and Awards [Section 17]

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CHAPTER 5 Procedure, Powers and Duties of Authorities

Publication of Reports and Awards [Section 17]— Updated On 08-01-2019

Every report of a Board or Court together with any minute of dissent recorded in it, every arbitration award and

every award of a Labour Court, Tribunal or National Tribunal has to be published by the appropriate Government. It has to be published within a period of thirty days from the date of its receipt by the appropriate Government in a manner it thinks fit.

The award published as abovestated is final and cannot be called in question by any Court in any manner whatsoever but is subject to the provisions of section 17A.

End of Document

Commencement of Award [Section 17A]

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CHAPTER 5 Procedure, Powers and Duties of Authorities

Commencement of Award [Section 17A]— Updated On 08-01-2019

An award (including an arbitration award) becomes enforceable on the expiry of thirty days from the date of its

publication where—

(a) in any case where the award has been given by a Labour Court or Tribunal in relation to an industrial dispute to which it is a party the appropriate Government is of opinion; or

(b) in any case where the award has been given by a National Tribunal the Central Government is of opinion,

that it will be inexpedient on public grounds affecting national economy or social justice to give effect to the whole or any part of award, the appropriate Government may declare that the award shall not become enforceable on the expiry of said period of thirty days. This declaration has to be made by the notification in the Official Gazette. [Sub-section (1)].

The fact of rejection or modification of the award has to be laid before the legislature of the State or the Parliament. Where such a declaration has been made, the appropriate Government or the Central Government may within 90 days from the date of publication of award make an order rejecting or modifying the award. If the order has been made by a State Government the award has to be laid with a copy of the order before the legislature of the State. Where the order is made by the Central Government, then it has to be laid before the Parliament with a copy of the order. [sub-section (2)].

Where any award as rejected or modified by an order is laid before the Legislature of a State or before Parliament, such award shall become enforceable on the expiry of fifteen days from the date on which it is so laid. Where no order is made in pursuance of a declaration, the award becomes enforceable on the expiry of the period of ninety days [sub-sections (3)].

Subject to the provisions abovestated regarding the enforceability of an award, the award comes into operation with effect form such date as may be specified in the award. But where no such date is specified, it comes into operation on the date when the award becomes enforceable under sub-section (1) or sub-section (3), as the case may be.

Ex-parte **Proceedings**

It has been held that the Tribunal has powers to proceed *ex-parte* in the absence of any of the parties to the dispute. The Industrial Tribunal retains its jurisdiction to deal with an application for setting aside an *ex-parte* award only until expiry of 30 days from publication of the award. Thereafter, the tribunal is relegated to the position of *functus officio.*

Nature of Industrial Tribunal's Jurisdiction

Industrial Tribunals and Labour Courts are creatures of the relevant statutes. They being comparatively new to the existing set-up of courts, questions about the nature of their jurisdiction have often been arisen. In *Bharat Bank Ltd., Delhi* v. *The Employees of the Bharat Bank Ltd., and the Bharat Bank Employees' Union, Delhi,* it was held on the preliminary point that the word 'Tribunal' in Article 136 has to be construed liberally and not in any narrow sense and an Industrial tribunal, inasmuch as it discharge functions of judicial nature in accordance with law, comes within the ambit of *Article 136 of the Constitution of India*. The Industrial Tribunal set up under

section 7 of the ID Act possesses all the necessary attributes of a court of justice and as such an application for special leave against its decision could be entertained and granted.

> *"Their powers are derived from statute that creates them and they have to function within the limits imposed there and to act according to its provisions. Those provisions invest them with many of the trappings" of a court and deprived them of arbitrary and absolute discretion and power. "When the Constitution of India converted this country into a great sovereign democratic republic, it did not invest it with the mere trappings of democracy and leave it with merely its outward forms of behaviour but invested it with the real thing, the true kernel of which is the ultimate authority of the courts to restrain all exercise of absolute and arbitrary power, not only by the executive and by officials and lesser tribunals, but also by the legislatures and even by the Parliament itself. The constitution established a 'Rule of Law' in this land that carries with it restraints and restrictions that are foreign to despotic power."*

The tribunals under the Act and other State Acts very broadly follow the pattern of the civil courts. Once the reference is made by the Government, the Tribunal has to take the pleadings of the parties in writing and to draw up issues. Then it has to take evidence, it hears arguments and finally pronounces 'its judgment' in an open court. It is evident from this that though these tribunals are not bound by all the technicalities of civil courts, they must nevertheless follow the same general pattern. Now the only point in requiring pleadings and issues is to ascertain the real dispute between the parties in order to narrow the area of conflict and to see just where the two sides differ. It is not open to the Tribunals to fly off at a tangent and, disregarding the pleadings, to reach any conclusions that they think are just and proper."

The respondent-workmen were appointed in 1977 as muster roll employees on daily wage basis. They raised dispute more than once before the Industrial Tribunal seeking regularisation of their service besides relief against their retrenchment. The Tribunal held them deemed to be regularised after three years of their joining of service. The decision was confirmed by High Court. In appeal by the employer-corporation, the Supreme Court observed that though the Industrial Adjudicator, unlike a Civil Court could vary the terms of contract of employment to maintain industrial peace, as contended by the respondents, it could not do something which was violative of *Article 14 of the Constitution of India*. If the case was one which was covered by the concept of regularisation, same could not be viewed differently. There could not be a case for regularisation without there being employer-employee relationship. Concept of regularisation was linked with *Article 14 of the Constitution*.

Non-enforceability of Award

It is not necessary to enforce the award. The discretion lies in the hands of the appropriate Government or the Central Government to restrict the enforcement of the award on the expiry of the period of thirty days. If the appropriate Government is of opinion in any case where the award has been given by a Labour Court or Industrial Tribunal in relation to an industrial dispute to which it is a party, or if the Central Government is of opinion in any case where the award has been given by the National Tribunal, that it will be inexpedient on public ground affecting national economy or social justice to give effect to the whole or any part of the award, the appropriate Government or the Central Government may declare that the award will not become enforceable on the expiry of the period of thirty days. The declaration has to be made by notification in the Official Gazette [Section 17A(1) Proviso].

Interference by Higher Courts in Awards

The High Court can interferes in the awards under *Articles 226* and *227* of the *Constitution of India* while the Supreme Court can interfere under *Articles 132* and *136* of the *Constitution of India* .

Rejection or Modification of Awards Affecting National Economy

Where any declaration of non-enforceability has been made in relation to an award, the appropriate Government or the Central Government may, within ninety days from the date of publication of award, make an order rejecting or modifying the award. On the first available opportunity, the Government has to lay the award together with a copy of the order before the Legislature of the State, if the order has been made by a State Government, or before Parliament, if the order has been made by the Central Government.

Where any award as rejected or modified by an order is laid before the Legislature of a State or before Parliament, such award become enforceable on the expiry of fifteen days from the date on which it is so laid. Where no order is made in pursuance of a declaration the order becomes enforceable on the expiry of period of ninety days [section 17A (2) and (3)].

Operation of Awards

Subject to the abovestated provisions of Section 17A(1) and (3) regarding enforceability of an award, the award comes into operation with effect from such date as may be specified therein. Where no date is so specified, it comes into operation on the date when the award becomes enforceable under sub-section (1) or (3), as the case may be.

End of Document

Payment of Full Wages to Workman Pending Proceedings in Higher Courts [Section 17B]

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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 5 Procedure, Powers and Duties of Authorities

Payment of Full Wages to Workman Pending Proceedings in Higher Courts [Section 17B]— Updated On 08-01-2019

Payment of Full Wages to Workman Pending Proceedings in Higher Courts [Section 17B]

The section provides for payment of full wages to workmen during the pendency of proceedings in higher courts. The section says that—

(i) where in any case, a Labour Court, Tribunal or National Tribunal by its award directs reinstatement of any workman, and

(ii) the employer prefers any proceedings against such award in a High Court or the Supreme Court,

(iii) the employer shall be liable to pay to such workman,

(iv) full wages last drawn by him during the period of pendency of such proceedings either in the High Court or the Supreme Court,

(v) such wages will be inclusive of any maintenance allowance admissible to him under any rule if the workman had not be employed in any establishment during such period and an affidavit to that effect had been filed by such workman in such court.

The proviso says that where it is proved that such workman had been employed and had been receiving adequate remuneration during any such period (or part thereof) to the satisfaction of the High Court or the Supreme Court, the Court shall order that no such wages shall be payable under this section for such period (or the part).

Where the appellant employer placed before the court copies of vouchers showing payment of salary to the respondent by a transport company where the workman had worked after dismissal from appellant but the High Court failed to consider them at the time of deciding the dispute, matter was remanded by the Supreme Court for fresh adjudication in accordance with law.[55]

The section is applicable only when challenge to the award is pending, the award which became final prior to the enforcement of the section can not be reopened by resort to the section.[56]

The provision of section 17-B does not require employee to file affidavit at every point of time that he was not gainfully employed.[57]

Where the High Court directed disposal of application under section 17-B and writ petition filed under *Article 226 of the Constitution of India* regarding payment of wages together, it was held that application under section 17-B should be disposed of before principal writ petition.[58]

Section 17-B does not preclude High Court or the Supreme Court from granting better benefits than contemplated by it but the amount over and above payable under the section may be subject to recovery by the employer, if employer ultimately succeeds in writ petition.[59]

The object of section 17-B is to relieve to certain extent hardship caused to workman due to delay in

implementation of award. Only plain and material meaning should be given to words "full wages last drawn" and no extended meaning can be given.[60]

Where the labour court had awarded full back wages to the employee without enquiring as to whether he was gainfully employed during period between termination of service and superannuation, the Supreme Court held that in view of the fact that appellant company has been referred to BIFR and according to appellant, it was insolvent and had stopped all manufacturing activity, it was unlikely that the employee would get payment for some time. Therefore, it was held that fresh enquiry would unnecessarily delay the matter; the employee was granted wages calculated earlier.[61] Where the workman in his application asserted that he was unemployed after his termination whereas the appellant employer submitted a certificate of workman's current employer, it was held that the workman was not entitled to any relief due to deliberate suppression and misrepresentation.[62]

Where full payment is made to the worker and all conditions of section 17-B are complied with, reinstatement of worker is held to be not necessary in the circumstances.[63]

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55 *Rajasthan Gramin Bank v. Bishan Lal Bairwa,* (2010) 13 SCC 248 [LNIND 2009 SC 818].

56 *Bharat Singh v. Management of New Delhi Tuberculosis Centre,* AIR 1986 SC 842 [LNIND 1986 SC 105].

57 *Narendra Kumar v. Taj Services Ltd.*, (2001) II LLJ 417 (SC).

58 *Workmen v. Hindustan Vegetable Oils Corpn., Ltd.,* (2000) II LLJ 792 (SC).

59 *Regional Authority, Dena Bank v. Ghanshyam,* (2001) II LLJ 252 (SC).

60 *Dena Bank v. Kiriti Kumar T. Patel,* (1998) I LLJ (SC).

61 *Guest Keen Williams Ltd. v. BR Govindaswamy,* (2010) 15 SCC 747.

62 *Mengal Nagpur Cotton Mills v. Bharat Lal,* (2011) 1 SCC 635 [LNIND 2009 SC 824].

63 *UP SEB v. Sone Lal,* (2009) 16 SCC 301.

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Persons on Whom Settlements and Awards are Binding [Section 18]

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;
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CHAPTER 5 Procedure, Powers and Duties of Authorities

Persons on Whom Settlements and Awards are Binding [Section 18]— Updated On 08-01-2019

A settlement arrived at by agreement between the employer and workman otherwise than in the course of

conciliation proceeding is binding on the parties to the agreement.

An arbitration award which has become enforceable will be binding on the parties to the agreement who referred the dispute to arbitration subject to the provisions of sub-section(3).

A settlement arrived at in the course of conciliation proceedings under the Act or an arbitration award in a case where a notification has been issued under subsection (3A) of section 10A or an award of a Labour Court, Tribunal or National Tribunal which has become enforceable shall be binding on—

(a) all parties to the industrial dispute;[64]

(b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, Arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, records the opinion that they were summoned without proper cause;

(c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;

(d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or in any part of it [section 18(3)].

Any settlement which has been arrived at by agreement between the employer and workman otherwise than is the course of conciliation proceedings shall be binding on the parties to the agreement.

Section 18 declares the extent of binding effect of settlement and awards. If by a particular decision or award certain workmen have been held entitled to some benefits, it does not mean that by operation of this section those who do not stand on the same footing should in the same circumstances also benefit by the same considerations.

Section 18 would apply where a particular award or decision does not apply only to a particular section of the workers and where the award is not intended for a limited class. Section 18 does not lay down that in spite of the fact that particular number of the old workmen are to get certain benefits, new entrants will be equally entitled to the same benefits though they have been by necessary implication excluded from the operation of the award. Where the dispute regarding the increase in working hours was referred for adjudication, the award granting additional wages for such increased hours from the date of such increase could not be availed of by workmen employed subsequently to the date of such increase.

In its decision in *National Engineering Industries Ltd.* v. *State of Rajasthan,* [65] the Supreme Court attempted a comparison of persons bound and those not bound:

There is an underlying assumption that the settlement reached with the help of the Conciliation Officer must be fair

and reasonable. Sections 18(1) and 18(3) divide settlements into two categories, namely, (1) those arrived at outside the conciliation proceedings, and (2) those arrived at in the course of conciliation proceedings. A settlement which belongs to the first category has a limited application since it merely binds the parties to the agreement. The settlement belonging to the second category has an extended application since it is binding on all the parties to the industrial disputes, all others who were summoned to appear in the conciliation proceedings and on all persons employed in the establishment or part of the establishment, as the case may be, to which the dispute related on the date of the dispute and on all others who joined the establishment subsequently. A settlement arrived at in the course of conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belonged to the minority union which had objected to the same. When a settlement is arrived at during the conciliation proceedings it is binding on the members of the workers' union as provided in S. 18(3)(d) of the Act. It would *ipso facto* bind all the existing workmen who are all parties to the industrial dispute and who may not be members of unions that are signatories to such settlement under S. 12(3) of the Act. The Act is based on the principle of collective bargaining for resolving industrial disputes and for maintaining industrial peace.

Arbitration Award and its Binding Effect

In an ordinary dispute, if the parties submit it to arbitration, the award of the arbitrator is binding on them under the general law and cannot be challenged except on grounds specified in law. If the dispute is an industrial dispute and the submission to arbitration is a part of the settlement arrived at a conciliation proceeding, the decision of the arbitration stands on a higher footing and is binding under the express statutory provision contained in *section 18 of the Industrial Disputes Act, 1947* . When an arbitrator appointed by the parties in settlement during conciliation proceedings relating to the dismissal of certain workmen orders their reinstatement, it cannot be modified by a tribunal on the ground that compensation and not reinstatement is the proper order.

Settlement between parties regarding transfer of office-bearers of Central Executive Committee of recognised trade unions can be enforced without raising an industrial dispute by way of suit or writ petition if relief sought for is against authority or remedy permissible under law, not necessarily under section 10 of the Act.

Tribunal's Power to Add Parties

It has been held that under clause (b) the power of the tribunal to summon parties other than the original parties to an industrial dispute can be implied and, therefore, the industrial tribunal could add any person or establishment as parties to the proceedings whose presence is necessary or proper for the due and just adjudication of the dispute. The power conferred under clause (b) is analogous to the power of a Civil Court under Order 1 Rule 9 of the *Code of Civil Procedure* .

Award Governing Previous Employees will not Bind Corporation

Under the ordinary law of contract an agreement is binding only on those persons who are parties to it, but this is not applicable in cases of industrial disputes where the principle of collective bargaining has been accepted. According to sec. 18 this general principle is not applicable in case of industrial disputes. A few persons should not be permitted to jeopardise the interests of majority of workers. From the use of the expression 'establishment' in the *Industrial Disputes Act* , it is fairly clear that the establishment must exist in some definite and identifiable form. The binding nature of the settlements and awards continues only so long as it can be said that the establishment continues. With the extrication of the establishment the binding nature of the settlements and awards would cease.

Award of a Labour Court and Industrial Tribunal normally binds only parties. A successor-in-interest to a party under agreement of merger is bound by proceedings which have taken place till merger. It has no right to recall a witness for cross-examination. Dismissal of application for recalling witness for cross-examination cannot be a ground for

setting aside tribunal's order.

Settlement reached during conciliation proceedings is binding not only on member of signatory unions but also on workmen whose unions having participated in proceedings, refused to sign settlement. A settlement *ipso facto* binds all workmen who were parties to the Industrial dispute. Provisions in Chapter V-A override only 'any other law' but not "any other part of the Act."

Regarding the applicability of settlement to employees appointed after expiry of the settlement, it was held in a case that it was not ap7p1 licable. Termination of settlement can be implied, it need not always be express.

Where the settlement was entered into by the employer-bank with one union and the Central Government made reference for adjudication of legality of term of settlement at the instance of another party which was not a party to the settlement, it was held that the settlement not being one entered into before Conciliation Officer or Labour Court will be binding only on parties to it. It was further held that as the reference in question did not refer to any dispute, existing or apprehended between the bank and the second union, the reference for adjudication was held not justified.

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64 *Indian Rare Earths Ltd. v. Promod Chandra Panigrahi,* (2006) I LLJ 1080 : (2005) 13 SCC 379.

65 (2000) 1 SCC 371 [*LNIND 1999 SC 1079*] : AIR 2000 SC 469 [*LNIND 1999 SC 1079*].

Period of Operation of Settlement and Awards [Section 19]

Avtar Singh: Introduction to Labour and Industrial Law

Avtar Singh: Introduction to Labour and Industrial Law > Introduction to Labour and Industrial Laws > PART I THE INDUSTRIAL DISPUTES ACT, 1947 > Procedure, Powers and Duties of Authorities

PART I THE INDUSTRIAL DISPUTES ACT, 1947

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CHAPTER 5 Procedure, Powers and Duties of Authorities

Period of Operation of Settlement and Awards [Section 19]— Updated On 08-01-2019

It has been held that settlements can be divided into two categories, those arrived at outside the conciliation

proceedings and those arrived at in the course of conciliation proceedings. A settlement arrived at in the course of conciliation with a recognised majority union will be binding on all workers of the establishment irrespective of any objection.[73]

A settlement comes into operation on such date as is agreed upon by the parties to the dispute. If no date is agreed upon, settlement comes into operation on the date on which the memorandum of the settlement is signed by the parties to the dispute.

Such settlement remains binding for such period as is agreed upon by the parties. Where no such period is agreed upon, it remains binding for a period of six months from the date on which the memorandum of settlement is signed by the parties to the dispute. It continues to bind the parties after the expiry of the aforesaid period until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to other parties to the settlement.

An award remains in operation for a period of one year from the date on which the award becomes enforceable under section 17A. However, the appropriate Government may reduce the period and fix such other period as it thinks fit.

The appropriate Government may, before the expiry of the period, extend the period of operation by any period not exceeding one year at a time as it thinks fit so. But the total period of operation of any award is not to exceed three years from the date on which it came into operation. These provisions do not apply to any award, which by its nature, terms or other circumstances does not impose any continuing obligation on the parties bound by the award after the award has been given effect to the award continues to be binding on the parties until a period of two months has elapsed from the date on which notice is given by any party bound by the award to the other parties intimating its intention to terminate the award, notwithstanding the expiry of period of operation.[74]

The period of operation of award can also be shortened by the appropriate Government. Where the appropriate Government considers that since the award was made, there has been a material change in the circumstances on which it was based, the Government may refer the award or part of it to a Labour Court or to a Tribunal or to a National Tribunal, if the award was that of a Labour Court, Tribunal or National tribunal respectively, for decision whether the period of operation should not, by reason of such change, be shortened. The decision of the Labour Court, Tribunal or National Tribunal on such reference is the final decision.

No notice given by one party to another party regarding intention to terminate the award or settlement has effect, unless it is given by a party representing the majority of persons bound by the award or settlement.

It was held in a Supreme Court case that a settlement reached between workers and management is binding not only for the agreed period but also even after expiry of the period until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement.[75] [s. 19(7)].

It is not the requirement of s. 19(2) of the Act that there should be a formal notice terminating a settlement. A notice can be inferred from the correspondence between the parties.[76]

Explaining the object of these provisions the Supreme Court observed : A settlement once entered into between the parties shall be operative until the same is terminated as provided in S. 19 of the Act. The object of such a provision is to ensure that once a settlement is entered into then industrial peace prevails bringing about cordialities between the parties during the period agreed upon. The same position should continue by extension of the settlement by operation of law.[77]

An award passed by Labour Court or Industrial Tribunal is binding till it is substituted by another award or court order or court compromise indicating such substitution or it is replaced by another settlement or terminated by either party under s. 19(6).[78]

Preclosure Settlement

A preclosure settlement does not have any binding effect upon the company which has taken over the undertaking under a scheme of amalgamation.

Reference during Pendency of Settlement

Where a material change occurs in the circumstances during the subsistence of the settlement, a reference can be justifiably made.

Settlements How Long Binding?

It was held by the Calcutta High Court that where in a settlement arrived at by mutual consent or agreement, a period has been fixed for continuance of the settlement, it is binding until a notice in writing is given terminating the agreement and until two months have expired from the date of notice of termination. However, the Supreme Court held that even after termination of award by one of the parties under this sub-section and even after the expiry of the notice period of two months, a fresh dispute on the same subject-matter can only be canvassed before another tribunal if there are changes in circumstances. This decision was arrived at by applying the principle analogous to *res judicata* and also on the basis that awards are intended to have long-term operation and the giving of notice of termination of award should not be treated as a mere stage in the prosecution of a prolonged struggle. It has also been held that, even after the termination of the award by a notice under the sub-section, such termination has not the effect of extinguishing the rights under the award and that rights and obligations arising out of the award shall continue even after the notice of termination, and will continue to govern the relations of parties till it is substituted by a new contract, settlement or award.

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73 *All India Textile Janta Union v. The Labour Commission,* 1994 LLR 203 (P&H—DB).

74 *Bank of India v. Presiding Officer,* (2002) 1 Lab LJ 232 (SC), Industrial Dispute (Banking Companies) Decision Act, 1955, s. 4, Sastri Award, Desai Award, which remained in force even after the period stated in S. 19(3) and remained to till the parties intimates the intention to terminate.

75 (1997) II LLJ 631 (SC).