Penalty for Committing Unfair Labour Practices

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 9 Unfair Labour Practices

An unfair labour practice has been defined as any of the practices specified in 5th Schedule. In India, the State of Maharashtra enacted the M.R.T.U. & P.U.L.P. Act, 1971, which deals exhaustively with unfair labour practices. Gaining by a decade's experience of Maharashtra, the Amendment Act, 1982 identified unfair practices in Fifth Schedule and declared them illegal and criminal offences by Sections 25T and 25U. Unlike the Maharashtra Act, the Central law does not provide for effective prevention or stoppage or rectification of unfair practices. The innovative feature of this law is prohibition of unfair labour practices by "workmen" also. Where the employer, engaging agricultural labour seasonally, issued a circular disallowing fresh persons for continuing in service for more than 240 days, such circular instruction would not amount to unfair labour practice having regard to the seasonal temporary operations. Labourers other than those engaged in agricultural operations cannot be

terminated from service so as to prevent them form completing 240 days. Such termination of such labourers would amount to unfair labour practice.

In the changed economic scenario, the concept of unfair labour practice is also required to be understood in changed context. Today every State, which has to do the mantle of a welfare State, must keep in mind the twin objectives of industrial peace and economic justice and the courts and statutory bodies which decide what an unfair labour practice is must also be cognizant of the aforesaid two objects. Any unfair labour practice within its very concept must have some elements of arbitrariness and unreasonableness and if unreasonableness is established the same would bring about violation of fundamental right guaranteed under *Article 14 of the Constitution* . Anyone who alleges unfair labour practice must plead it specifically and such allegations must be established properly before any forum can pronounce on the same.

Any Government undertaking cannot justify illegal action including unfair labour practice nor can ask for different treatment on ground that public undertaking is guided by *Articles 14* and *16* of *Constitution of India* .

Where commission of unfair labour practice is *ex facie* clear from facts pleaded by both the parties, it was held that even without pleading courts have the power to adjudicate the same to resolve disputes. The Supreme Court held that it is necessary to achieve industrial peace and harmony and promote the cause of social justice in the larger public interest.

In a case, 154 workers applied for 89 vacancies on their own when their employer introduced a scheme of promotion. They did not make any complain either to the union or the management in respect of introduction of the scheme. In the absence of any allegation of victimization it was difficult to find out a case of unfair labour practice against the management. In these circumstances, the Supreme Court held that it cannot be said that the management was indulging in unfair labour practices. Employing workmen and temporary, badli and part-time employees doing perennial nature of work against permanent posts and continuing them for number of years has been held to be unfair labour practice.

Fine balancing of rights of employers and employees are required in a dispute. It would depend upon facts of each case whether order of regularization is necessitated to advance justice or it has to be denied if giving such a direction infringes upon the employer's rights. The law laid down in U.P. Power Corporation and Maharashtra SRTC was held to be not contradictory to each other by the SC. It was held by the SC that on harmonious reading of the two judgments, even where there are two posts available, an absence of any unfair labour practice the Labour Court cannot give any direction for regularization only because a worker has continued as a daily-wage worker or ad hoc worker or a temporary worker for a number of years.

Penalty for Committing Unfair Labour Practices— Updated On 08-01-2019

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

End of Document

Penalty for illegal strikes and lock-outs [Section 26]

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;
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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 10 Penalties

PENALTY FOR ILLEGAL STRIKES AND LOCK-OUTS [SECTION 26]— Updated On 08-01-2019

Any workman who commences, continues or otherwise acts in furtherance of, a strike which is illegal under the Act, shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to

fifty rupees, or with both [section 26(1)].

Any employer who commences, continues, or otherwise acts in furtherance of a lock-out which is illegal under the Act, shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to one thousand rupees, or with both [section 26(2)].

Penalty for Instigation, etc. [Section 27]

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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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 10 Penalties

Penalty for Instigation, etc. [Section 27]— Updated On 08-01-2019

Any person who instigates or incites others to take part in, or otherwise acts in furtherance of, a strike or lock-out which is illegal under the Act, shall be punishable with imprisonment for a term which may extend to six months, or

with fine which may extend to one thousand rupees, or with both.

End of Document

Penalty for Giving Financial Aid to Illegal Strikes and Lock-Outs [Section 28]

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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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 10 Penalties

Penalty for Giving Financial Aid to Illegal Strikes and Lock-Outs [Section 28]— Updated On 08-01-2019

Any person who knowingly expends or applies any moneys in direct furtherance or support of any illegal strike or

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

End of Document

Penalty for Breach of Settlement or Award [Section 29]

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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;
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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 10 Penalties

PENALTY FOR BREACH OF SETTLEMENT OR AWARD [SECTION 29]— Updated On 08-01-2019

Any person who commits a breach of any term of any settlement or award, which is binding on him under the Act, shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both, and where the breach is a continuing one, with a further fine which may extend to two hundred rupees for every day

during which the breach continues after the conviction for the first. The court trying the offence, if it fines the offender, may direct that the whole or any part of the fine realised from him shall be paid, by way of compensation, to any person who, in its opinion, has been injured by such breach.

End of Document

Penalty for Disclosing Confidential Information [Section 30]

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

CHAPTER 10 Penalties

Penalty for Disclosing Confidential Information [Section 30]— Updated On 08-01-2019

Any person who wilfully discloses any such information as is referred to in section 21 in contravention of the provisions of that section shall, on complaint made by or on behalf of the trade union or individual business affected, be punishable with imprisonment for a term which may extend to six months, or with fine which may

extend to one thousand rupees, or with both.

End of Document

Penalty for Closure without Notice [Section 30A]

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

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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 10 Penalties

Penalty for Closure without Notice [Section 30A]— Updated On 08-01-2019

Any employer who closes down any undertaking without complying with the provisions of section 25FFA shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five

thousand rupees, or with both.

End of Document

Penalty for Other Offences [Section 31]

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

CHAPTER 10 Penalties

PENALTY FOR OTHER OFFENCES [SECTION 31]— Updated On 08-01-2019

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

Penalty for Other Offences [Section 31]

(2) Whoever contravenes any of the provisions of this Act or any rule made thereunder shall, if no other penalty is elsewhere provided by or under this Act for such contravention, be punishable with fine which may extend to one hundred rupees.[1]

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1 *Uttar Pradesh State Sugar Corpn. v. Om Prakash Upadhyay,* *(2002) 1 Lab LJ 241* : (2002) 10 SCC 89 , section 31 was introduced by the Amendment of 1956, the Act is not to override state laws in force before commencement of the Act. The UP *Industrial Disputes Act, 1947* did not contain provisions similar to section 2(oo)(bb). The termination the service governed by the UP Act, therefore, resulted in retrenchment.

End of Document

PART I THE INDUSTRIAL DISPUTES ACT, 1947

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

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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 11 Miscellaneous Matters

OFFENCE BY COMPANIES ETC. [SECTION 32]— Updated On 08-01-2019

Where a person committing an offence under this Act is a company, or other body corporate, or an association of persons (whether incorporated or not), every director, manager, secretary, agent or other officer or person concerned with its management shall, unless he proves that the offence was committed without his knowledge or

consent, be deemed to be guilty of such offence.[1]

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1 See *Rabindra Chaursia v. Registrar of Cos.*, *(1992) 1 Lab LJ 313* : AIR 1992 SC 398 [*LNIND 1991 SC 608*], proceedings under *Employees Provident Fund* Act, 1952 and those under *section 633 of the Companies Act, 1956* cannot be brought under this section.

Conditions of Service, etc. to Remain Unchanged under Certain Circumstances During Pendency of Proceedings [Section 33]

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

CHAPTER 11 Miscellaneous Matters

CONDITIONS OF SERVICE, ETC. TO REMAIN UNCHANGED UNDER CERTAIN CIRCUMSTANCES DURING PENDENCY OF PROCEEDINGS [SECTION 33]—

Updated On 08-01-2019

Conditions of Service, etc. to Remain Unchanged under Certain Circumstances During Pendency of Proceedings [Section 33]

According to section 33, during the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before an arbitrator or a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall—

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish whether by dismissal or otherwise, any workmen concerned in such dispute,

save with the express permission in writing of the authority before which the proceeding is pending. (1)

During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workmen—

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman.

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer (2).[2]

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

(a) by altering, to the prejudice of such protected workman, the conditions of service applicable to him immediately before the commencement of such proceeding; or

(b) by discharging or punishing, whether by dismissal or otherwise, such protected workman,

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

Explanation.—For the purposes of this sub-section, a "protected workman", in relation to an establishment, means a workman who, being a member of the executive or other office-bearer of a registered trade union connected with the establishment, is recognised as such in accordance with rules made in this behalf. (3)

In every establishment, the number of workmen to be recognised as protected workmen for the purposes of sub-section (3) shall be one per cent of the total number of workmen employed therein subject to a minimum number of five protected workmen and a maximum number of one hundred protected workmen and for the aforesaid purpose, the appropriate Government may make rules providing for the distribution of such protected workmen among various trade unions, if any, connected with the establishment and the manner in which the workmen may be chosen and recognised as protected workmen. [s. 33(4)].

Where an employer makes an application to a conciliation officer, Board, [an arbitrator, a Labour Court, Tribunal or National Tribunal under the proviso to sub-section (2) for approval of the action taken by him, the authority concerned shall, without delay, hear such application and pass, within a period of three months from the date of receipt of such application, such order in relation thereto as it deems fit:

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

Provided further that no proceedings before any such authority shall lapse merely on the ground that any period specified in this sub-section had expired without such proceedings being completed.

By passing an order of discharge or dismissal, *de fecto* to relationship of employer and employee is ended, but not *de jure,* for that could happen when the Tribunal accords its approval. The employee thus gets factually unemployed from the date of approval application in the sense that he is not called to work and is paid only a month's wage representing the succeeding month of his unemployment. The relationship of employer and employee is legally not terminated till approval of discharge or dismissal is given by the Tribunal.

During pendency of management's application for permission to dismiss workmen before the tribunal, the relationship of master-servant subsists and therefore, the management has to pay subsistence allowance to workmen during such pendency.[3] Employer may have the right to suspend employee, employee will have the corresponding right to receive subsistence allowance during period of suspension.[4]

If the Tribunal were to refuse approval merely on the ground that statutory tax deduction stands in the way to grant of approval, it respecting the same subject-matter for non-availing of the alternate remedy before the forum of U.P. Public Services Tribunal, is also a valid reason.[5]

Workman should not suffer consequences of invalid order of dismissal till matter is decided, by the tribunal in

industrial dispute. Respondent workman was dismissed from service after departmental enquiry and when employer filed application for approval of order of dismissal, tribunal rejected the application on the ground that the employer failed to establish *prima facie* case for dismissal, it was held that consequence of such rejection would be that the employer will become duty bound to treat employees as continuing in service and pay wages for period in question even though placed in suspension subsequently.[6]

When the first application for approval of order of dismissal was held invalid for non-compliance with the section and was not approved, the employer passed second order of dismissal subsequently and sought approval second time, it was held that it was not open to employer to make such second application, especially without paying full wages due to workmen for period between first and second dismissal.[7]

Proviso to section 33(2)(b) affords protection to a workman. It is a shield against unfair labour practice by employer during pendency of an industrial dispute.[8]

In a case, a cash clerk in the commercial wing of a bank (appellant) was dismissed from service on conclusion of departmental proceedings against him for certain irregularities committed by him. He challenged the dismissal as void for omission on the part of the appellant-bank to seek approval under section 33(2)(b) as there was a pending dispute before the concerned authority. The High Court declared the dismissal to be void. The bank filed an appeal against the decision, the Supreme Court held that section 33(2)(b) was a shield against unfair labour practice by employer during pendency of an industrial dispute, and therefore, the order under appeal did not suffer from any infirmity.[9]

Maintenance of Peace during Pendency of Proceedings

The object of section 33 is to protect the workmen concerned in disputes which form the subject matter of pending proceedings against victimization by the employer on account of their having raised industrial disputes or their continuing the pending proceedings. The further object of the section is to ensure that proceedings in connection with industrial disputes already pending should be brought to a termination in a peaceful atmosphere and that no employer should, during the pendency of those proceedings, take any action of the kind mentioned in the section which may give rise to fresh disputes likely to further exacerbate the already strained relations between the employer and the workmen.

Procedure for Changing Conditions

Under the section 33(1) if an employer wants to change the conditions of service in regard to a matter connected with a pending dispute, or to take any action against an employee on the ground of an alleged misconduct connected with the pending dispute, he cannot do so unless he obtains previous permission in writing of the appropriate authority.

Section 33(2) deals with the alternation in the conditions of service as well as discharge or dismissal of workmen concerned in any pending dispute where such alternation or such discharge or dismissal is in regard to a matter not connected with the pending dispute.

Where the employer has a preliminary objection that s. 33 does not apply, he can make an application without

prejudice to his objection.

Where an employee has been suspended pending inquiry or his service terminated as a contractual measure or on account of real closure, or retrenchment, no application under this provision is necessary.

Workmen Concerned in the Dispute

This expression includes all workmen on whose behalf the dispute has been raised as well as those who would be bound by the award which may be made in the dispute. It is wider than the phrase ‘party to the suit.’ All workmen irrespective of membership of union are workmen concerned. Workmen subsequently employed are also workmen concerned.

Workmen not Concerned

Workmen employed in certain queries would not be workmen concerned in a dispute between the workers in a cement factory and the management of that factory, though the proprietor may be the same. The workmen, who are not members of the union and to whom no general notice requiring their appearance was issued, were not considered to be ‘workmen concerned in the dispute’ within the meaning of s. 33 of the Act.

Scope of Inquiry when Application for Permission is Made to Tribunal

Where an application is made by the employer for the requisite permission under section 33, the jurisdiction of the tribunal in dealing with such an application is limited to consider whether a *prima facie* case has been made out by the employer for the dismissal of the employee in question. The Tribunal may either grant the permission or refuse it according as it holds that a *prima facie* case is or is not made out by the employer.

A *prima facie* case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed. While determining whether a *prima facie* case had been made out, the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence.

Judgment of a criminal court must be considered to be relevant and admissible. It certainly could furnish good material to the industrial tribunal to form a *prima facie* opinion about the merits of the case before it. The acquittal of an accused in a criminal case could not stand in the way of the industrial tribunal granting the permission if it finds that the employer has made out a *prima facie* case on the evidence on record for the permission asked for.

In these proceedings it is not open to the tribunal to consider whether the action taken by the employer is proper or adequate or whether it errs on the side of excessive severity; nor can the tribunal grant permission, subject to certain conditions, which it may deem to be fair.

The industrial tribunal has no power to substitute another punishment for the one which was sought to be meted out by the employer to the employee nor to impose any condition on the employer for grant of the requisite permission.

The nature and scope of proceedings under section 33 shows that removing or refusing to remove the ban on punishment or dismissal of workmen does not bar the raising of an industrial dispute when as a result of the permission granted by the Tribunal the employer punishes or dismisses the workmen.

If the permission is granted, the ban would be lifted and employer would be at liberty, if he chooses thereafter, to deal out the punishment to the workmen. The permission granted under section 33 does not have the effect of validating the action taken against the employee.

Scope of Enquiry

The Tribunal does not function merely as a Court of Appeal weighing or reappraising evidence. For the purpose of granting or refusing approval under section 33(2) of the Act, the Tribunal only examines the findings of the enquiry officer in order to find out whether there is a *prima facie* case or whether the findings of the enquiry officer are perverse. A *prima facie* case is not a case proved to the hilt. If the employer has held a proper enquiry into the alleged misconduct of the employee following the principles of natural justice and it does not appear that the proposed award does not amount to victimisation or an unfair labour practice, the other ground on which the tribunal can interfere is only when there is no legal evidence at all recorded in the domestic enquiry as if no reasonable person can arrive at a conclusion of guilt on the evidence recorded in the domestic enquiry.

If the Tribunal refuses approval, the employer would be precluded from punishing or discharging the workmen. However, if approval is granted, that would not validate the action of discharge or dismissal. Permission or approval would only remove the ban but the validity of the order would till be liable to be decided in a reference at the instance of the workman under section 10 or section 2(A) of the Act.

In a case involving justification of ex parte enquiry, it was held by the Supreme Court that where the employee had failed to participate in enquiry proceedings despite three opportunities given to him and due to which the enquiry officer proceeded with the enquiry ex parte resulting in dismissal of the employee, tribunal was incorrect in holding that three barren dates in an in-house proceedings do not amount to delay. The Supreme Court held that in-house proceedings should be conducted expeditiously without any undue loss of time. The tribunal had reinstated the employee with full back wages on the ground that domestic enquiry suffered from violation of principles of natural justice as it was the duty of the enquiry officer to found from the employer whether or not any intimation was received from delinquent and the enquiry officer should have given him yet another chance to lead evidence in rebuttal.

Subsequent acquittal by criminal court does not render completed disciplinary proceeding invalid. It also does not affect validity of finding of guilt or consequential punishment.

Judicial review of findings of disciplinary authority can be conducted only where principles of natural justice or statutory regulations have been violated or where order is arbitrary, capricious, mala fide or based on extraneous considerations. Principles of natural justice cannot be stretched to a point where they render in-house proceedings unworkable.

Refusal of Permission and its Effect

The settled position of law that the permission should be refused if the Tribunal is satisfied that the management's action is not *bona fide* or that the principles of natural justice have been violated or that the materials on the basis of which the management came to a certain conclusion could not justify any reasonable person in coming to such a conclusion. The workman continues in employment and claim for wages will be maintainable.

Protected Workmen

The protected workmen cannot be proceeded against without obtaining permission for dismissal, discharge or punishment from the Tribunal. The law relating to protected workmen is contained in *section 33(3) of Industrial Disputes Act* read with rule 61 of the Industrial Disputes (Central) Rules.

For the purpose of this sub-section, a 'protected workman', in relation to an establishment, means a workman who, being an officer of a registered trade union connected with the establishment, is recognised as such in accordance with rules made in this behalf.

In every establishment, the number of workmen to be recognised as protected workmen for the purposes of sub-section (3) shall be one per cent of the total number of workmen employed in it subject to a minimum number of five protected workmen and a maximum number of one hundred protected workmen and for this purpose, the appropriate Government may make rules providing for the distribution of such protected workmen among various trade unions, if any, connected with the establishment and the manner in which the workmen may be chosen and recognised as protected workmen.

Disciplinary Action for Misconduct not Connected with Dispute

When an employer wants to dismiss or discharge a workman for alleged misconduct not connected with the dispute, he can do so in accordance with the Standing Orders but a ban is imposed on the exercise of this power by the proviso. The proviso requires that no such workman shall be discharged or dismissed unless two conditions are satisfied, the first is that the employee concerned should have been paid wages for one month, and the second is that an application should have been made by the employer to the appropriate authority for approval of the action taken by the employer.

Where a workman is dismissed by the management for committing theft, such punishment is not disproportionate to the gravity of the misconduct. Even the fact that such workman had put in long years of unblemished service will not mitigate the gravity of misconduct.

If a workman is suspended pending application under the section 33(3), his right to receive reasonable amount fixed either under the Standing Orders or by the inquiring authority by way of subsistence allowance should be implied as a term of the contract of employment.

Discharge Simpliciter

A discharge which is by way of punishment would fall under the second category, *viz.,* that of punishment, and a discharge which is otherwise than by way of punishment, would fall under the first category, *viz.,* discharge simpliciter. Discharge of workman simpliciter whether it is justified or not would not amount to alteration of the

conditions of service of the concerned workman within the meaning of section 33(2*)(a)* of the Act and would not, therefore, attract it. Similarly, the provisions do not apply to retrenchment.

Limitations Imposed by Section 33

The limitation imposed by this section is that the Standing Orders will have to be complied with. It cannot however be contended that section 33(2) has no application to a case where there are no Standing Orders. The existence of Standing Orders is a prerequisite to the exercise of the powers by the management, and the absence of Standing Orders will not place in a better position so as to claim exemption from the operation of the said provision. Model standing orders will also apply.

Payment of one-month wages is a mandatory condition. An offer of payment is sufficient compliance with the provisions.

Stage of Application

According to the Calcutta High Court, the payment of wages and the making of the application should be simultaneous with the order of discharge or dismissal.

The Supreme Court has observed the though an express permission in writing is not required in cases falling under the proviso to section 33(2*)(b)* it is desirable that there should not be any time-lag between the action taken by the employer and the order passed by the appropriate authority in an enquiry under the proviso.

Proceedings under Section 33 are Independent

Proceedings under the section are totally independent proceedings. They will not die with the death of the reference or its culmination into an award. The argument that the proceedings if continued beyond the date of the final decision of the main industrial dispute would become futile and meaningless cannot be accepted. The Tribunal does not become *functus officio?*

Withdrawal of Application

Where the industrial tribunal permitted the concerned workmen to withdraw their complaints under *section 33-A of the I.D. Act* without prejudice to their objections to the application for approval, they were not barred from objecting to the grant of approval, on the ground that order on section 33-A applications got the force of an award.

Scope of Inquiry under Section 33(2) in Approval Proceedings

The jurisdiction of the appropriate industrial authority in holding an inquiry under section 33(2*)(b)* is not wider and more limited than that permitted under section 33(1), and in exercising its powers under Section 33(2) of the Act, the appropriate authority must bear in mind the departure deliberately made in separating the two classes of causes falling under the two sub-sections, and in providing for express permission in one case and approval in other. No interference in punishment can be done.

The Supreme Court held in *Dharampal v. National Engg. Industries Ltd.* that the finding and its approval that the contents of the pamphlet distributed by the employee were neither true nor correct and, therefore, the charge stood proved could not have been interfered with by the High Court in writ jurisdiction under *Articles 226, 227* of the *Constitution*. The appropriate remedy is to seek reference under s. 10.

Where application for approval of order of dismissal was approved by the industrial tribunal, and the single judge of High Court held the tribunal to have committed error while granting approval, the Supreme Court held that he was not justified in holding the same.

Complaints Regarding Contravention of Section 33

Section 33A provides a summary remedy for adjudication of disputes arising out of contravention of statutory safeguards and protection given under section 33 of the Act to employees during the pendency of conciliation or adjudication proceedings. By section 33A an employee aggrieved by a wrongful order of dismissal passed against him in contravention of section 33 is given a right to move the tribunal in redressal of his grievance without having to take recourse to section 10 of the Act.

Who can Make Complaint?

An aggrieved workman against whom action is taken can make a complaint under section 33 of the Act. A complaint filed by a union or its secretary duly authorised by the aggrieved workman must be held to have been properly presented. In the absence of any proof to show that the office bearer of the union was authorised to prefer the complaint, it cannot be considered to be a valid complaint. No complaint can be preferred if no industrial dispute exists. It is not necessary that when the complaint is made, the main dispute should be pending.

Inquiry is Co-extensive with Inquiry under Section 10

The scheme of the section clearly indicates that the authority to whom the complaint is made is to decide both the issues, viz., (i) the effect of contravention, and *(ii)* the merits of the act or order of the employer.

Since the scope of section 33A is co-extensive with s. 10, the employee would not succeed in obtaining an order of reinstatement merely by proving contravention of section 33 by the employer. After such contravention is proved it would still be open to the employer to justify the impugned dismissal on merits. The Tribunal has power to order reinstatement in such proceedings.

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2 Where approval is not granted for order of discharge or punishment, by dismissal or otherwise, of workman during pendency of industrial disputes proceedings, for alleged misconduct not connected with such dispute, the order becomes in effective from the date on which it was passed, not making application for such approval or withdrawing it amount to a clear case of contravention of statutory requirement, *Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v. Ram Gopal Sharma,* (2002) I LLJ 834 :

AIR 2002 SC 643 [LNIND 2002 SC 44].

3 *Ram Lakhan v. Presiding Officer,* (2001) I LLJ 449 : AIR 2001 SC 286.

4 *Ibid.*

5 *S. Ganapathy v. Air India,* (1993) II LLJ 731 (SC).

6 *Tamil Nadu State Transport Corpn. v. Neethivilangan, Kumbakonam,* (2001) I LLJ 1706 : AIR 2001 SC 2309 [LNIND 2001 SC 1181].

7 *Indian Telephone Industries Ltd. v. Prabhakar H. Manjuare,* (2002) III LLJ 1134 : AIR 2003 SC 195.

8 *United Bank of India v. Sidhartha Chakraborty,* (2007) III LLJ 782 : AIR 2007 SC 3071 [LNIND 2007 SC 1009].

9 *Ibid.*

Special Provision for Adjudication on Fact of Variance [Section 33A]

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 11 Miscellaneous Matters

SPECIAL PROVISION FOR ADJUDICATION ON FACT OF VARIANCE [SECTION 33A]— Updated On 08-01-2019

Where an employer contravenes the provisions of section 33 during the pendency of proceedings before a conciliation officer, Board, an arbitrator, Labour Court, Tribunal or National Tribunal any employee aggrieved by

such contravention, may make a complaint in writing, in the prescribed manner—

(a) to the conciliation officer or Board, who shall take such complaint into account in mediating in, and promoting the settlement of, the industrial dispute, and

(b) to the arbitrator, Labour Court, Tribunal or National Tribunal and on receipt of such complaint, the deciding authority shall adjudicate upon the complaint as if it were a dispute referred to or pending before it, in accordance with the provisions of the Act and shall submit his or its award to the appropriate Government and the provisions of the Act shall apply accordingly.[44]

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44 See *Cipla Ltd. v. R. Jayakumar, (1998) 1 Lab LJ 460* : (1999) 1 SCC 300 , transfer not allowed to be questioned because no ill motives were shown. *Md. Akhtar Hussain v. State of Bihar, (1988) 1 Lab LJ 325* (SC), removal for misconduct without inquiry during pending proceedings before Industrial Tribunal, workman directed to be reinstated with 50% back wages.

Power to Transfer certain Proceedings [Section 33B]

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;
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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 11 Miscellaneous Matters

POWER TO TRANSFER CERTAIN PROCEEDINGS [SECTION 33B]— Updated On 08-01-2019

According to section 33B, the appropriate Government may, by order in writing and for reasons to be recorded, withdraw any proceeding under the Act pending before a Labour Court, Tribunal or National Tribunal and transfer the same to another Labour Court, Tribunal or National Tribunal, as the case may be, for disposal of the proceeding

and the Labour Court, etc. to which the proceeding is so transferred may, subject to special directions in the order of transfer, proceed either *de novo* or from the stage at which it was so transferred.

Where a proceeding under section 33 or section 33A is pending before a Tribunal or National Tribunal, the proceeding may also be transferred to a Labour Court. [SECTION 33B(1)].[45]

Without prejudice to the provisions of sub-section (1), any Tribunal or National Tribunal, if so authorised by the appropriate Government, may transfer any proceeding under section 33 or section 33A pending before it to any one of the Labour Courts specified for the disposal of such proceedings by the appropriate Government by notification in the Official Gazette and the Labour Court to which the proceeding is so transferred shall dispose of the same accordingly [Section 33B(2)].

The language of section 33-B does not suggest that the transfer permitted by the provision is only from a Labour Court to a Labour Court, from a Tribunal to another Tribunal and from a National Tribunal to another National Tribunal. The section provides that the Government can withdraw a proceeding pending under this provision. The expression “as the case may be” clearly indicates as the facts of the particular case demand. Therefore, if in a given case, the State Government is informed that a reference which is already made by it to a Labour Court, is likely to involve more than 100 workmen and, therefore, ultimately does not result in the settlement of the dispute referred for adjudication in order to achieve that purpose and object of the Act which is investigation and settlement of industrial disputes, the Government has been given the power to transfer the reference to an Industrial Tribunal, recording the reasons for doing so, for, in such a case transfer from one Labour Court to another Labour court would be purposeless and futile. The words “as the case may be” cannot be understood to mean “respectively” if the intention of the Legislature was that a transfer must be permitted only from a Labour Court to another Labour Court or from a Tribunal to another Tribunal and from a National Tribunal to another National Tribunal, the Legislature would have used that expression but the Legislature has designedly used the words “as the case may be” in order to make the provision flexible and give the power to the Government to transfer from one forum to another, as the circumstances and facts of the case may demand.[46]

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45 Where the pending proceeding was transferred from Labour Court of one place to that of another and without any information or opportunity to the management, the order of the Government was initiated. It was not necessary to prove *malafide* or prejudice, *M.S. Nally Bharat Engg. Co. v. State of Bihar, (1990) 2 LLJ 211* [*LNIND 1990 SC 72*] : (1990) 2 SCC 48 [*LNIND 1990 SC 72*].

46 *Management of Senapati Whitely Ltd. v. State of Karnataka,* 1984 LIC, p. 1890 (Dec).

Recovery of Money due from an Employer [Section 33-C]

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 11 Miscellaneous Matters

RECOVERY OF MONEY DUE FROM AN EMPLOYER [SECTION 33-C]— Updated On 08-01-2019

Where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter VA or Chapter VB, the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of

recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue.

Every such application shall be made within one year from the date on which the money became due to the workman from the employer.

Any such application may be entertained after the expiry of the period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period [Section 33C(1)].

Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government within a period not exceeding three months.[47] [section 33C(2)]. Where the presiding officer of a Labour Court considers it necessary, he may, for reasons to be recorded in writing, extend the period by such further period as he may think fit. Where the Municipal Council who was the employer did not dispute the liability to pay but claimed inability to meet the demand due to financial constraints caused by withdrawal of *octroi* duty, direction of the High Court to make payments to employees was confirmed when the State Government re-imposed *octroi* duty.[48]

For the purposes of computing the money value of a benefit, the Labour Court may, if it so thinks fit, appoint a Commissioner who shall, after taking such evidence as may be necessary, submit a report to the Labour Court and the latter shall determine the amount after considering the report of the Commissioner and other circumstances of the case [section 33C(3)]. The decision of the Labour Court shall be forwarded by it to the appropriate Government and any amount found due by the Labour Court may be recovered in the manner provided for in the same manner as arrears of land revenue [section 33C(4)]. Where workmen employed under the same employer are entitled to receive from him any money or any benefit capable of being computed in terms of money, then, subject to such rules as may be made in this behalf, a single application for the recovery of the amount due may be made on behalf of or in respect of any number of such workmen [section 33C(5)].

An *Explanation* to the section says that in this section “Labour Court” includes any court constituted under any law relating to investigation and settlement of industrial disputes in force in any State.

Amount must be Duly Determined before being Claimed

In *Kasturi & Sons (Private) Ltd. v. Salivateeswaran,* a case arising under section 17 of the Working Journalists (Conditions of Service and Miscellaneous Provisions) Act, 1955 which, to the extent now material, is similar in terms to section 33C(1), of the *Industrial Disputes Act* , the Supreme Court held that the condition precedent of the application of section 17 was prior determination of the amount due. It was only after the amount due to the employee had been duly determined that the stage to recover that amount was reached, and it was at this stage that the employee was given the additional advantage provided by section 17 without prejudice to any other mode of recovery available to him. According to this view, the State Government, or the specified authority has only to hold a summary enquiry on a very narrow and limited point: is the amount which was found due to the employee still due when the employee makes an application under section 17 or, has any amount been paid, and, if so, how much still remains to be paid? The scope of the enquiry permitted by this section does not include the examination and decision of the merits of the claim made by the employee. When the section refers to the application made by the employee for the recovery

of the money due to him, it really contemplates the state of execution which follows the passing of a decree or the making of an award or order by an appropriate court or authority. It seems that this will apply with equal force to the interpretation of section 8 also.

Meaning of the word 'Entitled'

In *Ramkrishan Ramnath Bidi Manufacturing, Kamptee v. Labour Court, Nagpur,* the Bombay High Court held that the expression "entitled to receive" meant no more than what it primarily connoted, i.e., an existing debt or liability. Recoverability implied some authority or agency.

Benefits under Other Laws are also Recoverable

In *Central Bank of India Ltd. and Others v. Rajagopalan* (P.S.), the Supreme Court observed: "In our opinion on a fair and reasonable construction of subsection (2), it is clear that if a workman's right to receive the benefit is disputed, that may have to be determined by the labour court. Before proceeding to compute the benefit in terms of money, the labour court inevitably has to deal with the question as to whether the workman has a right to receive that benefit. If the said right is not disputed, nothing more needs to be done and the labour court can proceed to compute the value of the benefit in terms of money; but if the said right is disputed the labour court must deal with that question and decide whether the workman has the right to receive the benefit as alleged by him and it is only if the labour court answers this point in favour of the workman that the next question of making the necessary computation can arise. It seems to us that the opening clause of sub-section (2) does not admit of the construction for which the appellant contends unless we add some words in that clause.

Scope of Section 33C(2)

It is wider than section 33C(1) of the Act. An application for retrenchment compensation is maintainable before the Labour Court. There is no limitation for claims under section 33C and the remedy is in addition to other remedies under the *Payment of Wages Act* or *Minimum Wages Act* . The matters, which can be decided under section 10(1) cannot be adjudicated under section 33C(2) of the Act.

Summary of Propositions Evolved

The question regarding the maintainability of an application under section 33C(2) has come up for consideration before the Supreme Court in a number of matters. The broad propositions, which emerge from the decisions, may be formulated as under:

1. A proceeding under section 33C(2) is by and large analogous to an execution proceeding in a Civil Court in the sense that the Labour Court will not create a right for the first time or confer a right for the first time in the course of such a proceeding. It will only proceed to recover the money or the benefit which is capable of being computed in terms of money in case the right is an existing right which has merely to be given effect to.

2. Whilst exercising jurisdiction under section 33C(2) the Labour Court is not restricted merely to the making of an arithmetical computation of the money claim or the benefit which is capable of being computed in terms of money. The Labour Court has also the jurisdiction to decide incidental questions which are necessary in order to make the provision effective and enable the workers to effectively recover the money

or the benefit. The Labour Court will have the jurisdiction to decide ancillary matters if necessary by recording evidence with this end in view.

3. The jurisdiction of the Labour Court will not be lost merely because the employer resists the claim or denies the existence of the right claimed by the employees. For the purpose of jurisdiction the matter will be governed by the assertion of the claim by the applicants subject to their being able to make good their claim. In other words, their application will not be thrown out at the threshold merely because the employers say that there is no existing right or that the employees are not entitled to make such a claim. If ultimately at the conclusion of the proceedings, the Labour Court reaches the conclusion that there is no existing right or that the workmen are not entitled to the claim, the application would of course be rejected.

4. If a dispute is a collective dispute involving collective bargaining, it would fall under section 10(1) and not under section 33C(2).

5. The Labour Court in exercise of its powers under section 33C(2) can interpret a bipartite agreement.

Claim must be Duly Determined

The proceeding under section 33-C(2) is in the nature of execution proceeding. The right of the workman to the money claimed in such application must be an existing right that is to say, a right already adjudicated upon. Where it is an undetermined claim, the Labour Court has no jurisdiction to adjudicate it under *section 33-C(2) of the I.D. Act* . Application under section 33-C(2) is maintainable only when workman establishes that he has legal right regarding his claim for recovery of money due from employer. Employer has the liberty to raise all defencss against the claim of workers. In a case, when after determining wages for a worker in earlier proceedings, the labour court directed appellant worker to approach authorities for seeking reference under section 10 to determine wages, such a direction was set aside and it was held that wages will be paid in terms of determination in earlier proceedings.

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47 Labour Court has the power to interpret the award and then work out the wages payable to the workmen concerned in terms of the award, but has no power to adjudicate upon fresh claims or to give directions on that basis, *Union of India v. Gurbachan Singh,* *(1997) 2 Lab LJ 827* : AIR 1997 SC 2641 [*LNINDORD 1997 SC 23*]. The Labour Court has no power under the section to decide whether the suspension period is to be treated as on duty period or otherwise, *Management, RBI v. Bhopal Singh Panchal,* *(1994) 1 Lab LJ 642* : AIR 1994 SC 552 [*LNIND 1993 SC 931*]. Where the Labour Court ordered that the appellant continued to be the employee of the respondent, the order not having been challenged, attained finality, *Mahesh Narsayya Chinlal v. Executive Engr., Jayakwadi Project,* *(1995) 1 Lab LJ 445* : 1994 Supp (3) SCC 255. A claim after a gross delay could not be entertained, *Co-operative Stores Ltd. v. K.S. Khurana,* *(1996) 2 Lab LJ 682* (SC). Minimum wages can be recovered by filing an application under s. 33C(2). The time-limit prescribed under *s. 20(2) of the Minimum Wages Act* is not applicable to a petition under *s. 33C(2) of the ID Act* . An agreement under which piece rate was accepted by the workman by giving up the benefit of the *MW Act* was held to be void, *(1984) 2 Lab LJ 385* (SC). See *State Bank of India v. Ram Chandra Dubey,* (2000) 1 SCC 73 : *(2000) 2 LLJ 1660* [*LNIND 2000 SC 1528*], jurisdiction of the Labour Court under s. 33-C(2) extends to the computation of a preexisting benefit or one flowing from a pre-existing right and not to computation of a benefit which is considered just and fair.

48 *Nagar Council, Kapurthala v. Davinder Kumar,* (2012) 10 SCC 280 .

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Cognizance of Offences [Section 34]

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

CHAPTER 11 Miscellaneous Matters

COGNIZANCE OF OFFENCES [SECTION 34]— Updated On 08-01-2019

No Court can take cognizance of any offence punishable under this Act or of the abetment of any such offence, save on complaint made by or under the authority of the appropriate Government. Under *section 34 of the Industrial Disputes Act, 1947* , there is no limitation is regard to the party to whom the authorisation may be given. It is the workman, the trade union and the employer who are most concerned with

offences under the Act and neither the terms of section 34 nor of public policy require that they should be excluded from making such complaints.

The provisions of section 34 are in the nature of a limitation on the entitlement of a workman or trade union or an employer to complain of offences under the said Act. They should not, in public interest, be permitted to make frivolous, vexation or otherwise patently untenable complaints and to this end section 34 requires that no complaint shall be taken cognizance of unless it is made with the authorisation of the appropriate Government.

Section 39 empowers the appropriate Government to delegate the powers exercisable by it under the Act. This is altogether different form the concept of authorisation to file a complaint under section 34. If the powers under section 34 have been delegated under section 39 the delegate can file the complaint himself or authorise someone else to file it. The words “or under the authority of” necessarily must be given due meaning and the meaning is that the appropriate Government may authorise someone other than itself, even a non-Government servant, to file a complaint under section 34.[57]

No Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class can try any offence punishable under the Act.

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57 *Raj Kumar Gupta v. Lt. Governor,* Delhi, [1997] I LLJ 994 : (1997) 1 SCC 556 [*LNIND 1996 SC 1833*].

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Protection of Persons [Section 35]

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

CHAPTER 11 Miscellaneous Matters

PROTECTION OF PERSONS [SECTION 35]— Updated On 08-01-2019

No person refusing to take part or to continue to take part in any strike or lockout which is illegal under this Act shall, by reason of such refusal or by reason of any action taken by him under this section, be subject to expulsion form any trade union or society, or to any fine or penalty, or to deprivation of any right or benefit to which he or his legal representatives would otherwise be entitled, or be liable to be placed in any respect, either directly or

indirectly, under any disability or at any disadvantage as compared with other members of the union or society, anything to the contrary in the rules of a trade union or society notwithstanding. [section 34(1)].

Any provisions in the rules of a trade union or society requiring the settlement of disputes in any manner shall not apply to any proceeding for enforcing any right or exemption secured by this section. In any such proceeding the Civil Court may, in lieu of ordering a person who has been expelled from membership of a trade union or society to be restored to membership, order that he be paid out of the funds of the trade union or society such sum by way of compensation or damages as that court thinks just. [section 35(2)].

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Representation of Parties [Section 36]

Avtar Singh: Introduction to Labour and Industrial Law

PART I THE INDUSTRIAL DISPUTES ACT, 1947

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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 11 Miscellaneous Matters

REPRESENTATION OF PARTIES [SECTION 36]— Updated On 08-01-2019

According to section 36, a workman who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by—

(a) any member of the executive or other office bearer of a registered trade union of which he is a member;

(b) any member of the executive or other office bearer of a federation of trade unions to which the trade union is affiliated;

(c) where the worker is not a member of any trade union, by any member of the executive or other office bearer of any trade union connected with, or by any other workman employed in, the industry in which the worker is employed and authorised in such manner as may be prescribed.

An employer who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by—

(a) an officer of an association of employers to which he is a member;

(b) an officer of a federation of association of employers to which the association referred to in clause (a) is affiliated;

(c) where the employer is not a member of any association of employers, by an officer of any association of employers connected with, or by any other employer engaged in, the industry In which the employer is engaged and authorised in such manner as may be prescribed.

Parties to a dispute are not entitled to be represented by a legal practitioner in any conciliation proceedings under the Act or in any proceedings before a court. [section 36(3)].

In any proceeding before a Labour Court, Tribunal or National Tribunal, a party to a dispute may be represented by a legal practitioner with the consent of the other parties to the proceeding and with the leave of the Labour Court, Tribunal or National Tribunal, as the case may be. [section 36(4)].

Before a Labour Court or Industrial Tribunal, workmen can be represented by an executive or office bearer of the Trade Union while the employer can be represented by the association of employers or its executive. The management has officers like Deputy Manager (Law), Asst. Manager (Law) *etc.,* who are qualified law graduates. The management is competent to engage any one of them to defend their case against one of their own workmen. However, employer is justified in approaching the Federation of Chamber of Commerce to contest a case of a workman of its own corporation.[58]

When some of the dismissed striking workmen made a settlement with the management in their individual capacities and workmen, not a signatory to settlement, challenged the order of dismissal, it was held that where the settlement is reached by individual workmen in their individual capacity, it is not binding on the workman who is not a party to it.[59]

Representation of Parties [Section 36]

58 R.M. *Duraiswamy* *v.* *Labour* *Courts,* *Salem,* 1998 LLR 478 (16).

59 *Ameteep* *Machine* *Tools* *v.* *Labours* *Court,* (1980) II LLJ 453 : AIR 1980 SC 2135 [*LNIND 1980 SC 399*].

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Power to Remove Difficulties [Section 36A]

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 11 Miscellaneous Matters

Power to Remove Difficulties [Section 36A]— Updated On 08-01-2019

If, in the opinion of the appropriate Government, any difficulty or doubt arises as to the interpretation of any provision of an award or settlement, it may refer the question to such Labour Court, Tribunal or National Tribunal as it may think fit.

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

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