



LL.B. IV Term

LB-403-Labour Law

Cases Selected and Edited by

Kamala Sankaran

Anu

Daya Devi

Kailash Jeenger

Kislay Soni

Narender Nagarwal

Parveen

Sukanya Singha

Vijoy V. Panicker

**FACULTY OF LAW
UNIVERSITY OF DELHI**

January, 2021

(For private use only in the course of instruction)

LL.B. IV Term

Paper – LB – 403 - Labour Law

General Readings:

1. *Report of the National Commission on Labour (1969)*
2. *Report of the Second National Commission on Labour (2002)*

Prescribed Legislations:

1. The Trade Unions Act, 1926
2. The Industrial Disputes Act, 1947
3. The Industrial Employment (Standing Orders) Act, 1946
4. The Essential Services Maintenance Act, 1981

Prescribed Books:

1. Kamala Sankaran, *Freedom of Association in India and International Labour Standards* (2009)
2. G.B. Pai, *Labour Law in India* (2001)
3. P.L. Malik, K.D. Srivastava's *Law Relating to Trade Unions and Unfair Labour Practices in India* (4th ed., 2002, with Supplement 2003)
3. S.C. Srivastava (Rev.) *Labour Law and Labour Relations: Cases and Materials* (Indian Law Institute, 2007)
4. E. M. Rao, *O.P. Malhotra's The Law of Industrial Disputes* (6th ed., 2004)
5. K.D. Srivastava, *Industrial Employment (Standing Orders) Act, 1946* (4th ed., 1998 with Supplement 2003)

PART – A: TRADE UNIONS

Topic 1: Introduction to Labour Law

History and Development of Labour Law, Importance and its Sociological Understanding, Philosophical Issues, Marxism and Labour Law

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| 1. Kahn Freund's Labour and Law (Hamlyn Lecture Series) | 1 |
| Introduction: Some Reflections on Law and Power, pp. 14-20 (1983). | |
| 2. Marxism and Labour Law (Edited version based on Hugh Collins, <i>Marxism and Law</i> , Clarendon Press, Oxford, 1982). | 4 |

Additional Reading: Debi S. Saini, "Labour Legislation and Social Justice: Rhetoric and Reality."

Topic 2: Trade Union – Definition, Registration and Recognition

Definitions of ‘trade union’, ‘workman’ and ‘trade dispute’ - The Trade Unions Act, 1926, Sections 2(g) and (h), 3-13, 15, 22

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| 3. <i>Rangaswami v. Registrar of Trade Unions</i> , AIR 1962 Mad. 231 | 7 |
| 4. <i>The Tamil Nadu Non-Gazetted Government Officers’ Union, Madras v. The Registrar of Trade Unions</i> , AIR 1962 Mad. 234 | 12 |
| 5. <i>In Re Inland Steam Navigation Worker’s Union</i> , AIR 1936 Cal 59 | 19 |
| 6. <i>The Food Corporation of India Staff Union v. Food Corporation of India & Ors</i> , Air 1995 SC 1344. | 23 |

Topic 3: Immunities – Criminal and Civil

The Trade Unions Act, 1926, Sections 17 and 18; The Indian Penal Code, Sections 120-A, 120-B

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| 7. <i>R.S. Ruikar v. Emperor</i> , AIR 1935 Nag. 149 | 27 |
| 8. <i>Rohtas Industries Staff Union v. State of Bihar</i> , AIR 1963 Pat. 170
(Also see <i>Rohtas Industries v. Its Union</i> , AIR 1976 S.C. 425) | 30 |

PART – B: INDUSTRIAL DISPUTES

Topic 4: ‘Industry’ – Conceptual Analysis

The Industrial Disputes Act, 1947, Section 2(j)

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| 10. <i>State of U.P. v. Jai Bir Singh</i> (2005) 5 SCC 1 | 82 |

Topic 5: ‘Industrial Dispute’ v. ‘Individual Dispute’ - Contrast

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| 11. <i>Workmen of Dimakuchi Tea Estate v. Management of Dimakuchi Tea Estate</i> , AIR 1958 SC 353 | 97 |
| 12. <i>Municipal Corporation of Delhi v. Female Workers (Muster Roll)</i> AIR 2000 SC 1274: (2000) 3 SCC 224 | 105 |
| 13. <i>J.H. Jadhav v. Forbes Gokak Ltd.</i> (2005) 3 SCC 202 | 110 |

Topic 6: Concept of ‘Workman’

Distinction between contract *for* services and contract *of* service: Due control and super-vision test; Predominant nature of duty test, The Industrial Disputes Act, 1947, Section 2(s)

14. <i>Dharangadhra Chemical Works Ltd. v. State of Saurashtra</i> , AIR 1957 SC 264	113
15. <i>A. Sundarambal v. Government of Goa, Daman & Diu</i> , AIR 1988 SC 1700	119
16. <i>H.R. Adyanthaya v. Sandoz (India) Ltd.</i> (1994) 5 SCC 737	123

Topic 7: 'Strike & Lock out'

Concepts, legality and justification – The Industrial Disputes Act, 1947, Sections 2(q), 2(l), 2(n), 10(3), 10A(3A), 22-28; The Industrial Employment (Standing Orders) Act, 1946; The Essential Services Maintenance Act, 1981

17. <i>Management of Chandramalai Estate v. Its Workmen</i> , AIR 1960 SC 902	136
18. <i>Syndicate Bank v. K. Umesh Nayak</i> (1994) 5 SCC 572	140
19. <i>Essorpe Mills Ltd. v. P.O.; Labour Court</i> (2008) 7 SCC 594	154
20. <i>T. K. Rangarajan v. Government of Tamil Nadu and others</i> , (2003) 6 SCC 581	159

Topic 08: 'Lay off' 'Retrenchment' & 'Closure'

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21. <i>Punjab Land Development and Reclamation Corporation Ltd. v. Presiding Officer, Labour Court</i> (1990) 3 SCC 682	168
22. <i>The Workmen of Fire Stone Tyre & Rubber Co. Pvt. Ltd. v. Fire Stone Tyre & Rubber Co. Pvt. Ltd.</i> (1976) 3 SCC 819: AIR 1976 SC 1775	184
23. <i>U.P. State Brassware Corporation Ltd. v. Uday Narain Pandey</i> (2006) 1 SCC 479	189
24. <i>Deepali Gundu Surwase v. Kranti Junior Adhyapak & Ors</i> (2013) 10 SCC 324	199
25. <i>Management of the Barara Cooperative Marketing cum Processing Society Ltd. v. Workman Pratap Singh</i> AIR 2019SC 228	222

IMPORTANT NOTE

1. The topics as well as cases mark the broad contours of the study domain. The teachers may feel free to extend the topics/cases for the larger benefit of the society and the students.
2. The students are required to study the legislations as amended from time to time and consult the latest editions of books as well as issues/debates.

PART-A: TRADE UNIONS

Topic 01: Introduction to Labour Law

Kahn Freund's Labour and Law (Hamlyn Lecture Series, Edited version)

Introduction: Some Reflections On Law And Power, 14-20 (1983)

Law is a technique for the regulation of social power. This is true of labour law, as it is of other aspects of any legal system. Power—the capacity effectively to direct the behaviour of others—is unevenly distributed in all societies. There can be no society without a subordination of some of its members to others, without command and obedience, without rule makers and decision makers. The power to make policy, to make rules and to make decisions, and to ensure that these are obeyed, is a social power. It rests on many foundations, on wealth, on personal prestige, on tradition, sometimes on physical force, often on sheer inertia. It is sometimes supported and sometimes restrained, and sometimes even created by the law, but the law is not the principal source of social power.

Labour law is chiefly concerned with this elementary phenomenon of social power. And—this is important—it is concerned with social power irrespective of the share which the law itself has had in establishing it. This is a point the importance of which cannot be sufficiently stressed. We are speaking about command and obedience, rule making, decision making, and subordination. As a social phenomenon the power to command and the subjection to that power are the same no matter whether the power is exercised by a person clothed with a "public" function, such as an officer of the Crown or of a local authority, or by a "private" person, an employer, a trade union official, a landlord regulating the conduct of his tenants. The subordination to power and the nature of obedience do not differ as between purely "social" or "private" and "legal" or "public" relations. It is a profound error to establish a contrast between "society" and the "state" and to see one in terms of co-ordination, the other in terms of subordination. As regards labour relations that error is fatal. It is engendered by a view of society as an agglomeration of individuals who are co-ordinated as equals; by a myopic neglect or deliberate refusal to face the main characteristic of all societies, and not least of industrial societies, which is the unequal distribution of power. The law does and to some extent must conceal the realities of subordination behind the conceptual screen of contracts considered as concluded between equals. This may partly account for the propensity of lawyers to turn a blind eye to the realities of the distribution of power in society.

The principal purpose of labour law, then, is to regulate, to support and to restrain the power of management and the power of organised labour. These are abstractions. In their original meanings the words "management" and "labour" denoted (as they still do) not persons, but activities; the activities of planning and regulating production and distribution and co-ordinating capital and labour on the one hand, the activity of producing and distributing on the other. But even if, by a now common twist of language, "management" and "labour" are used to denote not activities but the people who exercise them, they remain abstractions. "Management" may be a private employer, a company, a firm. It may be an association of employers, or an association of associations, such as the Confederation of

British Industry. It may be a public corporation such as the National Coal Board, British Railways or an Area Health Authority. It may be a local authority or it may be that largest of all "managers" which in most countries is called the State or the Government and which in this country appears in the symbolic disguise of the "Crown." In a concrete situation, however, this word "management" may be used to designate a foreman at the assembly line, a production manager, a factory manager, or a board of directors or head of a department. The word is always used to identify the individual or corporate body who in a given situation wields that power to define policy, to make rules, and above all decisions, through whose exercise management manifests itself to those who are its subordinates. To manage means to command.

"Labour," too, is an abstraction. To the Confederation of British Industry "labour" presumably denotes in the first place the Trades Union Congress, to a foreman it may principally denote a shop steward, to every employer it denotes the men and women subject to his managerial power, and also the union or unions with whom he or the association of which he is a member negotiates.

This ambiguity of the terms "management" and "labour" if applied to persons rather than to activities is important: it means that by "labour relations," the relations between "management" and "labour" we understand all sorts of relationships, individual and collective, and that hence the orbit of what we are accustomed to call labour law comprehends matters of industrial safety as well as of industrial disputes, of collective agreements as well as of job security, in short anything that can arise between managers and those subject to managerial power.

The individual employee or worker—we use these words indiscriminately⁴—has normally no social power, because it is only in the most exceptional cases that, as an individual, he has any bargaining power at all. Such exceptional cases exist of course—one can think of a high powered managerial employee with unique experience, a top rank scientist, or even a highly skilled craftsman whom the employer cannot easily replace, in short, of those whom Alan Fox calls "occupants of high discretion roles." Typically, the worker as an individual has to accept the conditions which the employer offers. On the the labour side, power is collective power. The individual employer represents an accumulation of material and human resources, socially speaking the enterprise is itself in this sense a "collective power." If a collection of workers (whether it bears the name of a trade union or some other name) negotiate with an employer, this is thus a negotiation between collective entities, both of which are, or may at least be, bearers of power. But the relation between an employer and an isolated employee or worker is typically a relation between a bearer of power and one who is not a bearer of power. In its inception it is an act of submission, in its operation it is a condition of subordination, however much the submission and the subordination may be concealed by that indispensable figment of the legal mind known as the "contract of employment." The main object of labour law has always been, and we venture to say will always be, to be a countervailing force to counteract the inequality of bargaining power which is inherent and must be inherent in the employment relationship. Most of what we call protective legislation—legislation on the employment of women, children and young persons, on safety in mines, factories, and offices, on payment of wages in cash, on guarantee payments, on race or sex discrimination, on unfair dismissal, and indeed most labour legislation altogether— must be seen in this context. It is an attempt to infuse law into a relation of command and subordination.

We have said that all this is necessarily inherent in the employment relationship. Capital resources cannot be utilised by anybody (whether the body be private or public) without exercising a command power over human beings. This is, or ought to be, a common-place. In any event one has not heard of any legal system which has sought to replace the relation of subordination by a relation of co-

ordination. Except in a one man undertaking, economic purposes cannot be achieved without a hierarchical order within the economic unit. There can be no employment relationship without a power to command and a duty to obey, that is without this element of subordination in which lawyers rightly see the hallmark of the "contract of employment." However, the power to command and the duty to obey can be regulated. An element of co-ordination can be infused into the employment relationship. Co-ordination and subordination are matters of degree, but however strong the element of co-ordination, a residuum of command power will and must remain. Thus, the "when" and the "where" of the work must on principle be decided by management, but the law may restrict the managerial power as to the time of work by prohibiting work at night or on Sundays, and as to the place by seeking to prevent overcrowding and other insalubrious conditions. More than that: the law may create a mechanism for the enforcement of such rules and it may protect the worker who relies on its operation. By doing so the law limits the range of the worker's duty of obedience and enlarges the range of his freedom. This, without any doubt, was the original and for many decades the primary function of labour law.

The law has important functions in labour relations but they are secondary if compared with the impact of the labour market (supply and demand) and, which is relevant here, with the spontaneous creation of a social power on the workers' side to balance that of management. Even the most efficient inspectors can do but little if the workers dare not complain to them about infringements of the legislation they are seeking to enforce. ... The law does, of course, provide its own sanctions, administrative, penal, and civil, and their impact should not be underestimated, but in labour relations legal norms cannot often be effective unless they are backed by social sanctions as well, that is by the countervailing power of trade unions and of the organised workers asserted through consultation and negotiation with the employer and ultimately, if this fails, through withholding their labour. The law seeks to restrain the command power of management. How far it succeeds in doing so depends on the extent to which the workers are organised. The law also seeks to restrain the power of the unions. How far it can do so depends on the attitude of the employers.

Marxism and Labour Law

(Edited version based on, Hugh Collins, *Marxism and Law*, Clarendon Press, Oxford, 1982)
(This article aims at providing a broader picture of Marxism in relation to law. In doing so, it also tries to offer an outline of Marxist explanation to labour law. Therefore, this reading may be considered only as an introduction in this direction.)

Broadly, there are two elements of Marxism. First, a common methodology to interpret the meaning of history, and second, a prediction that the capitalist society is going to be transformed into a Communist society consequent upon a revolution by the working class.

It is true that there is no separate Marxist theory of law, let alone labour law, however, Marxists do consider legal systems because of the role they play in different social formations such as feudalism or capitalism. Marxists focus on the true nature of law so as to reveal its functions in a society dominated by few powerful people. With the help of this scrutiny, Marxists suggest that ultimately the nature of law is dominating and repressive, and its function is to serve the interests of the ruling class (bourgeoisie) at the cost of the subordinate class (proletariats).

Historical materialism- The general theory of Marxism is called historical materialism. It provides the concepts and methodology for a Marxist analysis of every aspect of a society including its legal system. Marx explains the theory in the Preface to his work titled “A Contribution to the Critique of Political Economy”. The theory uses the metaphor of “base and superstructure”. First, let us understand what is base. Human existence depends upon production of material life i.e. food, clothing, shelter and so on. The production of material life naturally depends upon available resources and technology; Marx calls them “forces of production”. Depending upon forces of production, an individual enters into “relations of production” with others for the production of material life, e.g. in ancient times formation of groups for hunting, or in modern society contract between worker and employer. According to Marx, the relations of production is the base. The base vitally affects the “superstructure”, i.e. the law, political authority and other social institutions. For example, development of labour law in Europe to regulate employee-employer relationship during industrial revolution, or substitution of feudal lords by state when manufacturing replaced craftsmanship during the sixteenth century and emerging capitalists needed property held by lords. With this Marxist explanation to the emergence of law, at least three questions arise (also in the context of labour law). Whether the base i.e. relations of production always determines law and other components of superstructure? Whether a capitalist state has any role in determining the content of law in its own interests? How does welfare legislation fit into the Marxist explanation to law? These three issues are dealt with below.

I.

Friedrich Engels has, time and again, emphasised that relations of production (base) are not the *only* factor that determine the form and content of law (superstructure). This is because the base-superstructure model disregards the intimate connection of law with state, moral values, family etc. There are several laws which cannot be said to be a reflection of the base, e.g. marriage law. Thus, it is inappropriate to say that law is only a reflection of material base because it is determined by latter.

II.

Given the fact that law is not merely a reflection of material production, the next question is whether law is a deliberate conscious creation of state to protect the interest of the ruling class. Before moving further, it must be made clear that ruling class, i.e. bourgeoisie is the one having control over and access to the means of production (capital, land, machinery, raw-material, labour), whereas dominated class, i.e. proletariats does not have such control or access, except over its own labour. Thus, these classes are determined by their position in the relations of production. They have ever-conflicting

interests. In such a scenario, state, acting in concert with the bourgeoisie, uses law as an instrument not only to advance the interest of bourgeoisie, but also to control, suppress and crush any voice raised against the interests of ruling class. Law becomes a system of control, repression, institutionalised violence. This is known as class instrumentalist theory of law. Law is used as an instrument of class domination. At the end of the eighteenth century when workers in England formed trade unions and demanded higher wages, the capitalists class viewed this as a threat to its profitability. The result was the English Combination Act, 1800 which declared all trade unions to be criminal conspiracies.

Does this mean that the ruling class always conspires to suppress the subordinate classes to serve its best interests, or there is some other explanation to the same in Marxism? According to the author:

“Since the class of owners of the means of production share similar experiences and perform approximately the same role in the relations of production, there emerges a dominant ideology which permeates their perceptions of interests. Laws are enacted pursuant to this ideology... There is no need, however, on the theory of ideology presented here to suggest that the ruling class is aware of its class position and deliberately sets out to crush opposition. Instead, its perceptions of interests will appear to be the natural order of things since they are confirmed by everyday experience. A corollary of this is that laws enacted according to the dictates of a dominant ideology will appear to the members of that society as rules designed to preserve the natural social and economic order. The ruling class will not have the oppression of other classes in mind, but simply the maintenance of social order.” (p. 43)

Here, it is necessary to explain why state caters to the needs of industrialists, or why state and capitalists act as one. There are several reasons as to why they act in concert. For instance, political leaders and their relatives are offered positions in the board of directors of companies; big business houses donate huge amount of money to political parties; many parliamentarians also own industries; export brings in foreign exchange, and so on.

III.

The third question relates to a welfare state passing laws beneficial to the working class. Looking into the plethora of welfare laws on matters such as, maternity leave, humane working conditions, minimum wages, provident fund etc, is it appropriate to call law an instrument of class domination? Whether Marxists offer any explanation to social welfare legislation, despite the fact that laws conform to the dominant ideology? It may be best explained in the words of the author:

“...Marxists acknowledge that the dominant class does not have exclusive control over the state apparatus in modern society. It is possible for subordinate classes to make real gains by securing beneficial legislation. Nevertheless, Marxists maintain that such gains are minor, and only marginally detract from the background control over the state exercised by the dominant class.” (p. 47)

“...in the context of legal reforms which constitute part of the welfare state, working class initiatives are founded upon bourgeois conceptions of rights. Their claims imitate established political values, and hence new laws serve to inculcate instruction in the dominant ideology. For example, many countries have laws which allow courts to test the fairness of managerial decision to dismiss an employee. These laws are predicated upon an assumption of the natural right of the owners of capital to determine security of employment, and whilst they may constrain this freedom, they inevitably acknowledge the basic right. Thus an essential theme of bourgeois ideology is articulated by the law even whilst it is being slightly qualified.” (p. 51)

“The state, therefore, has scope for political struggle and independent action, but only within broad guidelines determined by the owners of the means of production and the dominant ideology. The laws of the welfare state remind Marxists of the important ideological functions performed by the law, but do not undermine the whole of the class instrumentalist theory. Provided it is understood that a special feature of that modern state is its ability to admit legislation which is beneficial to the working

class whilst at the same time remaining incapable of supporting any serious challenges to the mode of production, then Marxists may retain their broad claim that law serves the interest of the dominant class albeit not always exclusively or directly.” (pp. 51-52)

“Marxists accept that the modern state including its legal system is notable for its considerable degree of independence from the control of the dominant class. The owners of the means of production do not overtly manipulate the politicians in democratic societies, but permit a degree of struggle within the state itself. Compared to earlier social formations the absence of personal control by the dominant class is remarkable. Yet Marxists deny that the state is completely autonomous, claiming that ultimately the dominant class determines the direction of political initiatives and ensures that the legal system serves to perpetuate the mode of production. The democratic process disguises the presence of class domination behind the mask of formal equality of access to power. Marxists refer to these peculiarities of the modern state by the concept of relative autonomy. This term incorporates two ideas: first, that there is in reality less direct manipulation of political power by the dominant class in modern society than there was in earlier social formations, and, second, that the appearance of autonomy conceals deep structural constraints upon the powers of the State apparatus which ensure that it faithfully pursues the interests of the ruling class.” (p. 48-49)

At the end, however, it must be borne in mind that Marxists do not attempt to present a specific theory of law, because they seek to challenge and discard, rather than defend the present organisation of power.

Topic-02: Trade Union- Definition, Registration and Recognition

Rangaswami v. Registrar of Trade Unions

AIR 1962 Mad. 231

RAMACHANDRA IYER, J. – This is a petition under S. 11 of the Trade Unions Act seeking to set aside the order of the Registrar of Trade Unions, Madras refusing to register the union of employees of the Madras Raj Bhavan as a trade union under the Trade Unions Act XVI of 1926, which for the sake of brevity I shall hereafter refer to as ‘the Act.’

2. In the Raj Bhavan at Guindy, a number of persons are employed in various capacities such as household staff, peons, chauffeurs, tailors, carpenters, maistries, gardeners, sweepers etc. There are also gardeners and maistries employed at the Raj Bhavan at Ootacamund. Those persons are employed for doing domestic and other services and for the maintenance of the Governor’s household and to attend to the needs of the Governor, the members of his family, staff and State guests. There are two categories of employees: (1) those whose services are more or less of a domestic nature. They number 102. The services of these persons are pensionable and are governed by certain rules framed by the Governor of Madras; and (2) those who formed part of the work charge establishment consisting of maistries and gardeners. There are 33 such persons employed at Guindy and 35 at Ootacamund. Their duties consist in maintaining the gardens. Their service is not pensionable but they would be entitled to gratuity at certain rates. There are separate rules prescribing the conditions of their service framed under the proviso to Art. 309 of the Constitution. Both the categories of the staff are appointed by and are under the disciplinary control of the Comptroller.

With the object of securing better service conditions and to facilitate collective bargaining with the employer, the employees formed themselves into a union called the Madras Raj Bhavan Workers’ Union. On 9.2.1959, seven of the employees applied to the Registrar of Trade Unions, Madras, for registration of their union as a trade union under the Trade Unions Act of 1926. The applicants did not however claim before the Registrar that the employees were engaged in either a trade or an industry; the claim was that their services could not be held to be purely domestic services and therefore their union would be entitled to the benefits of registration under the Trade Unions Act. The Registrar was of the view that before a union can be registered, the members thereof must be connected with a trade or industry or business of an employer, and that condition not being fulfilled in the present case, the employees could not be held to be workmen within the meaning of the Act to entitle them to the registration; the application for registration was rejected.

3. Mr. Ramsubramaniam, who appeared for the petitioners, impugned the correctness of the view taken by the Registrar. His argument ran thus. The term ‘workman’ under the Act would include one employed in an industry. Although there is no definition of the term industry in the Act itself, the definition of the term given in the Industrial Disputes Act should be adopted for ascertaining its meaning as both the enactments related to the same subject, viz., the betterment of the conditions of labour in the country. If that were done, the term “industry” which is defined to include an undertaking would be comprehensive enough to

cover the case of employees like these engaged in services at the Raj Bhavan who systematically do material service for the benefit of not merely the members of the Governor's household but also to visitors and guests as well. Therefore, the employees in the present case should be held to be employed in an undertaking by the employer within the meaning of that term. Further, as the Comptroller directs the sale of unserviceable articles as well as surplus produce of the gardens in the Raj Bhavan, the activity of the employer should be held to partake the character of a trade or business as well.

4. I am however unable to accept the argument. The question whether Government servants who form an association amongst themselves would have their union registered under the Trade Unions Act, was considered by me in O.P. No. 312 of 1958. I expressed the opinion that employees under Government whose service was regulated by statutory rules could not form themselves into a union so as to have it registered as a trade union. I am informed that the judgment in that case is the subject-matter of an appeal which is pending. It is, however, unnecessary to decide this case on the basis of that judgment as I am of the view that the claim of the petitioners has to fail on an independent ground as well, a ground which was not dealt with by me in the former case.

5. Under Sec. 4 of the Trade Unions Act, a trade union could apply for and obtain registration therefor. That provision states:

Any seven or more members of a trade union may by subscribing their names to the rules of the trade union and by otherwise complying with the provisions of this Act with respect to registration apply for registration of the trade union under this Act.

6. It is therefore necessary to consider what would be a trade union. Section 2(h) defines a trade union thus:

Trade union means any combination whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen or workmen or between employers and employers or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more Trade Unions.

The term "workmen" has not been independently defined in the Act. But in the definition of the term "trade dispute" (which defines such dispute as one between employers and workmen etc.), the definition of the term "workmen" is found. That runs:

'workman' means all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises.

The term "trade union" as defined under the Act contemplates the existence of the employer and the employee engaged in the conduct of a trade or business. The definition of the term "workmen" in Sec. 2(g) would prima facie indicate that it was intended only for interpreting the term "trade dispute." But even assuming that that definition could be imported for understanding the scope of the meaning of the term "trade union" in S. 2(h), it is obvious that the industry should be one as would amount to a trade or business, i.e., a commercial undertaking. So much is plain from the definition of the term "trade union" itself. I say this

because the definition of “industry” in the Industrial Disputes Act is of wider significance. Section 2(j) of the Industrial Disputes Act which defines “industry” states its meaning as

Any business, trade undertaking, manufacture or calling of employers and includes any calling, services, employment, handicraft or industrial occupation or avocation of workmen.

7. An undertaking which is not of a commercial nature will come within the scope of that enactment [vide *State of Bombay v. Hospital Mazdoor Sabha*, AIR 1960 SC 610]. The object behind the Industrial Disputes Act is to secure industrial peace and speedy remedy for labour discontent or unrest. A comprehensive meaning of the term “industry” was evidently thought necessary by the legislature in regard to that Act. But the same thing cannot be said of the Trade Unions Act. The history and object of that enactment show that it was intended purely to render lawful organisation of labour to enable collective bargaining. The provisions of the Act contemplate the admission of even outsiders as members and participation in political activities. That would itself dictate that the benefits conferred by the act should be enjoyed by a clearly defined category of unions. I am very doubtful whether at all it could be said that the Industrial Disputes Act and the Trade Unions Act form as it were a system or code of legislation so that either could be read together as in *pari materia*, that is, as forming one system and interpreting one in the light of another.

8. There can be no doubt that if a trade union is interpreted as one connected with a trade or a business, it cannot be said that the employer in the present case is having such a trade or business. This however is subject to the consideration of the question whether the sale of unserviceable materials and surplus garden produce will amount to a trade or business activity. I shall refer to it a little later.

9. Let me assume however that the definition of the term industry in S. 2(j) of the Industrial Disputes Act will apply to the Trade Unions Act. It has then to be seen whether the authorities of the Raj Bhavan could be held to be employers engaged with the workmen in any undertaking within the meaning of the term “industry” in the Industrial Disputes Act.

10. In *State of Bombay v. Hospital Mazdood Sabha*, the question arose whether the employees in a hospital run by the State could be held to be engaged in an undertaking of the State so as to entitle them to raise an industrial dispute. The Supreme Court observed:

It is clear, however, that though S. 2(j) (Industrial Disputes Act) uses words of very wide denotation, a line would have to be drawn in a fair and just manner so as to exclude some callings, services or undertakings. If all the words used are given their widest meaning all callings would come within the purview of the definition; even service rendered by a servant purely in a personal or domestic matter or even in a casual way would fall within the definition. It is not and cannot be suggested that in its wide sweep the word “service” is intended to include service howsoever rendered in whatsoever capacity and for whatsoever reason.

11. The Supreme Court held that the definition of the term “industry” in S. 2(j) was wider than the conception of trade or business as commonly understood. But an undertaking in order to come within that definition would be an activity which involves the co-operation of

the employer and the employees with the object of the satisfaction of material human needs, if organised or arranged in a manner in which a trade or business is generally organised or arranged, and if it were not of a casual nature nor one for oneself or for pleasure. It is well known that in an industry, capital and organisation, on the one hand, and labour, on the other, co-operate to achieve industrial production. Therefore, a mere personal service, however much it might have been organised, would not possibly be an undertaking within the meaning of the Act; the essential condition is only personal service given to the employer.

12. Two distinctive features of an industry therefore are (1) that the employer as well as the employees should be engaged in the industry, however wide the meaning of the term might be; and (2) there should be co-operation between both of them for achieving the particular result. The first of the two attributes of an industry is succinctly stated by Isaacs, J., in *Jambunna Coal Mine No Liability v. Victorian Coal Miners Association* [6 CLR 309, 370] thus:

An industry contemplated by the Act is apparently one in which both employers, and employees are engaged, and not merely industry in the abstract sense, or in other words the labour of the employees given in return for the remuneration received from his employer. As suggested, not only the words defining “industry” itself but also by Schedule B and by such a phrase in the definition of “industrial dispute” as employment in industries carried on by or under the control of the Commonwealth etc., an “industry” as intended by Parliament seems to be a business etc., in which the employer on his own behalf is engaged as well as the employees in his employment. Turning to the specific definition of “industry,” it rather appears to mean a business (as merchant), a trade (as cutler), a manufacturer (as a flour miller), undertaking (as a gas Company), calling (as an engineer) or service (as a carrier) or an employment (a general term like ‘calling’ embracing one of the others, and intended to extend to vocations which might not be comprised in any of the rest) all of these expressions so far indicating the occupation in which the principal, as I may call him, is engaged whether on land or water. If the occupation so described is one in which persons are employed for pay, hire, advantage, or reward, that is, as employees, then, with the exceptions stated, it is an industry within the meaning of the Act.

13. There can thus be no industry where the employer is not engaged in common with the employees with the definite objective of the achievement of the material needs of humanity and that in an organised manner. In the definition of the term “trade union” to which I made reference earlier, the regulation of the relationship contemplated is in regard to the condition of service of employees which postulates the existence of an employer who is concerned in the business, trade or industry. It has therefore to be seen whether in the circumstances of the case it can be said that persons in control of the Raj Bhavan can be held to be an employer in an industry however widely that term may be understood. The answer to that question presents no difficulty and can only be in the negative.

14. The decision in *State of Bombay v. Hospital Mazdood Sabha*, emphasised that the activity contemplated by term “industry” in section 2(j) of the Industrial Disputes Act involved the co-operation of the employer and the employees.

15. I cannot agree with the learned counsel for the petitioners, that the mere fact that employees serve the visitors and State guests of Raj Bhavan, nor the fact that unserviceable materials and surplus produce of the gardens of the Raj Bhavan are occasionally sold would show that there was co-operation between the employer and the employees for the purpose of a trade or business. The services rendered to the State guests are personal services to them and indirectly to the employer. The occasional sales of unserviceable articles and garden products are incidents of the ordinary administration of Government property. They are done in accordance with certain rules framed by the Government. They would not amount to a trade or business.

17. To sum up, even apart from the circumstance that a large section of employees at Raj Bhavan are Government servants who could not form themselves into a trade union, it cannot be stated that the workers are employed in a trade or business carried on by the employer. The services rendered by them are purely of a personal nature. The union of such workers would not come within the scope of the Act so as to entitle it to registration thereunder.

18. The order of the Registrar of Trade Unions rejecting the application of the petitioners is, therefore, correct. This petition is dismissed with costs.

* * * * *

***The Tamil Nadu Non-Gazetted Government Officers' Union, Madras v.
The Registrar of Trade Unions***

AIR 1962 Mad. 234

ANANTANARAYANAN, J. – The Tamil Nadu Non-Gazetted Government Officers' Union is a Services Association which has been recognised by Government, and the membership of which is open, according to Rule 7 of its constitution, to all Non-Gazetted Government Officers employed under the Government of Madras except the Executive Officers of the Police and Prisons Departments and the last grade Government servants. The objects of this Association are set forth in Rule 4 of the Constitution, and it is seen that they are beneficent and ameliorative in character, designed along the lines of promoting the welfare of the members in multiple directions. The Association represented by ten of its members applied on 23-12-1957 to the Registrar of Trade Unions, Madras, for registration as a Trade Union, under section 5 of the Indian Trade Unions Act (Act XVI of 1926). In a brief order, the Registrar rejected this application, in which, after a reference to Secs. 2 (g) and 2 (h) of the Act, he held that such an Association of ministerial employees of the Administrative Departments of offices of the Government of Madras could not claim to be a Trade Union at all and was not eligible for registration under the Act. Admittedly, against such an order declining registration an appeal is provided for under section 11 of the Act and this was duly preferred. The learned Judge who dealt with the proceeding (Rama Chandra Iyer, J., as he then was) delivered a judgment in which he had occasion to trace, in some detail, the history of the Trade Union movement in the United Kingdom, in order to elucidate certain fundamental principles. This appeal is before us as preferred by the Union and its secretary, from the order of the learned Judge.

(2) We shall set forth, a little subsequently, the relevant definitions and provisions of the Indian Trade Unions Act, as well as certain definitions in the Industrial Disputes Act XIV of 1947; though the learned Judge was definitely of the view that these two enactments are not in *pari materia* and do not together constitute any code or legislation it is at least indisputable that sections of the Industrial Disputes Act, 1947, are also very relevant for purposes of comparative analysis. But before doing this, it is essential for an appreciation of the basic issues, to summarise the grounds upon which the learned Judge (Rama Chandra Iyer, J.) rejected the petition before him. After referring to the definition of "Trade Union" in section 2 (h) of the Trade Unions Act, the learned Judge pointed out that a vital consideration would be the content or significance of the word "workmen" as occurring in section 2 (h) and he was of the view that this word primarily signify only manual labourers or workers of that class. This was one ground upon which the learned Judge ultimately concluded that civil servants of the present Association could not be considered as workmen at all. Next the learned Judge pointed out that the concept of "collective bargaining", which is the rationale behind the Trade Union movement and the existence of the Trade Unions was wholly inappropriate when applied to Government servants.

This was all the more so in this country where the civil service was not a mere tenure at the pleasure of the Crown, as in the United Kingdom, but where constitutional safe-guards

were themselves the subject of elaborate statutory rules. The Indian Trade Unions Act contemplated not merely collective bargaining, but also the permeation of the Trade Union by outside influences to a certain extent (Secs. 21 and 22) and definite participation in politics (Sec. 16). These were elements that had to be totally eschewed, in the public interest itself, with regard to the civil services. A strike, the acknowledged weapon of Labour organisations, must be considered inconceivable as a normal feature of the relationship between the State and its civil servants, at least with regard to essential state functions. This was another vital ground on which the learned Judge considered that this Services Association was not a trade union and could not be registered as such. Finally, the learned Judge referred to the Memorandum of Association and the objects as specified in Rule 4, to which we have made earlier reference. He stressed that those objects were benevolent and ameliorative and that they could not sustain the interpretation that the association existed for “regulating the relations between workmen and employers (State)” or, in brief, for “collective bargaining” with the State. Upon all these grounds, the petition was dismissed.

(4) As we have stated earlier, section 5 of the Act entitles a Trade Union to apply for registration, and provides that the application shall be accompanied by a copy of the rules of the Trade Union, and statement of specified particulars. Under section 5 (2), where a Trade Union has been in existence for more than one year before the making of the application for its registration, a further general statement of assets and liabilities is required to be submitted. Under section 7 (1) of the Act the Registrar may call for further information, for the purpose of satisfying himself that an application complied with the provisions of sections 5 and 6 of the Act and that the Trade Union is entitled to registration. The Registrar may refuse to register a Trade Union until such information is supplied. Section 8 relates to registration proper, and section 11 provides for an appeal by a person aggrieved by any refusal of the Registrar to register a Trade Union. This may be the convenient context for nothing an argument of the learned counsel for the appellant Union (Sri A. Ramachandran). The learned counsel argues that where as in this case the Registrar did not call for any further information under section 7. He has really no jurisdiction to decline registration. This argument is obviously unsustainable.

The very terms of section 8 are that the Registrar has to register the Union “on being satisfied that the Trade Union has complied with all the requirements of this Act”; this shows that where the definitions under sections 2 (g) and 2 (h) are themselves inapplicable to the so-called Union, the Registrar has every power to decline the registration. It is for the specified purpose of granting redress against the erroneous exercise of such power that the appeal is provided for under section 11. Section 16 of the Act, as noted by us earlier, enables the Union to constitute a separate fund for political purposes and objects and to pursue those purposes, enumerated in section 16 (2). Sections 17 and 18 refer to the immunity of the members of a registered Trade Union from criminal prosecution in certain respects, and similarly from civil suits in certain cases. Under sections 21 and 22, there is room for the introduction of outsiders as office bearers into the executive of a registered Trade Union, or of outsiders as members, after registration.

(5) Turning now to the Industrial Disputes Act (Act XIV of 1947), we find the very important definition of “industry” in section 2 (j) of the Act in the following terms –

Industry means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen.

An equally important definition is that of “workmen” in section 2 (s) in the following term:-

With regard to the present appeal, section 9-A concerning notice of change in the conditions of service is important; clause (b) of the proviso specifically exempts from such notice, workmen who are

Persons to whom the Fundamental and Supplementary rules, Civil Services (Classification Control and Appeal) Rules ... apply.

This certainly suggests that at least employees of the quasi-Government organisations, such as the Industrial undertakings or Insurance corporations are persons to whom the Industrial Disputes Act may apply. We may further note that under section 36 (1) of this Act, a workman who is a party to an industrial dispute is entitled to be represented in a proceeding under the Act by “an officer of a registered Trade Union of which is a member”. Learned counsel (Sri Ramchandran) argues that the appellant Union is keen upon registration under the Trade Unions Act, not merely for the privileges or immunities conferred under sections 17 and 18 of the Act, which we have noticed earlier, but even more importantly for this power or being represented in an industrial dispute, by the Union.

(7) Upon one ground, we do not think that it is really necessary to follow the learned Judge into the analysis that he has made. The learned Judge refers to the definitions of “workmen” in the Concise Oxford Dictionary and Wharton’s Law Lexicon, and concludes that the term could only fairly characterise persons engaged in manual labour semi-skilled occupations for wages, and could certainly not include civil servants of the State. It is certainly true that such a restrictive interpretation appears to have prevailed at one time, and to have found expression in several Acts in the United Kingdom, such as the Bankruptcy Act 1883, Employers and Workmen Act, 1875, Truck Acts 1887 etc., (see Burrows Words and Phrases, Vol. 5, page 527). But, more and more as the industrial structure expanded, such a limited definition became out of place; further, it was clearly impossible to sustain, from a logical point of view, a distinction between brain-workers and manual workers, in relation to ‘industry’ broadly conceived. One instance suggested to us may be significant. It would be difficult to hold that a typist does not do manual labour; literally his work is executed with his hands conforming to the etymological sense of the definition. But equally, it would be impossible to deny that a typist is also a brain-worker, or to deny that he is a “workman” in industry. Obviously, springing from such causes, we find that the earlier attitude is no longer maintained, particularly in Industrial law in the United States of America. For instance, in *Corpus Juris Secundum* (Vol. 98 page 834), “workman” is defined as – “a tailer, a worker, one who works in any department of physical or mental labour”. Also see the definition furnished by Bouvier cited in “Works and Phrases” Permanent Edn. Vol. 45, page 508 as “one who labours; one who is employed in some business for another.” Finally in N. A. Citrine’s (now Lord) “*Trade Union Law*” (1960 Edn.) the learned author observes (page 312) “It is suggested that a similar wide interpretation of the definition of “workmen” will be adopted by courts.” In the United Kingdom, Association of variety artistes and Musicians have been

recognised as unions of workmen, and the old distinction of the restrictive meaning no longer holds the field.

(8) Apart from this, as far as the present judgment is concerned, the learned Judge appears to have overlooked the definition of “workman” in section 2 (g) of the Trade Unions Act itself in the form - “means all persons employed in trade or industry.” The learned Advocate-General has placed certain arguments before us with regard to this definition, and the implication of the word “means”, as occurring therein. We shall dilate upon this a little later. It is here pertinent to observe that this definition, if considered integrally with the definition of “Trade Union” in section 2 (h) renders otiose and even inadmissible any arguments founded upon the distinction between manual labour and brain-labour, in the context of the word “workmen”. It is here important to take note of another judgment of the learned Judge (Ramachandra Iyer, J., himself) in *Rangaswami v. Registrar of Trade Unions* [AIR 1962 Mad. 231], a similar petition with regard to the order of the Registrar of Trade Union refusing to register the Union of Employees of the Madras Raj Bhawan, as a Trade Union under the Act. This judgment has really to be read as supplementing the judgment in appeal, with regard to the broad perspective of approach and the learned Judge herein specifically refers to the definition of “workmen” which occurs in section 2 (g). Upon these grounds, it is not essential to explore further the argument based upon the distinction as one of the factors justifying the order of the Registrar declining to register the appellants Union.

(9) Next, it is argued by learned counsel for the appellants Union, that as noted by the learned Judge himself, such Unions of civil servants of the State are recognised as Trade Unions in the United Kingdom. It is stressed that this recognition should also become part of the Industrial law of this country; particularly as Trade Unions of the workmen in the railways, which are now State concerns, already exist. There is no doubt about the situation in the United Kingdom, and a single sentence from a passage in the “*History of Trade Unions*” by Sydney and Beatrice Webb (1950 Edn., p. 507) cited by the learned Judge himself, will suffice.

Practically no one below the rank of an Under Secretary of State is held to be outside the scope of the Society of Civil servants.

It is strenuously contended that the same principle should apply here, that any distinction between tenure at the pleasure of the Crown, in the United Kingdom, and tenure subject to constitutional safeguards, as in this Country, is really invalid for the purpose of applying the criterion under the Trade Unions Act, and that, in brief, the learned Judge was in error in holding that the appellants Union was not entitled to registration. Sri Ramachandran further contends that recent case-law has been in the opposite direction, namely, the direction of recognising even Governmental activities as part of “industry”, and the employees of such branches of administration as “workers” entitled to form Trade Unions, subject of course, to well-recognised exceptions) section 2(s) of Act XIV of 1947), categories (i) to (iv); the cases relied on, chiefly are *State of Bombay v. Hospital Mazdoor Sabha* [AIR 1960 SC 610], *Banerji v. Mukherjee* [AIR 1953 SC 58] and *Nagpur Corporation v. Its Employees* [AIR 1960 SC 675]. These arguments certainly deserve careful consideration at our hands.

(10) We think it is clear that there are two broad grounds upon which the claim of the appellant Union to registration as a Trade Union could be properly resisted. The first ground is inherent to the very constitution of the Union, and the admitted facts of its structure, in relation to a basic principle stressed by the Supreme Court; we do not see how this ground of objection can in any manner be negated. The second ground is more open to controversy, but even here we are inclined to the view that at least as relative to the core of the civil services entrusted with the implementation of the essential and sovereign functions of Government, the ground of objection is valid. But the first ground alone is really sufficient to dispose of the present appeal.

(11) As the learned Advocate-General contends, the word “means” when it occurs in a definition, and occurs without the complementary expression “and includes”, is restrictive and explanatory in character. The matter was put thus by Lord-Esher M. R. in *Gough v. Gough*, 1891-3 QB 665, at p. 674:

It is a hard and fast definition, and the result is that you cannot give any other meaning to the word landlord in the Act than that which is mentioned in the definition.

Also see Burrows – *Words and Phrases*, Vol. 3, page 347, and page 49 of Supplement, where Canadian case-law on the matter is cited. Hence, the word “workmen” as occurring in the Trade Unions Act, means “all persons employed in Trade or industry” without any other criterion or reference. The question therefore is whether such persons as Sub Magistrate in the Judiciary, Tahsildars, Officers of the Treasuries and Home department of Government, who are all members of the appellant-Union according to its constitution, could, by any stretch of imagination, be regarded as “workmen employed” in “trade” or “industry”. Learned Counsel for the appellant Union (Sri Ramachandran) draws our attention to the observation of Lord Wright in *National Association of Local Govt. Officers v. Bolton Corporation* [1943 AC 166], to the effect that:

Indeed Trade is not only in etymological or dictionary sense, but in the legal usage, a term of the widest scope.

He points out that in (AIR 1960 SC 610), a hospital subsidised and run by Government was held to be “industry” within the scope of the wide definition of section 2 (j) of the Industrial Disputes Act. But this very case furnishes us with a point of departure in the direction of excluding the core of the civil services from the definition of “workmen”.

However wide the term “trade” might be, in all the authorities cited before us, the Supreme Court has approved of the dictum that those activities of the Government which should be properly described as regal or sovereign activities were outside the scope of “industry”,

“These are functions which a constitutional Government can and must undertake for governance, and which no private citizen can undertake” (AIR 1960 SC 610 at p. 615). Their Lordships also quoted the reference of Lord Watson in *Coomber v. Justices of Berks*, [(1883) 9 AC 61] to “the primary and inalienable functions of a Constitutional Government.” Again, the dicta of Issacs, J., in *Federated State School Teachers’ Association of Australia v. State*

of Victoria, [(1929) 41 CLR 569], were quoted with approval by the Supreme Court in AIR 1960 SC 675, namely,

Regal functions are inescapable, and inalienable. Such are the legislative power, the administration of laws, the exercise of the judicial power.

The Supreme Court added –

It could not have been, therefore, in the contemplation of the Legislature to bring in the regal functions of the State within the definition of “industry” and thus confer jurisdiction on industrial courts to decide disputes in respect thereof.

Also see the observations of this Court in *Govindarajulu Naidu v. Secy. of State* [AIR 1927 Mad 689], repelling an argument based on the wording in clause 12 of the Letters Patent, that the business of Government being to govern, Government must also be deemed, within the meaning of the section, to carry on business at its head-quarters. This court observed :

The business intended by the section is a commercial business and not a business of State or Government.

(12) But if this criterion is to be applied, it is evident that the very basis of the structure of the appellant Union would exclude its registration as a Trade Union. The appellant Union purports to include among its members Sub Magistrates of the Judiciary, Tahsildars entrusted with the powers of enforcement of the tax-machinery (Revenue Recovery Act etc.), officers in charge of Treasuries and Sub-treasuries officers of civil court establishment, and of the Home Department of Government. It is impossible to contend that these are not civil servants engaged in the tasks of the sovereign and regal aspects of Government, which are its inalienable functions; they cannot be included within the definition of “workmen” in an “industry” to whom either section 2 (g) or 2 (h) of the Trade Unions Act can apply. Learned counsel points out that the Association equally includes members of the State Transport organisation, the Cinchona factory of Government, etc., who could well be regarded as person in an “industry” since these are specific industrial undertakings of Government, certainly not part of its essential and regal functions. This may well be so. As the learned Advocate-General has conceded, there are three categories to be regarded here, the middle of which shares the characteristics of the other two, and is hence debatable in its scope.

Firstly, we have the core of the civil services integrated with the inalienable and regal functions of government; those aspects of governmental activities cannot be an “industry”; not can such civil servants be “workmen”. As opposed to this, we have those independent corporations which are quasi-Government agencies, or subsidised undertakings, which are purely industrial in character; these may be such concerns as a Machine Tool factory, Insurance Corporation etc. Here there would appear to be little room for doubt, upon the authority of (AIR 1960 SC 610), that these are industrial undertakings, whose employees are “workmen” at least as defined in the Industrial Disputes Act XIV of 1947. The learned Judge considers that the Trade Unions Act is not in *pari materia* but however this might be, it may be difficult in principle to claim that such employees could not raise “industrial disputes” or form Trade Unions for the conduct of such disputes. But we have the intermediate category, forming as the learned Advocate general phrased it, a kind of penumbra where light and shadow are mixed. Here, differences of view are certainly possible. Certain welfare,

educational or ameliorative departments of Government might or might not be regarded as liable to exclusion; the employees in those departments might or might not hence be regarded as “workmen” in an “industry”. But we have no doubt that the appellant Union, with its wide and unqualified basis cannot claim to consist of “workmen” in an “industry”. Sri Ramachandran argues that as the learned Judge himself has explicitly stated in a portion of his judgment “The test for a Trade Union is its object, and not its personnel. But that does not imply that persons who are not workmen” in an “industry” can form a Trade Union at all; obviously they cannot, for the definitions in sections 2 (g) and 2 (h) could not apply to them, and they could neither raise a “trade dispute” nor form a “trade union”. It is noteworthy that, as we have pointed out-siders can come into the picture only after the registration of the Trade Union. On this clear ground, the appellant Union must fail.

(13) Even upon the second ground, we consider that the appellant Union is not entitled to succeed, at least with reference to the members of the civil services who form part of the essential and regal administrative machinery of Government. Under Article 310 of the Constitution even in this country, the tenure of office of a civil servant is during the pleasure of the Head of the Union or the State, as the case may be, and Article 311 provides for statutory safeguards against certain penalties, such as dismissal removal or reduction in rank. To such a relationship, the concept of “collective bargaining” is utterly inappropriate and foreign. “Collective bargaining” is a right conceded to Labour Organisations within the contractual field of the employer and employee relationship. It would become a grotesque anomaly that if civil services, for instance, were permitted to raise a ‘trade dispute’ with regard to the dismissal of a civil servant it may be for activities against the State itself, and at the same breath to claim that the constitutional safeguards under Article 311, which are wholly irrelevant to the field of contract and to the employer-labour nexus, should be maintained intact for the benefit of the civil services. Hence, whatever might be the developments in the United Kingdom, it is difficult for us to conceive of “collective bargaining” as governing the State in its relations to civil services. It is not necessary for us to express any view whether, in the event of the employee of those branches of Government, which do partake of the character of “industry” organising themselves into an Association of this kind, they would be eligible for registration as a trade Union, or otherwise.

(14) We are therefore of the view, on a careful consideration of the grounds urged before us, that the order of the learned Judge (Ramachandra Iyer, J.,) was correct, and that this appeal has to fail. We accordingly direct that it be dismissed but, under the circumstances, without costs.

* * * *

In Re Inland Steam Navigation Workers' Union

AIR 1936 Cal. 59

C.J. DERBYSHIRE, J. – This matter comes to us by way of appeal from the Registrar of Trade Unions for Bengal. The appeal is brought under S. 11, Trade Unions Act of 1926.

In the petition which brings the matter before us it is stated that on 8th March 1935 a meeting of the employees of all Inland Steamer Services in the Province of Bengal was held at Jorabagan Park in the town of Calcutta and the employees assembled resolved to form a Union in the name of “Inland Steam Navigation Workers’ Union” and the said Union was formed on the date. It is also stated in para 2 that the rules of the said “Inland Steam Navigation Workers’ Union” were so framed as to enable all employees of all Inland Steamer Services in India to become members of the said Union and the subscription was fixed on a monthly basis. Para 3 states that thereafter, on the 26th March 1935, an application was filed before the Registrar of Trade Unions for registration of the said Union under the provisions of the Indian Trade Unions Act, 1926. Para 4 states that thereupon, on the 16th May 1935, the Registrar refused to register the Union and passed the following order:

The application below purports to be an application for registration under the Indian Trade Unions Act, 1926, on behalf of a Union calling itself the Inland Steam Navigation Workers’ Union. A few days before this application was filed, the General Secretary of this Union addressed the Government of Bengal in a letter dated 22nd March 1935 and stated that he had been directed by the general body of the Inland Steam Navigation Workers’ Union, formerly known as R.S.N. and I.G.N. and Ry. Workers’ Union, to approach Government and request that the notification under S. 16, Criminal Law Amendment Act, 1908, declaring the R.S.N. and Ry. Workers’ Union an unlawful association might be withdrawn. The rules and the constitution of the so-called Inland Steam Navigation Workers’ Union are for practical purpose identical with those of the banned Union: the principal officers are common to both and in view of the declaration in the Union’s letter of 22nd March 1935 that this Union was formerly known as R.S.N. and L.G.N. and Ry. Workers’ Union, I have no hesitation in finding that the present application is an attempt to have the Union which was registered on 18th September 1934 and No. 62 and thereafter declared an unlawful association registered under a new name. The application is accordingly refused.

The letter that is referred to by the Registrar is headed Inland Steam Navigation Workers’ Union, Head Office, 209, Cornwallis Street, Calcutta, dated 22nd March 1935, addressed to Sir John Woodhead, Esq., Chief Secretary to the Government of Bengal,

Respected Sir,

Unlawful bodies.

I have been directed by the general body of the Inland Steam Navigation Workers’ Union to approach your good self with the following few lines for your kind information and necessary order:

That the R.S.N. and I.G.N. and Ry. Workers' Union was organised by me in September last 1934.

That within a short period it had enrolled about 6,000 members and the majority of them are clerks.

That 98 percent members of the Executive Committee including the president belonged to the active service of industry.

That myself was the General Secretary and Mr. S.N. Banerji was one of the Vice-Presidents of the Union who had no connection with any Communist Party in India or abroad.

That except myself, Banerji and few members of the Union were ever allowed to deliver speeches in the meeting of the said Union.

That the so-called communist had no hands or any connection with this particular Union.

That this Union had no connection with Communist International nor its object preached or methods adopted.

That this Union had no touch with the peasants' movement.

That this Union had never received any financial help from outside nor from any other party in India.

That this Union approached on several occasions the Government Officials and Labour Commissioner to secure redress of the steamer employees.

That this Union submitted an application for a Board of Conciliation: vide Trade Disputes Act of 1929.

That this Union never carried out any programme of mass revolution nor advocated militant communist methods.

That on the 10th March last in the protest meeting neither myself nor Mr. Banerji made any sort of violent speeches which might be in the record of the Police Report.

That Mr. Celson, Commissioner of Police, is personally known to me for the last eight years who can speak well of me.

Under the circumstances, when the Government of India have expressed their desire to lift the ban on genuine Trade Unions, should we not get its advantage?

A favourable decision will highly oblige.

I have the honour to be,

Sir,

(Sd.) K.C. Mitra

Thereafter, the present appellant endeavoured to open the matter with the Registrar of Trade Unions with a view to secure registration of this Trade Union amplifying the letter that I have read with arguments to show that the appellants were and are Trade Unions different from the one declared to be unlawful by the Government. These arguments were not successful as on 24th May the Registrar of Trade Unions, Bengal, wrote back that he was not prepared to revise the orders that he had made in his letter of 16th May. From that order the appellants have appealed under the provisions of the Act above cited to this Court. This is the

first appeal of its kind which has come before this Court. We are in doubt as to whether the matter ought to be dealt with by a single Judge on the original side or by two Judges sitting here in what is ordinarily called an appellate Court. We directed the matter to come before us. It may be that in future such appeals from the Registrar of Trade Unions in matters of this kind will be directed to be taken by a single Judge sitting alone so that if it should be necessary, evidence can be taken. Now the first thing that strikes me is that the Registrar relied on a letter which was written by the Secretary of the appellant Union to Sir John Woodhead as showing that this Union was, for all practical purposes, the same as the I.G.N. Union which had been declared to be unlawful under S. 16, Criminal Law Amendment Act. He appears to have acted on that letter without giving the appellant any notice of it or without giving them any opportunity of dealing with the statements therein set out.

In my view, if the Registrar was going to rely upon that letter he ought to have brought it to the notice of the appellants before he acted on it and given them an opportunity to say anything that they had to say with regard to it. It is quite true that after he had given the decision the matter was raised again and the appellants were given an opportunity of saying what they had to say. But that is not enough. Such opportunity ought, in my view, to have been given before the Registrar considered that letter – if indeed he ought to have considered that letter at all. The office of the Registrar of Trade Unions is one created by the Statute of 1926 and the functions which the Registrar has to perform are prescribed by that Act. By that Statute, in S. 2(h), Trade Union is defined, and it is defined to be any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more Trade Unions. Then there is a proviso which does not come in in this case at all. S. 4 of the Act provides for mode of registration; S. 5 deals with application for registration; S. 6 prescribes provisions to be contained in the rules of a Trade Union; S. 7 empowers the Registrar to call for further particulars and to require alteration of name; S. 8 provides that the Registrar on being satisfied that the Trade Union has complied with all the requirements of this Act in regard to registration, shall register the Trade Union by entering in a register, to be maintained in such form as may be prescribed, the particulars relating to the Trade Union contained in the statement accompanying the application for registration. S. 9 prescribes the form of the certificate of registration; S. 10 deals with cancellation of registration. S. 15 sets out all the objects on which the general funds of the Union may be spent. S. 16 deals with the constitution of a separate fund for political purposes. S. 17 deals with criminal conspiracy in trade disputes. S. 18 deals with legal proceedings and other suits in certain cases. S. 22 prescribes the proportion of officers to be connected with the industry. S. 23 deals with the change of name of the Trade Union. S. 24 deals with amalgamation of Trade Unions; S. 27 deals with the dissolution of Trade Unions. S. 28 deals with the returns to be made by Trade Unions, S. 29 gives the Local Government, subject to the control of the Governor-General-in-Council, powers to make regulations for the purpose of carrying into effect the provisions of the Act. Under S. 29 in the Province of Bengal regulations have been made which are called Trade Union Regulations of 1927. They make provisions for various ministerial acts and duties to be carried on in connection with the registration and the carrying on and rendering of accounts and returns of Trade Unions.

Now it has been said on behalf of the Registrar that he was quite right in refusing to register this Union. It is said that he came to the conclusion on the facts before him that this Union was really the I.G.N. Union under a different name. The I.G.N. Union had been declared to be an unlawful Association. Therefore he was justified in refusing to register this Union. IN my view, the Registrar in taking up that attitude is wrong. The functions of the Registrar are laid down in S. 8.

The Registrar on being satisfied that the Trade Union has complied with all the requirements of this Act in regard to registration shall register the Trade Union....

Then the prescribed form is set out. The new Union may or may not be a continuation of the other Union or its successor. Whether the new Union is or is not the same as, or successor to the old Union, depends on evidence. Until further evidence is forthcoming in my view it is impossible to say whether the new Union is or not the same as the old Union or the successor to the old Union. In my view, the duties of the Registrar were to examine the application and to look at the objects for which the Union was formed. If those objects were objects set out in the Act, and if those objects did not go outside the objects prescribed in the Act and if all the requirements of the Act, and the regulations made thereunder had been complied with it was his duty, in my view, to register the Union. If at sometime that Union is deemed by those who have the power to deal with the matter to be an unlawful association within S. 16, Criminal Law Amendment Act this Union can be proscribed as an unlawful association in the same way as any other body. But in my view the Registrar is not, at this stage, entitled to go into that question; his functions in my view are limited to seeing that the requirements of the Act have been complied with. We have not before us the necessary particulars to decide whether this Trade Union should be registered, and I am of opinion that this appeal should be allowed and the matter should be sent back to the Registrar for him to consider the question as to whether the requirements of the Act, and the regulations made thereunder, with regard to registration, have been complied with, or not. If, on the face of the application, the objects and the provisions for carrying them out are within what is allowed by the Act and the requirements as to registration have been complied with, he should register; if not, he should decline to register. We think, in the circumstances, there should be no order as to costs on either side.

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***The Food Corporation of India Staff Union v. Food Corporation of
India & Ors***

AIR 1995 SC 1344

KULDIP SINGH, B.L. HANSARIA, S.B. MAJUMDAR, JJ.- 1. Collective bargaining is the principal *raison d'être* of the trade unions. However, to see that the trade union, which takes up the matter concerning service conditions of the workmen, truly represents the workmen employed in the establishment, the trade union is first required to get itself registered under the provisions of Trade Unions Act, 1926. This gives a stamp of due formation of the trade union and assures the mind of the employer that the trade union is an authenticated body, the names and occupation of whose office bearers also become known. But when in an establishment, be it an industry or an undertaking, there are more than one registered trade unions, the question as to with whom the employer should negotiate or enter into bargaining assumes importance, because if the trade union claiming this right be one which has as its members minority of the workmen/employees, the settlement, even if any arrived between the employers and such a unions, may not be acceptable to the majority and may not result in industrial peace. In such a situation with whom the employers should bargain, or to put it differently who should be the sole bargaining agent, has been a matter of discussion and some dispute. The 'check off system' which once prevailed in this domain has lost its appeals; and so, efforts are on to find out which other system can foot the bill. The method of secret ballot is being gradually accepted. All concerned would, however, like to see that this method is so adapted and adjusted that it reflects the correct position as regards membership of the different trade unions operating in one and the same industry, establishment or undertaking.

2. In the appeal at hand, the Food Corporation of India (FCI) and the unions representing the workmen have agreed to follow the "secret ballot system" for assessing the representative character of the trade unions. We have, however, been called upon to lay down as to how the method of secret ballot should be tailored to yield the correct result. Keeping in view the importance of the said matter, an order was passed as early as on November 22, 1985 to issue notice and hear all the major all India trade union organizations on this aspect. Pursuant to this notice some trade unions' organizations have appeared; and we have heard the learned counsel representing them, so also Shri Thakur, learned senior counsel appearing for the appellants.

3. Shri Khera appearing for one of the trade unions has brought to our notice instruction No. 25 of 1980 dated 18.12.80 issued by the Office of the Chief Labour Commissioner, Ministry of Labour, Government of India. This communication styled as 'Memorandum' has stated that on receipt of request either from the management or union for recognition of the union for the purpose at hand, its eligibility for recognition is first required to be examined, as stated in paragraph 3 in which mention has been made about collection of some preliminary data. After this has been done, the exercise of determination of the strength of all eligible unions is

undertaken. This is decided through secret ballot. The Memorandum has laid down a detailed procedure in this regard.

We direct that the following norms and procedure shall be following for assessing the representative character of trade unions by the "secret ballot system":

(i) As agreed to by the parties the relative strength of all the eligible unions by way of secret ballot be determined under the overall supervision of the Chief Labour Commissioner (Central) (CLC).

(ii) The CLC will notify the Returning Officer who shall conduct the election with the assistance of the FCI. The Returning Officer shall be an officer of the Government of India, Ministry of Labour.

(iii) The CLC shall fix the month of election while the actual date/dates of election shall be fixed by the Returning Officer.

(iv) The Returning Officer shall require the FCI to furnish sufficient number of copies of the lists of all the employees/works (category III and IV) governed by the FCI (Staff) Regulations, 1971 borne on the rolls of the FCI as on the date indicated by the CLC. The list shall be prepared in the proforma prescribed by the CLC. The said list shall constitute the voters list.

(v) The FCI shall display the voters list on the notice boards and other conspicuous places and shall also supply copies thereof the each of the union for raising objections, if any. The unions will file the objections to the Returning officer, within the stipulated period and the decision of the Returning Officer shall be final.

(vi) The FCI shall make necessary arrangement to :

(a) give wide publicity to the date/dates of election by informing the unions and by affixing notices on the notice board and also at other conspicuous places for the information of all the workers;

(b) print requisite number of ballot papers in the proforma prescribed by the CLC incorporating therein the names of all the participating unions in an alphabetical order after ascertaining different symbols of respective unions ;

(c) the ballot papers would be prepared in the proforma prescribed by the CLC in Hindi/English and the concerned regional language;

(d) set up requisite number of polling stations and booths near the premises where the workers normally work; and

(e) provide ballot boxes with requisite stationery, boards, sealing wax etc.

(vii) The Returning officer shall nominate Presiding Officer for each of the polling station/booth with requisite number of polling assistants to conduct the election in an impartial manner. The

Presiding Officers and the polling assistants may be selected by the Returning Officer from amongst the officers of the FCI.

(viii) The election schedule indicating the dates for filing of nominations, scrutiny of nominations papers, withdrawal of nominations, polling, counting of votes and the declaration of results, shall be prepared and notified by the Returning Officer in consultation with the FCI. The election schedule shall be notified by the Returning Officer well in advance and at

least one month's time shall be allowed to the contesting unions for canvassing before the date of filing the nominations.

(ix) To be eligible for participating in the election, the unions must have valid registration under the Trade Unions Act, 1926 for one year with an existing valid registration on the first day of filing of nomination.

(x) The Presiding Officer shall allow only one representative to be present at each polling station/booth as observer.

(xi) At the time of polling, the polling assistant will first score out the name of the employee/workman who comes for voting, from the master copy of the voters' list and advise him thereafter to procure the secret ballot paper from the Presiding Officer.

(xii) The Presiding Officer will hand over the ballot paper to the workman/employee concerned after affixing his signatures thereon. The signatures of the workman/employee casting the vote shall also be obtained on the counterfoil of the ballot paper. He will ensure that the ballot paper is put inside the box in his presence after the voter is allowed to mark on the symbol of the candidate with the inked rubber stamp in camera. No employee/workman shall be allowed to cast his vote unless he produces his valid identity card before the Presiding Officer concerned. In the event of non production of identity card due to any reason, the voter may bring in an authorization letter from his controlling officer certifying that the voter is the bona fide employee of the FCI.

(xiii) After the close of the polling, the Presiding Officer shall furnish detailed ballot paper account in the proforma prescribed by the CLC indicating total ballot papers received, ballot papers used, unused ballot papers available etc. to the Returning Officer.

(xiv) After the close of the polling, the ballot boxes will be opened and counted by the Returning Officer or his representative in the presence of the representative of each of the unions. All votes which are marked more than once, spoiled, cancelled or damaged etc. will not be taken into account as valid votes but a separate account will be kept thereof.

(xv) The contesting unions through their representatives present at the counting place may be allowed to file applications for re-counting of votes to the Returning Officer. The request would be considered by the Returning Officer and in a given case if he is satisfied that there is reason to do so he may permit recounting. However, no application for recounting shall be entertained after the results of the votes are declared.

(xvi) The result of voting shall be compiled on the basis of valid votes polled in favour of each union in the proforma prescribed by the CLC and signatures obtained thereon from the representatives of all the unions concerned as a proof of counting having been done in their presence.

(xvii) After declaring the results on the basis of the votes polled in favour of each union by the

Returning Officer, he will send a report of his findings to the CLC.

(xviii) The union/unions obtaining the highest number of votes in the process of election shall be given recognition by the FCI for a period of five years from the date of the conferment of the recognition.

(xix) It would be open to the contesting unions to object to the result of the election or any illegality or material irregularity which might have been committed during the election. Before the Returning Officer such objection can only be raised after the election is over. The

objection shall be heard by the CLC and dispose of within 30 days of the filing of the same. The decision of the CLC shall be final subject to challenge before a competent court, if permitted under law.

It would be open to the CLC to deal with any situation not covered by the procedure detailed above. He may do so in consultation with the returning officer and the FCI.

We direct the CLC and the FCI to hold the elections in accordance with the procedure prescribed by this order. This may be done before April 30, 1995. The appeal and the writ petition are disposed of in the above terms. No costs.

Topic- 03: Immunities- Criminal and Civil

R.S. Ruikar v. Emperor

AIR 1935 Nag. 149

J.C. GRILLE, J. – This is an application in revision by R.S. Ruikar who has been convicted of the abetment of the offence of molestation defined in S. 7, Criminal Law Administration Act (23 of 1932). He was sentenced to six months' rigorous imprisonment, and the sentence was upheld on appeal. The facts found are as follows: The Nagpur Textile Union of which the applicant is the President had determined on a strike of textile workers in Nagpur, the ground being that certain conditions in the terms of settlement of a strike in the previous year 1933 had been evaded by the Empress Mills in Nagpur. The strike was ordered, but did not at first meet with the response which the union desired and consequently a system of picketing was inaugurated. On 3rd, 4th and 6th May 1934 the applicant made speeches supporting the strike and in the course of his speeches advocated and encouraged the picketing of the mills and called for volunteers to carry on the picketing. On the morning of 5th May as a result of a complaint made by some of the strike committee that two women picketers had been harassed by the police and driven away, the applicant brought his wife to one of the mill gates and posted her there with instructions to beat, with her slippers, any one who interfered with her. Charges were framed under four heads, three relating to the speeches delivered on 3rd, 4th and 6th May 1934 and the fourth relating to the incident of the abetment of picketing by his wife on 5th May. Proceedings were taken against the applicant on 7th May under S. 107, Criminal P.C., and it is admitted that after that there were no further activities on his part. He was not however arrested for the offences of which he has been charged and of which he has been convicted until the 16th May. The proceedings under S. 107, Criminal P.C., are in abeyance.

The principal contention on behalf of the applicant is that on the facts found against him in trial and in appeal no offence has been committed as S. 7, Criminal Law Amendment Act (23 of 1932) can have no application to purely industrial disputes.

In order to support the view that S. 7, Criminal Law Amendment Act, has no reference to picketing in the course of trade disputes, I am asked to refer to the statement of objects and reasons accompanying the Criminal Law Amendment Act on its introduction, and the decision in *Shantanand Gir v. Basudevanand Gir* [AIR 1930 All 225] has been cited as authority for the proposition that such reference is permissible, and old cases from the C.P. Law Reports have been cited to show that Judges have made references to Statement of Objects and Reasons in the past for the purpose of interpreting the law. The only other case cited by the applicant is *Administrator General of Bengal v. Premal Mullick* [AIR 1922 Cal 788] and it is contended that their Lordships of the Privy Council, when holding that proceedings of the legislature in passing a statute are excluded from consideration on the judicial construction of Indian statutes, thereby implied that a reference to the Statement of Objects and Reasons is permissible. I am unable to read any such implication in the judgment of their Lordships. The latest C.P. case cited was *Balaji v. Govinda* [(1888) CPLR 111] and in that, as in the previous cases, there was doubt as to the exact meaning or intention of a particular section. In *Shantanand Gir v. Basudevanand Gir* which the applicant cites, the

Judges of the High Court of Allahabad were equally divided on the question whether it was permissible to refer to the Statement of Objects and Reasons appended to an Act as introduced and published and the three learned Judges who held that such a reference was permissible qualified their observations by the limitation that such a reference could be made when there was an ambiguity. As the wording of the section under consideration is entirely plain and unambiguous, it seems to me unprofitable and unnecessary to enter into a discussion of the question whether such a reference is permissible at all. The section itself makes no limitation in respect of the parties disputing or the nature of the disputes giving rise to a situation where picketing is employed, and from the wording of the section itself I am unable to see that its application is anything but universal.

It is next contended that a perusal of the Act as a whole without any reference to the Statement of Objects and Reasons would indicate that S. 7, Criminal Law Amendment Act is to be utilised only on occasions of combating undertakings which are subversive to the Government. Now it is true that the bulk of the sections in the Criminal Law Amendment Act (23 of 1932) do refer to activities subversive to Government and that the Act is a consolidation of some ordinance which had been issued from time to time and which the legislature considered necessary to embody as part of the law, but that in itself does not show that S. 7 cannot be of universal application. There are other sections which are equally of universal application. I cite S. 10 of the Act which gives the Local Government power to declare offences committed under certain sections non-bailable and cognizable despite the provisions of the Criminal Procedure Code. The Local Government may publish the requisite notification required by this section at any time when it considers that such proclamation is necessary in the interests of law and order, but once such a notification has been issued the section would become operative in law whether the offences falling under these sections were committed with a subversive object or not. The same criterion would apply to S. 7 of the Act, the effectiveness of which depends on the publication of the notification by the Government that the section shall come into force. The requisite notification was published in August 1933.

It is urged that at the time the Criminal Law Amendment Act was passed by the Central Legislature, assurances were given that S. 7 would not be employed in the case of industrial disputes. In interpreting the section this Court is precluded from considering any statements made in the Legislative Assembly or elsewhere on behalf of Government. It is no duty of the Courts of law to examine, criticise or interpret anything that may be said on behalf of Government in debate or elsewhere, and it is beyond the competence of this Court to examine the correctness of the applicant's assertions. The duty of the Court is to interpret the law as enacted. Had it been the intention of the legislature to exclude the application of S. 7 from cases arising out of industrial disputes, it would have said so in explicit terms, more particularly in view of the nature of the majority of the other sections of the Act which have their origin in other ordinances. It is next argued that the ordinance out of which S. 7 arose was enacted with the particular purpose of combating the Civil Disobedience Movement. It is no doubt true that this was the occasion, but neither the ordinance nor the present Act lays down any limitation as to the circumstances in which molestation becomes an offence. At the time of the Civil Disobedience Movement of 1930 certain persons discovered a gap in the Indian Penal Code whereby they were enabled to commit acts of intimidation which were not

punishable by law. Proceedings taken to remedy this deficiency were not directed personally against such persons who were influenced by motives hostile to Government, but remedied the defect in law which left open the way for any person who so chose to bring unwarranted pressure on another person whatever his motive might be. The absence of any provision preventing molestation was recognised as a definite lacuna in the Criminal law and an enactment was made to remedy it. That the defect was discovered by the ingenuity of persons taking part in the Civil Disobedience Movement does not limit the universal applicability of the remedy, and I am unable to read, as the applicant desires me to read the opening word of the section “whoever” as “whoever” may be disaffected towards the Government.

The next contention is that there is a definite conflict between S. 7, Criminal Law Amendment Act and the Trade Unions Act of 1926. It is contended that the valuable right given to Trade Unions to declare a strike and their immunity from liability for criminal conspiracy or to civil suits in connection with the furtherance of a strike is taken away if S. 7, Criminal Law Amendment Act, is held to be applicable to trade disputes. I am unable to see any conflict. Trade Unions have the right to declare strike and to do certain acts in furtherance of trade disputes. They are not liable civilly for such acts or criminally for conspiracy in the furtherance of such acts as Trade Unions Act permits, but there is nothing in that Act which apart from immunity from criminal conspiracy allows immunity from any criminal offences. Indeed any agreement to commit an offence would, under S. 17, Trade Unions Act, make them liable for criminal conspiracy. S. 7, Criminal Law Amendment Act, is part of the Criminal law of the land and an offence committed as defined in that section is an offence to which the concluding sentence of S.17, Trade Unions Act, applies as much as it would do to an agreement to commit murder. The applicant has cited several passages from Maxwell on the Interpretation of Statutes which are all eminently acceptable propositions of law, but have no application to the case in hand. S. 7, Criminal Law Amendment Act defines a criminal offence of universal application without restriction and it must be interpreted according to its plain and obvious meaning, and as it defines a criminal offence it is not in conflict with the provisions of the Trade Unions Act, which remains unimpaired by S. 7, Criminal Law Amendment Act. In abetting the commission of this offence, an offence which was undoubtedly committed, the applicant has been correctly convicted.

* * * * *

Rohtas Industries Staff Union v. State of Bihar

AIR 1963 Pat. 170

RAMASWAMI, C.J. – In Miscellaneous Judicial Case No. 498 of 1959, petitioner No. 1 is a registered trade union, called the Rohtas Industries Mazdoor Sangh. Petitioners Nos. 2 and 3 are employees of respondent No. 2, the Rohtas Industries Limited, which have many units of production at Dalmianagar, namely, cement, paper, sugar, etc. etc., and a large number of workers are employed therein. For disputes regarding non-payment of bonus and non-implementation of Shree Jee Jee Bhoy's award, there was a strike notice served by petitioner No. 1 on respondent No. 2. The strike was started in the factories of the Rohtas Industries Limited on the 3rd September, 1957, and it was called off on the 3rd October, 1957, on the basis of an agreement between the management and the workers dated the 2nd October, 1957.

By this agreement the parties agreed to refer certain matters in dispute to arbitration. Under Section 10-A of the Industrial Disputes Act the Government of Bihar published the arbitration agreement in the Bihar Gazette. The arbitration agreement is to the following effect:

“Agreement under Section 10-A of the Industrial Disputes Act, 1947, between Rohtas Industries Limited and its workmen.

Representing Employers – Rohtas Industries, Ltd., Dalmianagar.

Representing Workmen – (1) Rohtas Industries Mazdoor Sangh, Dalmianagar;
(2) Rohtas Industries Staff Union, Dalmianagar;
(3) Dalmianagar Staff Employees' Union, Dalmianagar.
(4) Dalmianagar Mazdoor Seva Sangh, Dalmianagar.

It is hereby agreed between the parties to refer the following industrial disputes to the arbitration of Shri J.N. Mazumdar, Ex. Judge, Calcutta High Court, and Ex. Chairman, Labour Appellate Tribunal of India, and Shri R.C. Mitter, Ex. Judge, Calcutta High Court and Ex. Chairman, Labour Appellate Tribunal of India:

(i) Specific matters in dispute – Issues arising out of paragraph 7 of the Agreement dated 2nd October, 1957, reproduced below:

“The employees claim for wages and salaries for the period of strike and the Company's claim for compensation for losses due to strike shall be submitted for arbitration of Shri J.N. Mazumdar and Shri R.C. Mitter, Ex. High Court Judges and Ex. Members of the Labour Appellate Tribunal of India as Joint Arbitrators and their decisions on the two questions shall be final and binding on all the parties.”

(ii) Details of the parties to the dispute – The Rohtas Industries Ltd., Dalmianagar and their workmen.

(iii) Name of the Unions representing the workmen – (1) Rohtas Industries Mazdoor Sangh, Dalmianagar, (2) Rohtas Industries Staff Union, Dalmianagar, (3) Dalmianagar Staff Employees' Union, Dalmianagar, and (4) Dalmianagar Mazdoor Seva Sangh, Dalmianagar.

(iv) Total number of workmen employed in Rohtas Industries Limited – About 5,500.

(v) Estimated number of workmen likely to be affected by the dispute – About 5,500.”

According to clause 7 of the agreement, the claim of the workers for wages and salaries for the period of the strike and the claim of the Company for compensation for loss of production due to strike were to be submitted for arbitration of Shri J.N. Mazumdar and Sri R.C. Mitter, former High Court Judges and Ex. Members of the Labour Appellate Tribunal of India, as joint arbitrators. On the 20th April, 1959, the arbitrators gave an award and sent the same for publication to the Government of Bihar. In this award the arbitrators decided all the issues against the trade unions and held that compensation should be paid by the workers who had gone on strike to the Rohtas Industries Limited to the extent of Rs. 6,90,000/- and to the Ashoka Cement Works Limited to the extent of Rs. 80,000/-. The arbitrators also decided that the cost of arbitration should be divided equally between the employers and the trade unions concerned.

The petitioners have obtained a rule from the High Court asking the respondents to show cause why the award of the arbitrators dated the 20th April, 1959, should not be quashed by a writ in the nature of certiorari under Article 226 of the Constitution. Cause has been shown by the Additional solicitor General of India on behalf of respondent No. 2, to whom notice of the rule was ordered to be given. On behalf of respondent No. 1, the State of Bihar, the Additional Government Pleader, supported the contention of the petitioners that the award of the arbitrators is ultra vires and illegal in so far as it directs compensation to be paid by the workmen going on strike to the management of the company for loss of production and business due to the strike.

(2) In Miscellaneous Judicial Case No. 475 of 1959, petitioner No. 1 is a registered trade union, called the Rohtas Industries Staff Union, and respondents Nos. 2, 3, 3, 5 and 6 are the Rohtas Industries Limited, Ashoka Cement Limited, Sri Krishna Gyanoday Sugar Limited, Ashoka Marketing Limited and Bharat Collieries Limited. The material facts in this case are identical to those in Miscellaneous Judicial Case No. 498 of 1959, and the question of law presented for determination in this case is of the same character.

(3) It was submitted on behalf of the petitioners that compensation by the workmen to the employer has no direct connection with the employment or non-employment or the condition of employment of any workman and so does not come within the definition of Section 2(k) of the Industrial Disputes Act.

The opposite view point was presented by the Additional Solicitor General and it was contended that the definition of Section 2(k) of the Industrial Disputes Act was wide enough to cover the question of compensation to be paid to the employer by the workmen for the loss caused to business by the launching of the strike. Reference was made by the Additional Solicitor General to the decision of the Federal Court in *Western India Automobiles Association v. Industrial Tribunal, Bombay* [AIR 1949 FC 111], where it was held by the Federal Court that the question of reinstatement of a workman is covered by the definition of “industrial dispute” in Section 2(k) of the Industrial Disputes Act. I consider that there is

much force in the contention put forward on behalf of the petitioners that the question of compensation payable by the workmen to the employer for the loss caused by a strike does not come within the purview of Section 10-A of the Industrial Disputes Act, and such a claim of the employer cannot fall within the definition of “industrial dispute” under Section 2(k) of the statute.

It should be noticed that Section 25-C of Chapter VA provides for compensation to workmen who are laid-off. Section 25-FF similarly provides for compensation to workmen in case of transfer of understandings. Section 25-FFF in the same manner provides for compensation in case of closing down of undertakings. There is no similar provision in the Act for compensation payable to employers by workmen for interference with the business. It is true that the language of section 2(k) is wide, but it is a well established canon of construction that the language of any section must be interpreted in the setting and in the context of other sections of the Act. In other words, the meaning of the section must be subject to the qualifying effect of *subjectae materies*. I do not propose, however, to express any concluded opinion on this question in the present case. I shall proceed on the assumption that the claim of the employers for compensation from the workmen falls within the scope of Section 2(k) of the Industrial Disputes Act, and the reference to arbitration under Section 10-A of the Industrial Disputes Act of this question is *intra vires*.

(4) I shall now consider the main argument addressed on behalf of the petitioners that the award of the Arbitrators is illegal and ultra vires because they committed a mistake of law apparent on the face of the record. It was contended by learned counsel on behalf of the petitioners that the arbitrators were erroneous in holding that the workers had committed the tort of conspiracy and were accordingly liable for paying compensation to the Companies concerned. It was also submitted that the arbitrators had committed an error of law in holding that the workers were not protected by the immunity granted under Section 18 of the Trade Unions Act. It was submitted on behalf of the petitioners that the award of the arbitrators so far as the question of compensation is concerned is vitiated by error of law and must be quashed by grant of a writ in the nature of certiorari under Art. 226 of the Constitution.

(5) The law with regard to the tort of conspiracy is now well established. Conspiracy as a tort must arise from a combination of two or more persons to do an act. It would be actionable if the real purpose of the combination is the inflicting of damage on A, as distinguished from serving the bona fide and legitimate interests of those who so combine and there is a resulting damage to A. In the leading case of *Sorrell v. Smith* [1925 AC 700], Lord Cave, L.C. remarked as follows:

I deduce as material for the decision of the present case two propositions of law which may be stated as follows: (1) A combination of two or more persons wilfully to injure a man in his trade is unlawful and, if it results in damage to him, is actionable, (2) If the real purpose of the combination is, not to injure another, but to forward or defend the trade of those who enter into it, then no wrong is committed and no action will lie, although damage to another ensues. The distinction between the two classes of case is sometimes expressed by saying that in cases of the former class there is not, while in cases of the latter class there is, just cause or excuse for the action taken.

In a subsequent case, *Crofter Hand-woven, Harris Tweed Co. v. Veith* [1942-1 All ER 142] the House of Lords applied the principle of the *Mogul* case [*Mogul S.S. Co. v. Mc Gregor Gov. and Co.*, 1892 AC 25] to labour relations. It was observed by Viscount Simon, L.C. in this case as follows:

(T)he predominant object of the respondents in getting the embargo imposed was to benefit their trade union members by preventing under-cutting and unregulated competition, and so helping to secure the economic stability of the island industry. The result they aimed at achieving was to create a better basis for collective bargaining, and thus directly to improve wage prospects. A combination with such an object is not unlawful, because the object is the legitimate promotion of the interests of the combiners...

In the course of his judgment in the same case, Lord Wright observed as follows:

It cannot be merely that the appellants' right to freedom in conducting their trade has been interfered with. That right is not absolute or unconditional. It is only a particular aspect of the citizen's right to personal freedom, and, like other aspects of that right, is qualified by various legal limitations, either by statute or by common law. Such limitations are inevitable in organized societies, where the rights of individuals may clash. In commercial affairs, each trader's rights are qualified by the right of others to compete. Where the rights of labour are concerned, the rights of the employer are conditioned by the right of the men to give or withhold their services. The right of workmen to strike is an essential element in the principle of collective bargaining.

(6) In the case of a "mixed motive" or a "mixed purpose" for the conspiracy, the test is what is the dominant motive or the dominant purpose of the conspiracy. The test to be applied in a case of this description is – was the dominant motive of the combiners to benefit the funds of the Union or was the dominant motive to cause the injury to the employer? The test is not what is the natural result to the employers of such combined action or what is the resulting damage to the employers, but what is in truth the object in the minds of the workmen when they acted as they did. It is well established that if there is more than one purpose actuating a combination, the liability must depend on ascertaining what is the predominant purpose is.

The matter is clearly put by Viscount Simon, L.C. in 1942-1 All ER 142 as follows:

The test is not what is the natural result to the plaintiff of such combined action or what is the resulting damage which the defendants realise, or should realise, will follow, but what is in truth the object in the minds of the combiners when they acted as they did. It is not consequence that matters, but purpose. The relevant conjunction is not, 'so that,' but 'in order that.' Next, it is to be borne in mind that there may be cases where the combination has more than one 'object' or 'purpose'. The combiners may feel that they are killing two birds with one stone, and, even though their main purpose may be to protect their own legitimate interests notwithstanding that this involves damage to the plaintiffs, they may also find a further inducement to do what they are doing by feeling that it serves the plaintiffs

right. The analysis of human impulses soon leads us into the quagmire of mixed motives, and, even if we avoid the words 'motive', there may be more than a single purpose or object. It is enough to say that, if there is more than one purpose actuating a combination, liability must depend on ascertaining the predominant purpose. If the predominant purpose is to damage another person and damage results, that is tortious conspiracy. If the predominant purpose is the lawful protection or promotion of any lawful interest of the combiners, it is not a tortious conspiracy, even though it causes damage to another person.

(7) In the present case the arbitrators have failed to apply this principle in adjudicating the liability of the workers to pay compensation. It is conceded by the arbitrators that the workers commenced the strike because their demands for payment of bonus had not been complied with. It is also stated by the arbitrators in the award that the reason for the strike was the non-implementation of Shri Jee Jee Bhoy's award with regard to the wages of casual workmen and also non-implementation of the settlement dated 2nd May, 1957. But the arbitrators have said that the strike was resorted to by each of the Unions "for ulterior objects of their own." The arbitrators have not found what were the "ulterior objects" for which the Unions entered into a strike. Even assuming that there were ulterior objects impelling the Unions to enter into a strike, it was the duty of the arbitrators to go into the question as to what was the dominant purpose of the strike and whether the dominant purpose was not promotion of the legitimate interest of the Trade Unions for better wage conditions for the workers concerned. In failing to apply the principle of law laid down by the House of Lords in 1942-1 All ER 42, the arbitrators have misdirected themselves in law, and the award of compensation to the Companies granted by the arbitrators must be quashed on this ground.

(8) I shall then proceed to consider the argument of Counsel for the petitioners that the arbitrators have committed an error of law in holding that the workers were not protected by Section 18(1) of the Trade Union Act, which is to the following effect:

It is manifest that the question whether the strike was legal or illegal under Section 24(1) of the Industrial Disputes Act has no bearing on the question of immunity furnished by Section 18 of the Trade Unions Act.

The view I have expressed is borne out by a comparison of the English law on this point. S. 4 of the Trade Disputes Act, 1906, provides that no action for a tort of any kind shall lie against a trade union so as to charge the union funds. It is also provided by Section 3 of the Act that

An act done by a person in contemplation or furtherance of a trade dispute shall not be actionable on the ground only that it induces some other person to break a contract of employment or that it is an interference with the trade, business, or employment of some other person, or with the right of some other person to dispose of his capital or his labour as he will.

With regard to the interpretation of S. 3 of the Trade Disputes Act it was held by the Court of Appeal in *Dallimore v. Williams and Jesson* [(1914) 30 TLR 432] that if there is an existing trade dispute the act need not be done solely or even honestly in contemplation or furtherance thereof to obtain the protection of that section. It was further held in *Fowler v.*

Kibble [(1922) 1 Ch 487] that an act is not deprived of the protection of S. 3 of the Trade Disputes Act because it is punishable under S. 7 of the Conspiracy and Protection of Property Act, 1875. It is manifest in the present case that the striking workmen are not prevented from taking recourse to the protection of S. 18 of the Trade Unions Act mainly because the strike was illegal under S. 24(1) of the Industrial Disputes Act. It was still the duty of the arbitrators to find whether the strike was undertaken by the workmen in furtherance of a trade dispute within the meaning of S. 18 of the Trade Unions Act.

It was pointed out by the Government Advocate on behalf of the respondents that there was a finding of the arbitrators in paragraphs 21 and 27(c) of the award that the strike was not resorted to in furtherance of a trade dispute. But this finding is vitiated in law because the arbitrators do not say upon what evidence this finding is based. As I have already said, the arbitrators have said in their award that the strike was resorted to because the demand for payment of bonus was not complied with and also because there was non-implementation of Shri Jee Jee Bhoy's award relating to wages of casual workmen. It is true that in paragraph 21 of the award the arbitrators have said that the Unions have resorted to a strike with ulterior objects of their own. But the arbitrators have not mentioned anywhere as to what these ulterior objects were. The arbitrators have not also analysed the question as to whether the predominant purpose of the workmen in resorting to the strike was not the furtherance of a trade dispute. As I have already pointed out, the arbitrators have misdirected themselves in law in holding that the workmen cannot claim immunity under S. 18 of the Trade Unions Act because the strike is illegal under S. 24(1) of the Industrial Disputes Act. I consider that the award of the arbitrators regarding payment of compensation to the employers is vitiated by this fundamental mistake of law.

(9) On behalf of the petitioners learned Counsel submitted that the Companies had no right of civil action for damages against the workers who had taken part in an illegal strike. It was submitted that the only remedy open to the Companies was criminal prosecution under S. 26(1) of the Industrial Disputes Act, which is in the following terms:

26. (1) Any workman who commences, continues or otherwise acts in furtherance of, a strike which is illegal under this 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 both.

The submission of the learned counsel was that special penalty has been attached to the breach of Ss. 23 and 24 of the Industrial Disputes Act, and that remedy is exclusive and the companies have no civil remedy in addition to the remedy expressly provided by the statute.

The opposite view point was put forward on behalf of the respondent-Companies and it was contended that apart from the express penalty provided under S. 26(1) of the Industrial Disputes Act the Companies had a right to civil action for breach of Ss. 23 and 24 of the Act.

The question raised depends upon the intention of the Legislature in the enactment of the Industrial Disputes Act. Was it intended to make the duty imposed upon the employees and the employers by Ss. 23 and 24 of the Act a duty owed to the individuals aggrieved, or was it intended to be a public duty only?

In the approach to this question it is necessary to have regard to certain principles which afford guidance in ascertaining the legislative intent. For example, if a statutory duty is prescribed but no remedy by way of penalty or otherwise for its breach is imposed, it can be assumed that a right of civil action accrues to the person who is damnified by the breach, for, if it were not so, the statute would be wholly ineffective. But “where an Act creates an obligation, and enforces the performance in a specified manner, we take it to be a general rule that performance cannot be enforced in any other manner” (Lord Tenterdoan, C.J. in *Doe D. Rochester v. Bridges* [(1831) 1 B and Ad. 847, 859]. This passage was cited with approval by the Earl of Halsbury, L.C. in *Pasmore v. Oswaldtwistle Urban Council* [1898 AC 387, 394]. But this general rule is subject to exceptions. It may be that, though a specific remedy is provided by the Act yet the person injured has a personal right of action in addition. That depends on the scope of language of the particular statute.

(12) In the application of this principle, it is necessary to consider the scope and object of the Industrial Disputes Act and to ascertain for whose benefit the protection of Sections 22 and 23 are intended. These sections undoubtedly imposed a duty on the employees, but the important question is to whom was the duty owed? Was it intended by the framers of the Act to make the duty one which was owed to the employers, or was it a duty owed to the public? The preamble of the Act stated:

It is expedient to make provision for the investigation and settlement of industrial disputes, and for certain other purposes.

There is nothing in the title or preamble of this Act to suggest that it is a charter for the employers or the employees or that it is enacted solely for the benefit of any particular class of employers or employees. On the contrary, the preamble suggests that the object of the Act is the proper adjustment of relations between capital and labour, preservation of law and order, and the increase of industrial production.

(14) Upon the consideration of the various provisions of the Act it is manifest that the overriding purpose of the Act is the benefit of the community and not the benefit of the employees or the employers. It is true that S. 24 imposes a statutory duty on the employees not to commence or declare an illegal strike. But it is manifest that if there is a breach of this statutory duty on the part of the employees, the employer has no right of Civil action against the employees in default apart from the statutory penalty provided by Section 26(1). Similarly, if the employer declares an illegal lock-out, there is a breach of the statutory obligation created by S. 24, but the employees have no right of civil action. The exclusive remedy open to them is criminal prosecution under Section 26(2) of the Act. For these reasons I hold that the duties imposed by Ss. 22, 23 and 24 of the Act are statutory duties owed by the employees not to the employers concerned but duties owed to the public which can be solely enforced by criminal prosecution under S. 26(1) of the Act. It follows, therefore, that the employers have no right of civil action for damages against the employees participating in an illegal strike within the meaning of S. 24(1) of the Industrial Disputes Act.

(18) For these reasons I hold that the award of the arbitrators in all the five references under Section 10-A of the Industrial Disputes Act must be held to be ultra vires and illegal so far as the arbitrators have granted compensation to the employees by the workmen

participating in the strike for the losses due to the strike. In my opinion the petitioners are entitled to grant of a writ in the nature of certiorari under Article 226 of the Constitution for quashing the award of the arbitrators in all the five references so far as they granted compensation to the employers by the workmen concerned for the losses due to the strike.

(19) I would accordingly allow these applications, but I do not propose to make any order as to costs.

PART-B: INDUSTRIAL DISPUTES

Topic-04: Industry- Conceptual Analysis

Bangalore Water Supply & Sewerage Board v. A. Rajappa

AIR 1978 SC 548

V.R. KRISHNA IYER, J. - 25. The rather zigzag course of the landmark cases and the tangled web of judicial thought have perplexed one branch of Industrial Law, resulting from obfuscation of the basic concept of 'industry' under the Industrial Disputes Act, 1947 (for short, the Act). This bizarre situation, 30 years after the Act was passed and industrialisation had advanced on a national scale, could not be allowed to continue longer. So, the urgent need for an authoritative resolution of this confused position which has survived - indeed, has been accentuated by - the judgment of the six-member Bench in *Safdarjung (Management of Safdar Jang Hospital, New Delhi v. Kuldip Singh Sethi* [AIR 1970 SC 1407]) if we may say so with deep respect, has led to a reference to a larger Bench of this die-hard dispute as to what an 'industry' under Section 2(j) means.

26. Legalese and logomachy have the genius to inject mystique into common words, alienating the laity in effect from the rule of law. What is the common worker or ordinary employer to do if he is bewildered by a definitional dilemma and is unsure whether his enterprise, say, a hospital, a university, a library, a service club, a local body, a research institute, a pinjarapole, a chamber of commerce, a Gandhi Ashram, is an industry at all?

32. Back to the single problem of thorny simplicity: what is an 'industry'? Historically speaking, this Indian statute has its beginnings in Australia, even as the bulk of our *corpus juris*, with a colonial flavour, is a carbon copy of English law. Therefore, in interpretation, we may seek light Australasially, and so it is that the precedents of this Court have drawn on Australian cases as on English dictionaries. But India is India and its individuality, in law and society, is attested by its National Charter, so that statutory construction must be home-spun even if hospitable to alien thinking.

33. The reference to us runs thus:

One should have thought that an activist Parliament by taking quick policy decisions and by resorting to amendatory processes would have simplified, clarified and de-limited the definition of "industry", and, if we may add "workman". Had this been done with aware and alert speed by the Legislature, litigation which is the besetting sin of industrial life could well have been avoided by a considerable degree. That consummation may perhaps happen on a distant day, but this Court has to decide from day to day disputes involving this branch of industrial law and give guidance by declaring what is an industry, through the process of interpretation and re-interpretation, with a murky accumulation of case-law. Counsels on both sides have chosen to rely on *Safdarjung* each emphasising one part or other of the decision

as supporting his argument. Rulings of this Court before and after have revealed no unanimity nor struck any unison and so, we confess to an inability to discern any golden thread running through the string of decisions bearing on the issue at hand.

(T)he chance of confusion from the crop of cases in an area where the common man has to understand and apply the law makes it desirable that there should be a comprehensive, clear and conclusive declaration as to what is an industry under the Industrial Disputes Act as it now stands. Therefore, we think it necessary to place this case before the learned Chief Justice for consideration by a larger Bench. If in the meantime the Parliament does not act, this Court may have to illumine the twilight area of law and help the industrial community carry on smoothly.

34. So, the long and short of it is what is an industry? Section 2(j) defines it:

“industry” means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen.

Let us put it plain. The canons of construction are trite that we must read the statute as a whole to get a hang of it and a holistic perspective of it. We must have regard to the historical background, objects and reasons, international thoughtways, popular understanding, contextual connotation and suggestive subject-matter. Equally important, dictionaries, while not absolutely binding, are aids to ascertain meaning. Nor are we writing on a *tabula rasa*. Since ***Banerji (D.N. Banerji v. P.R. Mukherjee)*** [AIR 1953 SC 58], decided a silver jubilee span of years ago, we have a heavy harvest of rulings on what is an ‘industry’ and we have to be guided by the variorum of criteria stated therein, as far as possible, and not spring a creative surprise on the industrial community by a stroke of freak originality.

37. A look at the definition, dictionary in hand, decisions in head and Constitution at heart, leads to some sure characteristics of an ‘industry’, narrowing down the twilight zone of turbid controversy. An industry is a continuity, is an organized activity, is a purposeful pursuit -- *not* any isolated adventure, desultory excursion or casual, fleeting engagement motivelessly undertaken. Such is the common feature of a trade, business, calling, manufacture - mechanical or handicraft-based - service, employment, industrial occupation or avocation. For those who know English and are not given to the luxury of splitting semantic hairs, this conclusion argues itself. The expression ‘undertaking’ cannot be torn off the words whose company it keeps. If birds of a feather flock together and *noscitur a sociis* is a commonsense guide to construction, ‘undertaking’ must be read down to conform to the restrictive characteristic shared by the society of words before and after. Nobody will torture ‘undertaking’ in Section 2(j) to mean meditation or *musheira* which are spiritual and aesthetic undertakings. Wide meanings must fall in line and discordance must be excluded from a sound system. From ***Banerji*** to ***Safdarjung*** and beyond, this limited criterion has passed muster and we see no reason, after all the marathon of argument, to shift from this position.

38. Likewise, an ‘industry’ cannot exist without co-operative endeavour between employer and employee. No employer, no industry; no employee, no industry - not as a dogmatic proposition in economics but as an articulate major premise of the definition and the

scheme of the Act, and as a necessary postulate of industrial disputes and statutory resolution thereof.

39. An industry is not a futility but geared to utilities in which the community has concern. And in this mundane world where law lives now, economic utilities material goods and services, not transcendental flights nor intangible achievements - are the functional focus of industry. Therefore, no temporal utilities, no statutory industry, is axiomatic. If society, in its advance, experiences subtler realities and assigns values to them, jurisprudence may reach out to such collective good. Today, not tomorrow, is the first charge of pragmatic law of western heritage. So we are confined to material, not ethereal end products.

40. This much flows from a plain reading of the purpose and provision of the legislation and its western origin and the ratio of all the rulings. We hold these triple ingredients to be unexceptionable.

41. The relevant constitutional entry speaks of industrial and labour disputes (Entry 22 List III Schedule VII). The Preamble to the Act refers to 'the investigation and settlement of industrial disputes'. The definition of industry has to be decoded in this background and our holding is reinforced by the fact that industrial peace, collective bargaining, strikes and lock-outs, industrial adjudications, works committees of employers and employees and the like connote organised, systematic operations and collectively of workmen co-operating with their employer in producing goods and services for the community. The betterment of the workmen's lot, the avoidance of outbreaks blocking production and just and speedy settlement of disputes concern the community. In trade and business, goods and services are for the community, not for self-consumption.

42. The penumbral area arrives as we move on to the other essentials needed to make an organized, systematic activity, oriented on productive collaboration between employer and employee, an industry as defined in Section 2(j). Here we have to be cautious not to fall into the trap of definitional expansionism bordering on *reductio ad absurdum* nor to truncate the obvious amplitude of the provision to fit it into our mental mould of beliefs and prejudices or social philosophy conditioned by class interests. Subjective wish shall not be father to the forensic thought, if credibility with a pluralist community is a value to be cherished. "Courts do not substitute their social and economic beliefs for the judgment of legislative bodies". [See *Constitution of the United States of America*, Corwin, p. xxxi]. Even so, this legislation has something to do with social justice between the 'haves' and the 'have-nots', and naive, fugitive and illogical cutbacks on the import of 'industry' may do injustice to the benignant enactment. Avoiding Scylla and Charybdis we proceed to decipher the fuller import of the definition. To sum up, the personality of the whole statute, be it remembered, has a welfare basis, it being a beneficial legislation which protects labour, promotes their contentment and regulates situations of crisis and tension where production may be imperilled by untenable strikes and blackmail lock-outs. The mechanism of the Act is geared to conferment of regulated benefits to workmen and resolution, according to a sympathetic rule of law, of the conflicts, actual or potential, between management and workmen. Its goal is amelioration of the conditions of workers, tempered by a practical sense of peaceful co-existence, to the benefit of both - not a neutral position but restraints on *laissez faire* and concern for the welfare of the weaker lot. Empathy with the statute is necessary to understand not merely its

spirit, but also its sense. One of the vital concepts on which the whole statute is built, is 'industry' and when we approach the definition in Section 2(j), we must be informed by these values. This certainly does not mean that we should strain the language of the definition to import into it what we regard as desirable in an industrial legislation, for we are not legislating *de novo* but construing an existing Act. Crusading for a new type of legislation with dynamic ideas or humanist justice and industrial harmony cannot be under the umbrella of interpreting an old, imperfect enactment. Nevertheless, statutory diction speaks for today and tomorrow; words are semantic seeds to serve the future hour. Moreover, as earlier highlighted, it is legitimate to project the value-set of the Constitution, especially Part IV, in reading the meaning of even a pre-Constitution statute. The paramount law is paramount and Part IV sets out Directive Principles of State Policy which must guide the judiciary, like other instrumentality, in interpreting all legislation. Statutory construction is not a petrified process and the old bottle may, to the extent language and realism permit be filled with new wine. Of course, the bottle should not break or lose shape.

43. We may start the discussion with the leading case on the point, which perhaps may be treated as the mariner's compass for judicial navigation *D. N. Banerji v. P. R. Mukherjee*. But before setting sail, let us map out briefly the range of dispute around the definition.

A definition is ordinarily the crystallisation of a legal concept promoting precision and rounding off blurred edges but, alas, the definition in Section 2(j), viewed in retrospect, has achieved the opposite. Even so, we must try to clarify. Sometimes, active interrogatories tell better than bland affirmatives and so marginal omissions notwithstanding, we will string the points together in a few questions on which we have been addressed.

44. A cynical jurist surveying the forensic scene may make unhappy comments. Counsel for the respondent Unions sounded that note. A pluralist society with a capitalist backbone, notwithstanding the innocuous adjective 'socialist' added to the Republic by the Constitution (Forty-second Amendment Act, 1976) regards profit-making as a sacrosanct value. Elitist professionalism and industrialism is sensitive to the 'worker' menace and inclines to exclude such sound and fury as 'labour unrest from its sanctified precincts by judicially de-industrialising the activities of professional men and interest groups to the extent feasible. Governments, in a mixed economy, share some of the habits of thought of the dominant class and doctrines like sovereign functions, which pull out economic enterprises run by them, come in handy. The latent love for club life and charitable devices and escapist institutions bred by clever capitalism and hierarchical social structure, shows up as inhibitions transmuted as doctrines, interpretatively carving out immunities from the 'industrial' demands of labour by labelling many enterprises 'non-industries'. Universities, clubs, institutes, manufactories and establishments managed by eleemosynary or holy entities, are instances. To objectify doctrinally subjective consternation is casuistry.

45. A counter-critic on the other hand, may acidly contend that if judicial interpretation, uninformed by life's realities, were to go wild, every home will be, not a quiet castle but tumultuous industry, every research unit will grind to a halt, every god will face new demands, every service club will be the venue of rumble and every charity choked off by brewing unrest and the salt of the earth as well as the lowliest and the lost will suffer. Counsel for the appellants struck this pessimistic note. Is it not obvious from these rival thoughtways

that law is value-loaded, that social philosophy is an inarticulate interpretative tool? This is inescapable in any school of jurisprudence.

46. Now let us itemise, illustratively, the posers springing from the competing submissions, so that the contentions may be concretised.

(1) (a) Are establishments, run without profit motive, industries?

(b) Are charitable institutions industries?

(c) Do undertakings governed by a no-profit-no-loss rule, statutorily or otherwise fastened, fall within the definition in Section 2(j)

(d) Do clubs or other organisations (like the Y. M. C. A.) whose general emphasis is not on profit-making but fellowship and self-service, fit into the definitional circle?

(e) To go to the core of the matter, is it an inalienable ingredient of 'industry' that it should be plied with a commercial object?

(2) (a) Should co-operation between employer and employee be *direct* in so far as it relates to the basic service or essential manufacture which is the output of the undertaking?

(b) Could a lawyer's chambers or chartered accountant's office, a doctor's clinic or other liberal profession's occupation or calling be designated an industry?

(c) Would a university or college or school or research institute be called an industry?

(3) (a) Is the inclusive part of the definition in Section 2(j) relevant to the determination of an industry? If so, what impact does it make on the categories?

(b) Do domestic service drudges who slave without respite — become 'industries' by this extended sense?

(4) Are governmental functions, *stricto sensu*, industrial and if not, what is the extent of the immunity of instrumentalities of government?

(5) What rational criterion exists for a cut-back on the dynamic potential and semantic sweep of the definition, implicit in the industrial law of a progressive society geared to greater industrialisation and consequent concern for regulating relations and investigating disputes between employers and employees as industrial processes and relations become more complex and sophisticated and workmen become more light-conscious?

(6) As the provision now stands, is it scientific to define 'industry' based on the nature - the dominant nature - of the activity, i.e. on the terms of the work, remuneration and conditions of service which bond the two wings together into an employer-employee complex?

47. Back to *Banerji*, to begin at the very beginning. Technically, this Bench that hears the appeals now is not bound by any of the earlier decisions. But we cannot agree with Justice Roberts of the U. S. Supreme Court that 'adjudications of the Court were rapidly gravitating

into the same class as a restricted railroad ticket, good for this day and train only' (See Corwin XVII). The present - even the revolutionary present - does not break wholly with the past but breaks bread with it, without being swallowed by it and may eventually swallow it. While it is true, academically speaking, that the Court should be ultimately right rather than consistently wrong, the social interest in the certainty of the law is a value which urges continuity where possible, clarification where sufficient and correction where derailment, misdirection or fundamental flaw defeats the statute or creates considerable industrial confusion. Shri M. K. Ramamurthy, endorsed by Shri R. K. Garg, argued emphatically that after *Safdarjung*, the law is in trauma and so a fresh look at the problem is ripe. The learned Attorney General and Shri Tarkunde, who argued at effective, illuminating length, as well as Dr Singhvi and Shri A. K. Sen who briefly and tellingly supplemented, did not hide the fact that the law is in Queer Street but sought to discern a golden thread of sound principle which could explain the core of the rulings which peripherally had contradictory thinking. In this situation, it is not wise, in our view, to reject everything ruled till date and fabricate new tests, aimed with lexical wisdom reinforced by vintage judicial thought from Australia. *Banerji* (supra) we take as good, and, anchored on its authority, we will examine later decisions to stabilize the law on the firm principles gatherable therefrom, rejecting erratic excursions. To sip every flower and change every hour is not realism but romance which must not enchant the Court. Indeed, Sri Justice Chandrasekhara Aiyar, speaking for a unanimous Bench, has sketched the guidelines perceptively, if we may say so respectfully. Later cases have only added their glosses, not overruled it and the fertile source of conflict has been the *bashyams* rather than the basic decision. Therefore, our task is not to supplant the ratio of *Banerji* but to straighten and strengthen it in its application, away from different deviations and aberrations.

48. *Banerji*: The Budge Budge Municipality dismissed two employees whose dispute was sponsored by the Union. The award of the Industrial Tribunal directed re-instatement but the Municipality challenged the award before the High Court and this Court on the fundamental ground that a municipality in discharging its normal duties connected with local self-government is not engaged in any industry as defined in the Act.

49. A panoramic view of the statute and its jurisprudentially hearings has been projected there and the essentials of an industry decocted. The definitions of employer [Section 2(g)], industry [Section 2(j)], industrial dispute [Section 2(k)], workman [Section 2(s)] are a statutory dictionary, not popular parlance. It is plain that merely because the employer is a government department or a local body (and, a *fortiori*, a statutory board, society or like entity) the enterprise does not cease to be an 'industry'. Likewise, what the common man does not consider as 'industry' need not necessarily stand excluded from the statutory concept (and *vice versa*). The latter is deliberately drawn wider, and in some respects narrower, as Chandrasekhara Aiyar, J., has emphatically expressed:

In the ordinary or non-technical sense, according to what is understood by the man in the street, industry or business means an undertaking where capital and labour co-operate with each other for the purpose of producing wealth in the shape of goods, machines, tools etc., and for making profits. The concept of industry in this ordinary sense applies even to agriculture, horticulture, pisciculture and so on and so forth. It is also clear that every aspect of activity in which the relationship of employer and

employee exists or arises does not thereby become an industry as commonly understood. We hardly think in terms of an industry, when we have regard, for instance, to the rights and duties of *master and servant*, or of *a Government and its secretariat*, or *the members of the medical profession working in a hospital*. It would be regarded as absurd to think so; at any rate the layman unacquainted with advancing legal concepts of what is meant by industry would rule out such a connotation as impossible. *There is nothing however to prevent a statute from giving the word "industry" and the words "industrial dispute" a wider and more comprehensive import in order to meet the requirements of rapid industrial progress and to bring about in the interests of industrial peace and economy, a fair and satisfactory adjustment of relations between employers and workmen in a variety of fields of activity*. It is obvious that the limited concept of what an industry meant in early times must now yield place to an *enormously wider concept* so as to take in various and varied forms of industry, so that dispute arising in connection with them might be settled quickly without much dislocation and disorganisation of the needs of society and in a manner more adapted to conciliation and settlement than a determination of the respective rights and liabilities according to strict legal procedure and principles. The conflicts between capital and labour have now to be determined more from the standpoint of status than of contract. Without such an approach, the numerous problems that now arise for solution in the shape of industrial disputes cannot be tackled satisfactorily, and this is why every civilised government has thought of the machinery of conciliation officers, Boards and Tribunals for the effective settlement of disputes, (emphasis, added)

50. The dynamics of industrial law, even if incongruous with popular understanding, is this first proposition we derive from **Banerji**:

Legislation had to keep pace with the march of times and to provide for new situations. Social evolution is a process of constant growth, and the State cannot afford to stand still without taking adequate measures by means of legislation to solve large and momentous problems that arise in the industrial field from day to day almost.

51. The second, though trite, guidance that we get is that we should not be beguiled by similar words in dissimilar statutes, contexts, subject-matters or socio-economic situations. The same words may mean one thing in one context and another in a different context. This is the reason why decisions on the meaning of particular words or collection of words found in other statutes are scarcely of much value when we have to deal with a specific statute of our own; they may persuade, but cannot pressure.

52. We would only add that a developing country is anxious to preserve the smooth flow of goods and services, and interdict undue exploitation and, towards those ends, labour legislation is enacted and must receive liberal construction to fulfil its role.

53. Let us get down to the actual amplitude and circumscription of the statutory concept of 'industry'. Not a narrow but an enlarged acceptance is intended. This is supported by several considerations. Chandrasekhara Aiyar, J., observes:

Do the definitions of 'industry', 'industrial dispute' and 'workman' take in the extended significance, or exclude it? Though the word 'undertaking' in the definition of 'industry' is wedged in between business and trade on the one hand and manufacture on the other, and though therefore it might mean only a business or trade undertaking, still it must be remembered that if that were so, there was no need to use the word separately from business or trade. The wider import is attracted even more clearly when we look at the latter part of the definition which refers to "calling, service, employment, or industrial occupation or avocation of workmen". "Undertaking" in the first part of the definition and "industrial occupation or avocation" in the second part obviously mean much more than what is ordinarily understood by trade or business. The definition was apparently intended to include within its scope what might not strictly be called a trade or business venture.

So 'industry' overflows trade and business. Capital, ordinarily assumed to be a component of 'industry', is an expendable item so far as statutory 'industry' is concerned. To reach this conclusion, the Court referred to 'public utility service' [Section 2(n)] and argued: (SCR p. 312)

A public utility service such as railways, telephones and the supply of power, light or water to the public may be carried on by private companies or business corporations. Even conservancy or sanitation may be so carried on, though after the introduction of local self-government this work has in almost every country been assigned as a duty to local bodies like our Municipalities or District Boards or Local Boards. A dispute in these services between employers and workmen is an industrial dispute, and the proviso to Section 10 lays down that where such a dispute arises and a notice under Section 22 has been given, the appropriate Government shall make a reference under the sub-section. If the public utility service is carried on by a corporation like a Municipality which is the creature of a statute, and which functions under the limitations imposed by the statute, does it cease to be an industry for this reason? The only ground on which one could say that what would amount to the carrying on of an industry if it is done by a private person ceases to be so if the same work is carried on by a local body like a Municipality is that *in the latter there is nothing like the investment of any capital or the existence of a profit earning motive as there generally is in a business. But neither the one nor the other seems a sine quo non or necessary element in the modern conception of industry*, (emphasis, added)

54. Absence of capital does not negative 'industry'. Nay, even charitable services do not necessarily cease to be 'industries' definitionally although popularly charity is not industry. Interestingly, the learned Judge dealt with the point. After enumerating typical municipal activities he concluded: (SCR p. 313)

Some of these functions may appertain to and partake of the nature of an industry, while others may not. For instance, there is a necessary element of distinction between the supply of power and light to the inhabitants of a Municipality and the running of charitable hospitals and dispensaries for the aid of the poor. In ordinary parlance, the former might be regarded as an industry but not the latter. The very idea underlying the entrustment of such duties or functions to local bodies is not

to take them out of the sphere of industry but to secure the substitution of public authorities in the place of private employers and to eliminate the motive of profit-making as far as possible. The levy of taxes for the maintenance of the services of sanitation and the conservancy or the supply of light and water is a method adopted and devised to make up for the absence of capital. The undertaking or the service will still remain within the ambit of what we understand by industry though it is carried on with the aid of taxation, and no immediate material gain by way of profit is envisaged, (emphasis, added)

55. The contention that charitable undertakings are not industries is, by this token, untenable.

56. Another argument pertinent to our discussion is the sweep of the expression 'trade'.

57. In short, 'trade' embraces functions of local authorities, even professions, thus departing from popular notions. Another facet of the controversy is next touched upon - i.e. profit-making motive is not a *sine qua non* of 'industry', functionally or definitionally. For this, Powers, J. in ***Federated Municipal and Shire Employees' Union of Australia v. Melbourne Corporation*** [26 CLR 508 (Aus.)] was quoted with emphatic approval where the Australian High Court considered an industrial legislation:

So far as the question in this case is concerned, as the argument proceeded the ground mostly relied upon (after the Councils were held not to be exempt as State instrumentalities) was that the work was not carried on by the municipal corporations for profit in the ordinary sense of the term, although it would generally speaking be carried on by the Councils themselves to save contractors' profits. *If that argument were sufficient, then a philanthropist who acquired a clothing factory and employed the same employees as the previous owner had employed would not be engaged in an occupation about which an industrial dispute could arise, if he distributed the clothes made to the poor free of charge or even if he distributed them to the poor at the bare cost of production.* If the contention of the respondents is correct, a private company carrying on a ferry would be engaged in an industrial occupation. If a municipal corporation carried it on, it would not be industrial. The same argument would apply to baths, bridge-building, quarries, sanitary contracts, gas-making for lighting streets and public halls, municipal building of houses or halls, and many other similar industrial undertakings. Even coal-mining for use on municipal railways or tramways would not be industrial work if the contention of the respondents is correct. If the works in question are carried out by contractors or by private individuals it is said to be industrial, but not industrial within the meaning of the Arbitration Act or Constitution if carried out by municipal corporations. *I cannot accept that view.*" (emphasis added)

58. The negation of profit motive, as a telling test against 'industry', is clear from this quote.

59. All the indicia of 'industry' are packed into the judgment which condenses the conclusion tersely to hold that 'industries' will cover '*branches of work that can be said to be analogous to the carrying out of a trade or business*'. The case, read as a whole, contributes

to industrial jurisprudence, with special reference to the Act, a few positive facets and knocks down a few negative fixations. Governments and municipal and statutory bodies may run enterprises which do not *for that reason* cease to be industries. Charitable activities may also be industries. Undertakings, *sans* profit motive, may well be industries. Professions are not ipso facto out of the pale of industries. Any operation carried on in a manner analogous to trade or business may legitimately be statutory 'industry'. The popular limitations on the concept of industry do not amputate the ambit of legislative generosity in Section 2(j). Industrial peace and the smooth supply to the community are among the aims and objects the Legislature had in view, as also the nature, variety range and areas of disputes between employers and employees. These factors must inform the construction of the provision.

60. The limiting role of *Banerji* must also be noticed so that a total view is gained. For instance, 'analogous to trade or business' cuts down 'undertaking', a word of fantastic sweep. Spiritual undertakings, casual undertakings, domestic undertakings, war waging, policing, justicing, legislating, tax collecting and the like are, *prima facie*, pushed out. Wars are not merchantable, nor justice saleable, nor divine grace marketable. So, the problem shifts to what is "analogous to trade or business". As we proceed to the next set of cases we come upon the connotation of other expressions like 'calling' and get to grips with the specific organisations which call for identification in the several appeals before us.

61. At this stage, a close-up of the content and contours of the controversial words 'analogous etc.', which have consumed considerable time of Counsel, may be taken. To be fair to *Banerji*, the path-finding decision which conditioned and canalised and fertilised subsequent juristic-humanistic ideation, we must show fidelity to the terminological exactitude of the seminal expression used and search carefully for its import. The prescient words are: *branches of work* that can be said to be *analogous to the carrying out of a 'trade or business'*. The same judgment has negatived the necessity for profit-motive and included charity impliedly, has virtually equated private sector and public sector operations and has even perilously hinted at 'professions' being 'trade'. In this perspective, the comprehensive reach of 'analogous' activities must be measured. The similarity stressed relates to 'branches of work'; and more; the analogy with trade or business is in the '*carrying out*' of the economic adventure. So, the parity is in the *modus operandi*, in the working - not in the purpose of the project nor in the disposal of the proceeds but in the organisation of the venture, including the relations between the two limbs, *viz.*, labour and management. If the mutual relations, the method of employment and the process of co-operation in the *carrying out of the work* bear close resemblance to the organization, method, remuneration, relationship of employer and employee and the like, then it is industry, otherwise not. This is the kernel of the decision. An activity oriented, not motive based, analysis.

62. The landmark Australian case of *Melbourne Corporation*, which was heavily relied on in *Banerji* may engage us. That ruling contains dicta, early in the century, which make India in forensic fabianism, sixty years after in the 'socialist' Republic, blush. The apart, the discussion in the leading judgments dealing with 'industry' from a constitutional angle but relying on statute similar to ours, is instructive. For instance, consider the promptings of profit as a condition of 'industry'; Highness, J. crushes that credo thus:

The purpose of profit-making can hardly be the criterion. If it were, the labourers who excavated the underground passage for the Duke of Portland's whim, or the labourers who build (for *pa.*) a tower of Babel or a Pyramid, could not be parties to an 'industrial dispute.

The worker-oriented perspective is underscored by Isaacs and Rich JJ.: It is at the same time, as is perceived, contended on the part of labour, that matters even indirectly prejudicially affecting the workers are within the sphere of dispute.

64. Now, the cornerstone of industrial law is well laid by **Banerji**, supported by Lord Mayor of the City of Melbourne.

65 A chronological survey of *post-Banerji* decisions of this Court, with accent on the juristic contribution registered by them, may be methodical. Thereafter, cases in alien jurisdictions and derivation of guidelines may be attempted. Even here, we may warn ourselves that the literal latitude of the words in the definition cannot be allowed grotesquely inflationary play but must be read down to accord with the broad industrial sense of the nation's economic community of which Labour is an integral part. To bend beyond credible limits is to break with facts, unless language leaves no option. Forensic inflation of the sense of words shall not lead to an adaptation breakdown outraging the good sense of even radical realists. After all, the Act has been drawn on an industrial canvas to solve the problems of industry, not of chemistry. A functional focus and social control desideratum must be in the mind's eye of the Judge.

66. The two landmark cases, **The Corporation of the City of Nagpur v. Its Employees** [AIR 1960 SC 675] and **State of Bombay v. The Hospital Mazdoor Sabha** [AIR 1960 SC 610] may now be analysed in the light of what we have just said. Filling the gaps in the **Banerji** decision and the authoritative connotation of the fluid phrase 'analogous to trade and business' were attempted in these twin decisions. To be analogous is to resemble in functions relevant to the subject, as between like features of two apparently different things. So, some kinship through resemblance to trade or business, is the key to the problem, if **Banerji** is the guide star. Partial similarity postulates selectivity of characteristics for comparability. Wherein lies the analogy to trade or business, is then the query.

67. Sri Justice Subba Rao, with uninhibited logic, chases this thought and reaches certain tests in **Nagpur Municipality**, speaking for a unanimous Bench. We respectfully agree with much of his reasoning and proceed to deal with the decision. If the ruling were right, as we think it is, the riddle of 'industry' is resolved in some measure. Although foreign decisions, words and phrases, lexical plenty and definitions from other legislations, were read before us to stress the necessity of *direct* co-operation between employer and employees in the essential product of the undertaking, of the need for the commercial motive, of service to the community etc., as implied inarticulately in the concept of 'industry', we bypass them as but marginally persuasive. The rulings of this Court, the language and scheme of the Act and the well-known canons of construction exert real pressure on our judgment. And, in this latter process, next to **Banerji** comes **Corporation of Nagpur** which spreads the canvas wide and illumines the expression 'analogous to trade or business', although it comes a few days after **Hospital Mazdoor Sabha** decided by the same Bench.

68. To be sure of our approach on a wider basis let us cast a glance at internationally recognised concepts *vis-a-vis* industry. The International Labour Organisation has had occasion to consider freedom of association for labour as a primary right and collective bargaining followed by strikes, if necessary, as a derivative right. The question has arisen as to whether public servants employed in the crucial functions of the government fall outside the orbit of industrial conflict. Convention 98 concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, in Article 6 states:

This Convention does not deal with the position of public servants engaged in the administration of the State, nor shall it be construed as prejudicing their rights or status in any way.

Thus, it is well-recognised that public servants in the key sectors of administration stand out of the industrial sector. The Committee of Experts of the ILO had something to say about the carving out of the public servants from the general category.

69. Incidentally, it may be useful to note certain clear statements made by ILO on the concept of industry, workmen and industrial dispute, not with clear-cut legal precision but with sufficient particularity for general purposes although looked at from a different angle. We quote from *Freedom of Association*, Second Edition, 1976, which is a digest of decisions of the Freedom of Association Committee of the Governing Body of the ILO:

2. Civil servants and other workers in the employ of the State

(250) Convention 98, and in particular Article 4 thereof concerning the encouragement and promotion of collective bargaining, applies both to the private sector and to nationalised undertakings and public bodies, it being possible to exclude from such application public servants engaged in the administration of the State. (*Report* 141, Case 729, para 15.)

(251) Convention 98, which mainly concerns collective bargaining, permits (Article 6) the exclusion of “public servants engaged in the administration of the State”. In this connection, the Committee of Experts on the Application of Conventions and Recommendations has pointed out that, while the concept of public servant may vary to some degree under the various national legal systems, the exclusion from the scope of the Convention of persons employed by the State or in the public sector, who do not act as agents of the public authority (even though they may be granted a status identical with that of public officials engaged in the administration of the State) is contrary to the meaning of the Convention. The distinction to be drawn, according to the Committee, would appear to be basically between civil servants employed in various capacities in government ministries or comparable bodies on the one hand and other persons employed by the government, by public undertakings or by independent public corporations. (*Report* 116, Case 598, para 377; *Report* 121, Case 635, para 81; *Report* 143, Case 764, para 87).

(254) With regard to a complaint concerning the right of teachers to engage in collective bargaining, the Committees, in the light of the principles contained in Convention 98 draw attention to the desirability of promoting voluntary collective

bargaining, according to national conditions, with a view to the regulation of terms and conditions of employment. (Report 110, Case 573, para 194.)

(255) The Committee has pointed out that Convention 98, dealing with the promotion of collective bargaining, covers all public servants who do not act as agents of the public authority, and consequently, among these employers of the postal and telecommunications service. (Report 139, Case 725, para 278.)

(256) Civil aviation technicians working under the jurisdiction of the armed forces cannot be considered, in view of the nature of their activities, as belonging to the armed forces and as such liable to be excluded from the guarantees laid down in Convention 98; the rule contained in Article 4 of the convention concerning collective bargaining should be applied to them. (Report 116, Case 598, paras 375-378.)

70. This divagation was calculated only to emphasise certain fundamentals in international industrial thinking which accord with a wider conceptual acceptance for 'industry'. The wings of the word 'industry' have been spread wide in Section 2(j) and this has been brought out in the decision in *Corporation of Nagpur*. That case was concerned with a dispute between a municipal body and its employees. The major issue considered there was the meaning of the much disputed expression "analogous to the carrying on of a trade or business". Municipal undertakings are ordinarily industries as *Baroda Borough Municipality* [AIR 1957 SC 110] held. Even so the scope of 'industry' was investigated by the Bench in the *City of Nagpur* which affirmed *Banerji* and *Baroda*. The Court took the view that the words used in the definition were prima facie of the widest import and declined to curtail the width of meaning by invocation of *noscitur a sociis*. Even so, the Court was disinclined to spread the net too wide by expanding the elastic expressions 'calling', 'service', 'employment' and 'handicraft'. To be over-inclusive may be impractical and so while accepting the enlargement of meaning by the device of inclusive definition the Court cautioned: (SCR p. 952)

But such a wide meaning appears to over-reach the objects for which the Act was passed. It is, therefore, necessary to limit its scope on permissible grounds, having regard to the aim, scope and the object of the whole Act.

71. After referring to the rule in *Heydon* case [(1584) ER 637], Subba Rao, J. proceeded to outline the ambit of industry thus:

The word 'employers' in clause (a) and the word 'employees' in clause (b) indicate that the fundamental basis for the application of the definition is the existence of that relationship. The cognate definitions of 'industrial dispute', 'employer', 'employee', also support it. The long title of the Act as well as its preamble shows that the Act was passed to make provision for the promotion of industries and peaceful and amicable settlement of disputes between employers and employees in an organised activity by conciliation and arbitration and for certain other purposes. If the preamble is read with the historical background for the passing of the Act, it is manifest that the Act was introduced as an important step in achieving social justice. The Act seeks to ameliorate the service conditions of the workers, to provide a machinery for resolving their conflicts and to encourage co-operative effort in the service of the community. The history of labour legislation both in England

and India also shows that it was aimed more to ameliorate the conditions of service of the labour in organised activities than to anything else. The Act was not intended to reach the personal services which do not depend upon the employment of a labour force.

72. Whether the exclusion of personal services is warranted may be examined a little later.

73. The Court proceeded to carve out the negative factors which, notwithstanding the literal width of the language of the definition, must, for other compelling reasons, be kept out of the scope of industry. For instance, sovereign functions of the State cannot be included although what such functions are has been aptly termed 'the primary and inalienable functions of a constitutional government'. Even here we may point out the ineptitude of relying on the doctrine of regal powers. That has reference, in this context, to the Crown's liability in tort and has nothing to do with Industrial Law. In any case, it is open to Parliament to make law which governs the State's relations with its employees. Articles 309 to 311 of the Constitution of India, the enactments dealing with the Defence Forces and other legislation dealing with employment under statutory bodies may, expressly or by necessary implication, exclude the operation of the Industrial Disputes Act, 1947. That is a question of interpretation and statutory exclusion; but, in the absence of such provision of law, it may indubitably be assumed that the key aspects of public administration like public justice stand out of the circle of industry. Even here, as has been brought out from the excerpts of ILO documents, it is not every employee who is excluded but only certain categories primarily engaged and supportively employed in the discharge of the essential functions of constitutional government. In a limited way, this head of exclusion has been recognised throughout.

74. Although we are not concerned in this case with those categories of employees who particularly come under departments charged with the responsibility for essential constitutional functions of government, it is appropriate to state that if there are industrial units severable from the essential functions and possess an entity of their own it may be plausible to hold that the employees of those units are workmen and those undertakings are industries. A blanket exclusion of every one of the host of employees engaged by government in departments falling under general, rubrics like, justice, defence, taxation, legislature, may not necessarily be thrown out of the umbrella of the Act. We say no more except to observe that closer exploration, not summary rejection, is necessary.

75. The Court proceeded, in the *Corporation of Nagpur* case, to pose for itself the import of the words 'analogous to the carrying out of a trade or business' and took the view that the emphasis was more on 'the nature of the organised activity implicit in trade or business than to equate the other activities with trade or business'. Obviously, non-trade operations were in many cases 'industry'.

77. It is useful to remember that the Court rejected the test attempted by Counsel in the case:

It is said that unless there is a *quid pro quo* for the service it cannot be an industry. This is the same argument, namely, that the service must be in the nature of trade in a different garb.

We agree with this observation and with the further observation that there is no merit in the plea that unless the public who are benefited by the services pay in cash, the services so rendered cannot be industry. Indeed, the signal service rendered by the *Corporation of Nagpur* is to dispel the idea of profit-making.

Monetary considerations for service is, therefore, not an essential characteristic of industry in a modern State.

78. Even according to the traditional concepts of English Law, profit has to be disregarded when ascertaining whether an enterprise is a business:

3. Disregard of Profit.- Profit or the intention to make profit is not an essential part of the legal definition of a trade or business; and payment or profit does not constitute a trade or business that which would not otherwise be such.

79. Does the badge of industrialism, broadly understood, banish, from its fold, education? This question needs fuller consideration, as it has been raised in this batch of appeals and has been answered in favour of employers by this Court in the *Delhi University* [AIR 1963 SC 1873] case. But since Subba Rao, J., has supportively cited Isaacs, J. in *School Teachers' Association* [(1929) 41 CLR 569 (Aus)], which relates to the same problem, we may, even here, prepare the ground by dilating on the subject with special reference to the Australian case. That learned Judge expressed surprise at the very question:

The basic question raised by this case, strange as it may seem, is whether the occupation of employees engaged in education, itself universally recognised as the key industry to all skilled occupations, is 'industrial' within the meaning of the Constitution.

80. The employers argued that it was fallacious to spin out 'industry' from 'education' and the logic was a specious economic doctrine. Isaacs, J., with unsparing sting and in fighting mood, stated and refuted the plea:

The theory was that society is industrially organised for the production and distribution of wealth in the sense of tangible, ponderable, corpuscular wealth, and therefore an "industrial dispute" cannot possibly occur except where there is furnished to the public - the consumers - by the combined efforts of employers and employed, wealth of that nature. Consequently, say the employers, "education" not being "wealth" in that sense, there never can be an "industrial dispute" between employers and employed engaged in the avocation of education, regardless of the wealth derived by the employers from the joint co-operation.

The contention sounds like an echo from the dark ages of industry and political economy. It not merely ignores the constant currents of life around us, which is the real danger in deciding questions of this nature, but it also forgets the memorable industrial organization of the nations, not for the production or distribution of material wealth, but for services, national service, as the service of organized industry must always be. Examination of this contention will not only completely dissipate it, but will also serve to throw material light on the question in hand generally. The contention is radically unsound for two great reasons. It erroneously conceives the object of national industrial organization and thereby unduly limits the meaning of

the terms “production” and “wealth” when used in that connection. But it further neglects the fundamental character of “industrial disputes” as a distinct and insistent phenomenon of modern society. Such disputes are not simply a claim to share the material wealth jointly produced and capable of registration in statistics. At heart they are a struggle, constantly becoming more intense on the part of the employed group engaged in co-operation with the employing group in rendering services to the community essential for a higher general human welfare, to share in that welfare in a greater degree That contention, if acceded to, would be revolutionary.... How could it reasonably be said that a comic song or a jazz performance, or the representation of a comedy, or a ride in a tramcar or motor-bus, piloting a ship, lighting a lamp or showing a moving picture is more “material” as wealth than instruction, either cultural or vocational? Indeed, to take one instance, a workman who travels in a tramcar a mile from his home to his factory is no more efficient for his daily task than if he walked ten yards, whereas his technical training has a direct effect in increasing output. If music or acting or personal transportation is admitted to be “industrial” because each is productive of wealth to the employer as his business undertaking, then an educational establishment stands on the same footing. But if education is excluded for the reason advanced, how are we to admit barbers, hair-dressers, taxi-car drivers, furniture removers, and other occupations that readily suggest themselves? And yet the doctrine would admit manufacturers of intoxicants and producers of degrading literature and pictures, because these are considered to be “wealth”. The doctrine would concede, for instance, that establishments for the training of performing dogs, or of monkeys simulating human behaviour, would be “industrial”, because one would have increased material wealth, that is, a more valuable dog or monkey, in the sense that one could exchange it for more money. If parrots are taught to say “Pretty Polly” and to dance on their perch, that is, by concession, industrial, because it is the production of wealth. But if Australian youths are trained to read and write their language correctly and in other necessary elements of culture and vocation making them more efficient citizens, fitting them with more directness to take their place in the general industrial ranks of the nation and to render the services required by the community, that training is said not to be wealth and the work done by teachers employed is said not to be industrial.

81. So long as services are part of the wealth of a nation - and it is obscurantist to object to it - educational services are wealth, are ‘industrial’. We agree with Isaacs, J.

82. More closely analysed, we may ask ourselves, as Isaacs, J. did, whether, if private scholastic establishments carried on teaching on the same lines as the State schools, giving elementary education free, and charging fees for the higher subjects, providing the same curriculum and so on, by means of employed teachers, would such a dispute as we have here be an industrial dispute?... “I have already indicated my view”, says Isaacs, J. “that education so provided constitutes in itself an independent industrial operation as a service rendered to the community”. Charles Dickens evidently thought so when ninety years ago Squeers called his school “the shop” and prided himself on Nickleby’s being “cheap” at £ 5 a year and commensurate living conditions. The world has not turned back since then. In 1926 the

Committee on Industry and Trade, in their report to the British Prime Minister, included among "Trade Unions" those called "teaching". It there appears that in 1897 there were six unions with a total membership of 45,319, and in 1924 there were seventeen unions with a membership of 1,94,946. The true position of education in relation to the actively operative trades is not really doubtful. Education, cultural and vocational, is now and is daily becoming as much the artisan's capital and tool, and to a great extent his safeguard against unemployment, as the employers' banking credit and insurance policy are part of his means to carry on the business. There is at least as much reason for including the educational establishments in the constitutional power as "labour" services, as there is to include insurance companies as "capital" services.

83. We have extensively excerpted from the vigorous dissent because the same position holds good for India which is emerging from feudal illiteracy to industrial education. In Gandhi's India basic education and handicraft merge and in the latter half of our century higher education involves field studies, factory training, house-surgeonry and clinical education; and, *sans* such technological training and education in humanities, industrial progress is self-condemned. If education and training are integral to industrial and agricultural activities, such services are part of industry even if highbrowism may be unhappy to acknowledge it. It is a class-conscious, inegalitarian outlook with an elitist aloofness which makes some people shrink from accepting educational institutions, vocational or other, as industries. The definition is wide, embraces training for industry which, in turn ensconces all processes of producing goods and services by employer-employee co-operation. Education is the nidus of industrialization and itself is industry.

84. We may consider certain aspects of this issue while dealing with later cases of our Court. Suffice it to say, the unmanaging argument of Isaacs, J. has been specifically approved in *Corporation of Nagpur* and *Hospital Mazdoor Sabha* in a different aspect.

85. Now we revert to the more crucial part of *Corporation of Nagpur*. It is meaningful to notice that in that case, the Court, in its incisive analysis, department by department of variform municipal services, specifically observed:

Education Department: This department looks after the primary education, i.e., compulsory primary education within the limits of the Corporation. (See the evidence of witness 1 for party 1). This service can equally be done by private persons. This department satisfies the other tests. The employees of this department coming under the definition of "employees" under the Act would certainly be entitled to the benefits of the Act.

86. The substantial break-through achieved by this decision in laying bare the fundamentals of 'industry' in its wider sense deserves mention. The ruling tests are clear. The 'analogous' species of quasi-trade qualify for becoming 'industry' *if the nature of the organized activity implicit in a trade or business is shared by them.* (See p. 960, the entire organisational activity). It is not necessary to 'equate the other activities with trade or business'. The pith and substance of the matter is that the structural, organisational, engineering aspect, the crucial industrial relations like wages, leave and other service conditions as well as characteristic business methods (not motives) in running the enterprise,

govern the conclusion. Presence of profit motive is expressly negated as a criterion. Even the *quid pro quo* theory - which is the same monetary object in a milder version - has been dismissed. The subtle distinction, drawn in lovely lines and pressed with emphatic effect by Sri Tarkunde, between gain and profit, between no-profit no-loss basis having different results in the private and public sectors, is fascinating but, in the rough and tumble, and sound and fury of industrial life, such nuances break down and nice refinements defeat. For the same reason, we are disinclined to chase the differential ambits of the first and the second parts of Section 2(j). Both read together and each viewed from the angle of employer or employee and applied in its sphere, as the learned Attorney General pointed out, will make sense. If the *nature of* the activity is para-trade or quasi-business, it is of no moment that it is undertaken in the private sector, joint sector, public sector, philanthropic sector or labour sector; it is 'industry'. It is the human sector, the way the employer-employee relations are set up and processed that gives rise to claims, demands, tensions, adjudications, settlements, truce and peace in industry. That is the *raison d'être* of industrial law itself.

87. Two seminal guidelines of great moment flow from this decision: (1) the primary and predominant activity test; and (2) the integrated activity test. The concrete application of these two-fold tests is illustrated in the very case. We may set out in the concise words of Subba Rao, J., the sum-up: (SCR p. 961)

The result of the discussion may be summarized thus: (1) The definition of "industry" in the Act is very comprehensive. It is in two parts: one part defines it from the standpoint of the employer and the other from the standpoint of the employee. If an activity falls under either part of the definition, it will be an industry within the meaning of the Act. (2) The history of industrial disputes and the legislation recognizes the basic concept that the activity shall be an organized one and not that which pertains to private or personal employment. (3) The regal functions described as primary and inalienable functions of State though statutorily delegated to a corporation are necessarily excluded from the purview of the definition. Such regal functions shall be confined to legislative power, administration of law and judicial power. (4) If a service rendered by an individual or private person would be an industry, it would equally be an industry in the hands of a corporation. (5) If a service rendered- by a corporation is an industry, the employees in the departments connected with that service, whether financial, administrative or executive, would be entitled to the benefits of the Act. (6) If a department of a municipality discharged many functions, some pertaining to industry as defined in the Act and other non-industrial activities, the predominant functions of the department shall be the criterion for the purpose of the Act.

88. By these tokens, which find assent from us, the tax department of the local body is 'industry'. The reason is this:

The scheme of the Corporation Act is that taxes and fees are collected in order to enable the municipality to discharge its statutory functions. If the functions so discharged are wholly or predominantly covered by the definition of "industry", it would be illogical to exclude the tax department from the definition. While in the case of private individuals or firms services are paid in cash or otherwise, in the case

of public institutions, as the services are rendered to the public, the taxes collected from them constitute a fund for performing those services. As most of the services rendered by the municipality come under the definition of "industry", we should hold that the employees of the tax department are also entitled to the benefits under the Act.

89. The health department of the municipality too is held in that case to be 'industry' - a fact which is pertinent when we deal later with hospitals, dispensaries and health centres:

This department looks after scavenging, sanitation, control of epidemics, control of food adulteration and *running of public dispensaries*. Private institutions can also render these services. It is said that the control of food adulteration and the control of epidemics cannot be done by private individuals and institutions. We do not see why. There can be private medical units to help in the control of epidemics for remuneration. Individuals may get the food articles purchased by them examined by the medical unit and take necessary action against guilty merchants. So too, they can take advantage of such a unit to prevent epidemics by having necessary inoculations and advice. This department also satisfies the other tests laid down by us, and is an industry within the meaning of the definition of "industry" in the Act.

90. Even the General Administration Department is 'industry'. Why?

Every big company with different sections will have a general administration department. If the various departments collated with the department are industries, this department would also be a part of the industry. Indeed the efficient rendering of all the services would depend upon the proper working of this department, for, otherwise there would be confusion and chaos. The State Industrial Court in this case has held that all except five of the departments of the Corporation come under the definition of "industry" and if so, it follows that this department, dealing predominantly with industrial departments, is also an industry. Hence the employees of this department are also entitled to the benefits of this Act.

91. Running right through are three tests: (a) the paramount and predominant duty criterion (p. 971); (b) the specific service being an integral, non-severable part of the same activity (p. 960) and (c) the irrelevance of the statutory duty aspect.

It is said that the functions of this department are statutory and no private individual can discharge those statutory functions. The question is not whether the discharge of certain functions by the Corporation have *statutory backing*, but whether those functions can equally be performed by private individuals. The provisions of the Corporation Act and the by-laws prescribe certain specifications for submission of plans and for the sanction of the authorities concerned before the building is put up. The same thing can be done by a co-operative society or a private individual. *Co-operative societies* and private individuals can allot lands for building houses in accordance with the conditions prescribed by law in this regard. The services of this department are therefore analogous to those of a private individual with the difference that one has the statutory sanction behind it and the other is governed by terms of contracts.

Be it noted that even co-operatives are covered by the learned Judge although we may deal with that matter a little later.

92. The same Bench decided both *Corporation of Nagpur* and *Hospital Mazdoor Sabha* . This latter case may be briefly considered now. It repeals the profit motive and *quid pro quo* theory as having any bearing on the question. The wider import of Section 2(/) is accepted but it expels essential 'sovereign activities' from its scope.

93. It is necessary to note that the hospital concerned in that case was run by Government for medical relief to the people. Nay more. It had a substantial educational and training role.

94. A conspectus of the clauses has induced Gajendragadkar, J. to take note of the impact of provisions regarding public utility service also:

If the object and scope of the statute are considered there would be no difficulty in holding that the relevant words of wide import have been deliberately used by the Legislature in defining "industry" in Section 2(j). The object of the Act was to make provision for the investigation and settlement of industrial disputes, and the extent and scope of its provisions would be realised if we bear in mind the definition of "industrial dispute" given by Section 2(k), of "wages" by Section 2(rr), "workman" by Section 2(s), and of "employer" by Section 2(g). Besides, the definition of a public utility service prescribed by Section 2(n) is very significant. One has merely to glance at the six categories of public utility service mentioned by Section 2(n) to realise that the rule of construction on which the appellant relies is inapplicable in interpreting the definition prescribed by Section 2(j).

The positive delineation of 'industry' is set in these terms:

(A)s a working principle it may be stated that an activity systematically or habitually undertaken for the production or distribution of goods or for the rendering of material services to the community at large or a part of such community with the help of employees is an undertaking. Such an activity generally involves the co-operation of the employer and the employees; and its object is the satisfaction of material human needs. It must be organised or arranged in a manner in which trade or business is generally organised or arranged. It must not be casual nor must it be for oneself nor for pleasure. Thus the manner in which the activity in question is organised or arranged, the condition of the co-operation between employer and the employee necessary for its success and its object to render material service to the community can be regarded as some of the features which are distinctive of activities to which Section 2(j) applies. Judged by this test there would be no difficulty in holding that the State is carrying on an undertaking when it runs the group of hospitals in question.

Again,

It is the character of the activity which decides the question as to whether the activity in question attracts the provision of Section 2(j); who conducts the activity and whether it is conducted for profit or not do not make a material difference.

By these tests even a *free* or charitable hospital is an industry. That the Court intended such a conclusion is evident:

If that be so, if a private citizen runs a hospital without charging any fees from the patients treated in it, it would nevertheless be an undertaking under Section 2(j). Thus the character of the activity involved in running a hospital brings the institution of the hospital within Section 2(j).

95. The ‘rub with the ruling’, if we may with great deference say so, begins when the Court inhibits itself from effectuating the logical thrust of its own crucial ratio: (SCR p. 876)

(T)hough Section 2(j) uses words of very wide denotation, *a line would have to be drawn in a fair and just manner* so as to exclude some callings, services or undertakings. If all’ the words used are given their widest meaning, all services and all callings would come within the purview of the definition; even service rendered by a servant purely in a personal or domestic matter or even in a casual way would fall within the definition. It is not and cannot be suggested that in its wide sweep the word “service” is intended to include service howsoever rendered in whatsoever capacity and for whatsoever reason. We must, therefore, consider where the line should be drawn and what limitations can and should be reasonably implied in interpreting the wide words used in Section 2(j); and that no doubt is a somewhat difficult problem to decide.

What is a ‘fair and just manner’? It must be founded on grounds justifiable by principle derived from the statute if it is not to be sublimation of subjective phobia, rationalization of interests or judicialisation of non-juristic negatives. And this hunch, in our respectful view, has been proved true not by positive pronouncement in the case but by two points suggested but left open. One relates to education and the other to professions. We will deal with them in due course.

Liberal Professions

96. When the delimiting line is drawn to whittle down a wide definition, a principled working test, not a projected wishful thought, should be sought. This conflict surfaced in the *Solicitors* [AIR 1962 SC 1080] case. Before us too, a focal point of contest was as to whether the liberal professions are *ipso facto*, excluded from ‘industry’. Two grounds were given by Gajendragadkar, J. for overruling Sri A. S. R. Chari’s submissions. The doctrine of *direct* co-operation and the features of liberal professions were given as good reasons to barricade professional enterprises from the militant clamour for more by lay labour. The learned Judge expressed himself on the first salvational plea:

When in the *Hospital* case this Court referred to the organisation of the undertaking involving the co-operation of capital and labour or the employer and his employees, it obviously meant *the co-operation essential and necessary/or the purpose of rendering material service or for the purpose of production*. It would be realised that the concept of industry postulates partnership between capital and labour or between the employer and his employees. It is under this partnership that the employer contributes his capital and the employees their labour and the joint contribution of capital and labour leads directly to the production which the industry

has in view. In other words, the co-operation between capital and labour or between the employer and his employees which is treated as a working test in determining whether any activity amounts to an industry, is the co-operation which is directly involved in the production of goods or in the rendering of service. It cannot be suggested that every form or aspect of human activity in which capital and labour co-operate or employer and employees assist each other is an industry. The distinguishing feature of an industry is that for the production of goods or for the rendering of service, *co-operation between capital and labour or between the employer and his employees must be direct and must be essential....* Co-operation to which the test refers must be co-operation between the employer and his employees which is essential for carrying out the purpose of the enterprise and the service to be rendered by the enterprise should be the *direct outcome of the combined efforts of the employer and the employees.*

97. The second reason for exoneration is qualitative.

Looking at this question in a broad and general way, it is not easy to conceive that a liberal profession like that of an attorney could have been intended by the Legislature to fall within the definition of “industry” under Section 2(j). The very concept of the liberal professions has its own special and distinctive features which do not readily permit the inclusion of the liberal professions into the four corners of industrial law. The essential basis of an industrial dispute is that it is a dispute arising between capital and labour in enterprises where capital and labour combine to produce commodities or to render service. This essential basis would be absent in the case of liberal professions. A person following a liberal profession does not carry on his profession in any intelligible sense with the active co-operation of his employees and the principal, if not the sole, capital which he brings into his profession is his special or peculiar intellectual and educational equipment. That is why on broad and general considerations which cannot be ignored, a liberal profession like that of an attorney must, we think, be deemed to be outside the definition of “industry” under Section 2(j).

98. Let us examine these two tests. In the sophisticated, subtle, complex, assembly-line operations of modern enterprises, the test of ‘direct’ and ‘indirect’, ‘essential’ and ‘inessential’, will snap easily. In an American automobile manufactory, everything from shipping iron ore into and shipping cars out of the vast complex takes place with myriad major and minor jobs. A million administrative, marketing and advertising tasks are done. Which, out of this maze of chores, is direct? A battle may be lost if winter wear were shoddy. Is the army tailor a direct contributory?

99. An engineer may lose a competitive contract if his typist typed wrongly or shabbily or despatched late. He is a direct contributory to the disaster. No lawyer or doctor can impress client or court if his public relations job or home work were poorly done, and that part depends on smaller men, adjuncts. Can the great talents in administration, profession, science or art shine if a secretary fades or faults? The whole theory of direct co-operation is an improvisation which, with great respect, hardly impresses.

100. Indeed, Hidayatullah, C.J., in *Gymkhana Club Employees' Union* [AIR 1968 SC 554] scouted the argument about direct nexus, making specific reference to the *Solicitors'* case:

(T)he service of a solicitor was regarded as individual depending upon his personal qualifications and ability, to which the employees did not contribute directly or essentially. Their contribution, it was held, had no direct or essential nexus with the advice or services. In this way learned professions were excluded.

To nail this essential nexus theory, Hidayatullah, C.J., argued:

What partnership can exist between the company and/or Board of Directors on the one hand and the menial staff employed to sweep floors on the other? What direct and essential nexus is there between such employees and production? This proves that what must be established is the existence of an industry viewed from the angle of what the employer is doing and if the definition from the angle of the employer's occupation is satisfied, all who render service and fall within the definition of workman come within the fold of industry irrespective of what they do. There is then no need to establish a partnership as such in the production of material goods or material services. Each person doing his appointed task in an organisation will be a part of the industry whether he attends to a loom or merely polishes door handles. The fact of employment as envisaged in the second part is enough provided there is an industry and the employee is a workman. The learned professions are not industry not because there is absence of such partnership but because viewed from the angle of the employer's occupation, they do not satisfy the test.

101. Although Gajendragadkar, J. in *Solicitors'* case (supra) and Hidayatullah, J. in *Gymkhana* case agreed that the learned professions must be excluded, on the question of direct or effective contribution in partnership, they flatly contradicted each other. The reasoning on this part of the case which has been articulated in the *Gymkhana Club Employees' Union* appeals to us. There is no need for insistence upon the principle of partnership, the doctrine of direct nexus or the contribution of values by employees. Every employee in a professional office, be he a para-legal assistant or full-fledged professional employee or, down the ladder, a mere sweeper or janitor, every one makes for the success of the office, even the *mali* who collects flowers and places a beautiful bunch in a vase on the table spreading fragrance and pleasantness around. The failure of anyone can mar even the success of everyone else. Efficient collectivity is the essence of professional success. We reject the plea that a member of a learned liberal profession, for that sole reason, can self-exclude himself from operation of the Act.

102. The professional immunity from labour's demand for social justice because learned professions have a halo also stands on sandy foundation and, perhaps, validates G. B. Shaw's witticism that all professions are conspiracies against the laity. After all, let us be realistic and recognise that we live in an age of experts alias professionals, each having his ethic, monopoly, prestige, power and profit. Proliferation of professions is a ubiquitous phenomenon and none but the tradition-bound will, agree that theirs is not a liberal

profession. Lawyers have their code. So too medics swearing by Hippocrates, chartered accountants and company secretaries and other autonomous nidi of know-how.

108. All this adds up to the decanonisation of the noble professions. Assuming that a professional in our egalitarian ethos, is like any other man of common clay plying a trade or business, we cannot assent to the cult of the elite in carving out islands of exception to 'industry'.

109. The more serious argument of exclusion urged to keep the professions out of the coils of industrial disputes and the employees' demands backed by agitations 'red in tooth and claw' is a sublimated version of the same argument. Professional expertise and excellence, with its occupational autonomy, ideology, learning, bearing and morality, holds aloft a standard of service which centres round the individual doctor, lawyer, teacher or auditor. This reputation and quality of special service being of the essence, the co-operation of the workmen in this core activity of professional offices is absent. The clerks and stenographers, the bell boys and doormen, the sweepers and menials have no art or part in the soul of professional functions with its higher code of ethic and intellectual proficiency, their contribution being peripheral and low-grade, with no relevance to the clients' wants and requirements. This conventional model is open to the sociological criticism that it is an ideological cloak conjured up by highborns, a posture of *noblesse oblige* which is incongruous with raw life, especially in the democratic third world and post-industrial societies. To hug the past is to materialize the ghost. The paradigms of professionalism are gone. In the large solicitors' firms, architects' offices, medical polyclinics and surgeries, we find a humming industry, each section doing its work with its special flavour and culture and code, and making the end product worth its price. In a regular factory you have highly skilled technicians whose talent is of the essence, managers whose ability organizes and workmen whose coordinated input is, from one angle, secondary, from another, significant. Let us look at a surgery or walk into a realtor's firm. What physician or surgeon will not kill if an attendant errs or clerk enters wrong or dispenses deadly dose? One such disaster somewhere in the assembly-line operations and the clientele will be scared despite the doctor's distilled skill. The lawyer is no better and just cannot function without the specialised supportive tools of para-professionals like secretaries, librarians and law-knowing steno-typists or even the messengers and telephone girls. The mystique of professionalism easily melts in the hands of modern social scientists who have (as Watergate has shown in America and has India had its counterparts?) debunked and stripped the professional emperor naked. 'Altruism' has been exposed, cash has overcome craft nexus and if professionalism is a mundane ideology, then "profession" and "professional" are sociological contributions to the pile. Anyway, in the sophisticated organization of expert services, all occupations have central skills, an occupational code of ethics, a group culture, some occupational authority, and some permission to monopoly practice from the community. This incisive approach makes it difficult to 'caste-ify' or 'class-ify' the liberal professions as part and beyond the pale of 'industry' in our democracy. We mean no disrespect to the members of the professions. Even the judicial profession or administrative profession cannot escape the winds of social change. We may add that the modern world, particularly the third world, can hope for a human tomorrow only through professions for the people, through expertise at the service of the millions. Indian primitivism

can be banished only by *pro bono publico* professions in the field of law, medicine, education, engineering and what not. But that radicalism does not detract from the thesis that 'industry' does not spare professionals. Even so, the widest import may still self-exclude the little mofussil lawyer, the small rural medic or the country engineer, even though a hired sweeper or factotum assistant may work with him. We see no rationale in the claim to carve out islets. Look. A solicitor's firm or a lawyer's firm becomes successful not merely by the talent of a single lawyer but by the co-operative operations of several specialists, juniors and seniors. Likewise the ancillary services of competent stenographers, paralegal supportive services are equally important. The same test applies to other professions. The conclusion is inevitable that contribution to the success of the institution - every professional unit has an institutional goodwill and reputation - comes not merely from the professional or specialist but from all those whose excellence in their respective parts makes for the total proficiency. We have, therefore, no doubt that the claim for exclusion on the score of liberal professions is unwarranted from a functional or definitional angle. The flood-gates of exemption from the obligations under the Act will be opened if professions flow out of its scope.

110. Many callings may clamour to be regarded as liberal professions. In an age when traditions have broken down and the old would professions of liberal descent have begun to resort to commercial practices (even legally, as in America, or factually, as in some other countries) exclusion under this new label will be infliction of injury on the statutory intent and effect.

111. The result of this discussion is that the *Solicitors'* case is wrongly decided and must, therefore, be overruled. We must hasten, however, to repeat that a small category, perhaps large in numbers in the mofussil, may not squarely fall within the definition of industry. A single lawyer, a rural medical practitioner or urban doctor with a little assistant and/of menial servant may ply a profession but may not be said to run an industry. That is not because the employee does not make a contribution nor because the profession is too high to be classified as a trade or industry with its commercial connotations but because there is nothing like *organised labour* in such employment. The image of industry or even quasi-industry is one of a plurality of workmen, not an isolated 01 single little assistant or attendant. The latter category is more or less like personal avocation for livelihood taking some paid or part-time from another. The whole purpose of the Industrial Disputes Act is to focus on resolution of industrial disputes and regulation of industrial relations and not to meddle with every little carpenter in a village or bla ksmith in a town who sits with his son or assistant to work for the customers who trek in. The ordinary spectacle of a cobbler and his assistant or a cycle repairer with a helper, we come across in the pavements of cities and towns, repels the idea of industry and industrial dispute. For this reason, which applies all along the line, to small professions, petty handicraftsmen, domestic servants and the like, the solicitor or doctor or rural engineer, even like the butcher, the baker and the candle-stick maker, with an assistant or without, does not fall within the definition of industry. In regular industries, of course, even a few employees are enough to bring them within Section 2(7). Otherwise automated industries will slip through the net.

Education

112. We will now move on to a consideration of education as an industry. If the triple tests of systematic activity, co-operation between employer and employee and production of goods and services were alone to be applied, a University, a college, a research institute or teaching institution will be an industry. But in *University of Delhi* [AIR 1963 SC 1873] it was held that the Industrial Tribunal was wrong in regarding the University as an industry because it would be inappropriate to describe education as an industrial activity. Gajendragadkar, J. agreed in his judgment that the employer-employee test was satisfied and co-operation between the two was also present. Undoubtedly, education is a sublime cultural service, technological training and personality-builder. A man without- education is a brute and nobody can quarrel with the proposition that education, in its spectrum, is significant service to the community. We have already given extracts from Australian Judge Isaacs, J. to substantiate the thesis that education is not merely industry but the mother of industries. A philistine, illiterate society will be not merely uncivilised but incapable of industrialisation. Nevertheless Gajendragadkar, J. observed:

It would, no doubt, sound somewhat strange that education should be described as industry and the teachers as workmen within the meaning of the Act, but if the literal construction for which the respondents contend is accepted, that consequence must follow.

Why is it strange to regard education as an industry? Its respectability? Its lofty character? Its professional stamp? Its cloistered virtue which cannot be spoiled by the commercial implications and the raucous voices of workmen? Two reasons are given to avoid the conclusion that imparting education is an industry. The first ground relied on by the Court is based upon the preliminary conclusion that teachers are not 'workmen' by definition. Perhaps, they are not, because teachers do not do manual work or technical work. We are not too sure whether it is proper to disregard, with contempt, manual work and separate it from education, nor are we too sure whether in our technological universe, education has to be excluded. However, that may be a battle to be waged on a later occasion by litigation and we do not propose to pronounce on it at present. The Court, in the *University of Delhi*, proceeded on that assumption viz. that teachers are not workmen, which we will adopt to test the validity of the argument. The reasoning of the Court is best expressed in the words of Gajendragadkar, J.:

It is common ground that teachers employed by educational institutions, whether the said institutions are imparting primary, secondary, collegiate or post-graduate education, are not workmen under Section 2(s), and so, it follows that the whole body of employees with whose co-operation the work of imparting education is carried on by educational institutions do not fall within the purview of Section 2(s), and any disputes between them and the institutions which employed them are outside the scope of the Act. In other words, if imparting education is an industry under Section 2(j), the bulk of the employees being outside the purview of the Act, the only disputes which can fall within the scope of the Act are those which arise between such institutions and their subordinate staff, the members of which may fall under Section 2(s). In our opinion, having regard to the fact that the work of education is primarily and exclusively carried on with the assistance of the labour and co-

operation of teachers, the omission of the whole class of teachers from the definition prescribed by Section 2(s) has an important bearing and significance in relation to the problem which we are considering. It could not have been the policy of the Act that education should be treated as industry for the benefit of a very minor and insignificant number of persons who may be employed by educational institutions to carry on the duties of the subordinate staff. Reading Section 2(g), (j) and (s) together, we are inclined to hold that the work of education carried on by educational institutions like the University of Delhi is not an industry within the meaning of the Act.

113. The second argument which appealed to the Court to reach its conclusion is that: “the distinctive purpose and ‘object of education would make it very difficult to assimilate it to the position of any trade, business or calling or service within the meaning of Section 2(j)”. Why so? The answer is given by the learned Judge himself:

Education seeks to build up the personality of the pupil by assisting his physical, intellectual, moral and emotional development. To speak of this educational process in terms of industry sounds so completely incongruous that one is not surprised that the Act has deliberately so defined workman under Section 2(s) as to exclude teachers from its scope. Under the sense of values recognised both by the traditional and conservative as well as the modern and progressive social outlook, teaching and teachers are, no doubt, assigned a high place of honour and it is obviously necessary and desirable that teaching and teachers should receive the respect that is due to them. A proper sense of values would naturally hold teaching and teachers in high esteem, though power or wealth may not be associated with them. It cannot be denied that the concept of social justice is wide enough to include teaching and teachers, and the requirement that teachers should receive proper emoluments and other amenities which is essentially based on social justice cannot be disputed; but the effect of excluding teachers from Section 2(s) is only this that the remedy available for the betterment of their financial prospects does not fall under the Act. It is well-known that Education Departments of the State Governments as well as the Union Government, and the University Grants Commission carefully consider this problem and assist the teachers by requiring the payment to them of proper scales of pay and by insisting on the fixation of other reasonable terms and conditions of service in regard to teachers engaged in primary and secondary education and collegiate education which fall under their respective jurisdictions. The position nevertheless is clear that any problems connected with teachers and their salaries are outside the purview of the Act, and since the teachers form the sole class of employees with whose co-operation education is imparted by educational institutions, their exclusion from the purview of the Act necessarily corroborates the conclusion that education itself is not without its scope.

114. Another reason has also been adduced to reinforce this conclusion:

It is well-known that the University of Delhi and most other educational institutions are not formed or conducted for making profit; no doubt, the absence of profit motive would not take the work of any institution outside Section 2(j) if the

requirements of the said definition are otherwise satisfied. We have referred to the absence of profit motive only to emphasise the fact that the work undertaken by such educational institutions differs from the normal concept of trade or business. Indeed, from a rational point of view, it would be regarded as inappropriate to describe education even as a profession. Education in its true aspect is more a mission and a vocation rather than a profession or trade or business, however wide may be the denotation of the two latter words under the Act. That is why we think it would be unreasonable to hold that educational institutions are employers within the meaning of Section 2(g), or that the work of teaching carried on by them is an industry under Section 2(j), because essentially, the creation of a well-educated healthy young generation imbued with a rational progressive outlook on life which is the sole aim of education, cannot at all be compared or assimilated with what may be described as an industrial process.

115. The Court was confronted by the *Corporation of Nagpur* where it had been expressly held that the education department of the Corporation was service rendered by the department and so the subordinate menial employees of the department came under the definition of employees and would be entitled to the benefits of the Act. This was explained away by the suggestion that

(T)he question as to whether educational work carried on by educational institutions like the University of Delhi which have been formed primarily and solely for the purpose of imparting education amounts to an industry within the meaning of Section 2(j), was not argued before the Court and was not really raised in that form.

116. We dissent, with utmost deference, from these propositions and are inclined to hold, as the *Corporation of Nagpur* held, that *education is industry*, and as Isaacs, J. held, in the *Australian* case, that education is pre-eminently service.

117. The actual decision in *University of Delhi* was supported by another ground, namely, that the predominant activity of the University was teaching and since teachers did not come within the purview of the Act, only the incidental activity of the subordinate staff could fall within its scope but that could not alter the predominant character of the institution.

118. We may deal with these contentions in a brief way, since the substantial grounds on which we reject the reasoning have already been set out elaborately. The premises relied on is that the bulk of the employees in the University is the teaching community. Teachers are not workmen and cannot raise disputes under the Act. The subordinate staff being only a minor category of insignificant numbers, the institution must be excluded, going by the predominant character test. It is one thing to say that an institution is not an industry. It is altogether another thing to say that a large number of its employees are not 'workmen' and cannot therefore avail of the benefits of the Act and so the institution ceases to be an industry. The test is not the predominant number of employees entitled to enjoy the benefits of the Act. The true test is the predominant nature of the activity. In the case of the university or an educational institution, the *nature* of the activity is, *ex hypothesi*, education which is a service to the community. Ergo, the university is an industry. The error has crept in, if we may say so

with great respect, in mixing up the numerical strength of the personnel with the nature of the activity.

119. Secondly, there are a number of other activities of the University Administration, demonstrably industrial which are severable although ancillary to the main cultural enterprise. For instance, a university may have a large printing press as a separate but considerable establishment. It may have a large fleet of transport buses with an army of running staff. It may have a tremendous administrative strength of officers and clerical cadres. It may have *karamcharis* of various hues. As the *Corporation of Nagpur* has effectively ruled, these operations, viewed in severally or collectively, may be treated as industry. It would be strange, indeed, if a university has 50 transport buses, hiring drivers, conductors, cleaners and workshop technicians. How are they to be denied the benefits of the Act, especially when their work is separable from academic teaching, merely because the buses are owned by the same corporate personality? We find, with all defence, little force in this process of nullification of the industrial character of the University's multi-form operations.

120. The next argument which has appealed to the Court in that case is that education develops the personality of the pupil and this process, if described as industry, sounds grotesque. We are unable to appreciate the force of this reasoning, if we may respectfully say so. It is true that our societal values assign a high place of honour to education, but how does it follow from this that education is not a service? The *sequitur* is not easily discernible. The pejorative assumption seems to be that 'industry' is something vulgar, inferior, disparaging and should not be allowed to sully the sanctified subject of education. In our view, industry is a noble term and embraces even the most sublime activity. At any rate, in legal terminology located in the statutory definition it is not money-making, it is not lucre-loving, it is not commercialising, it is not profit hunger. On the other hand, a team of painters who produce works of art and sell them or an orchestra group which travels and performs and makes money may be an industry if they employ supportive staff of artistes or others. There is no degrading touch about 'industry', especially in the light of Mahatma Gandhi's dictum that 'Work is Worship'. Indeed the colonial system of education, which divorced book learning from manual work and practical training, has been responsible for the calamities in that field. For that very reason, Gandhiji and Dr Zakir Hussain propagated basic education which used work as *modus operandus* for teaching. We have hardly any hesitation in regarding education as an industry.

121. The final ground accepted by the Court is that education is a mission and vocation, rather than a profession or trade or business. The most that one can say is that this is an assertion which does not prove itself. Indeed, all life is a mission and a man without a mission is spiritually still-born. The high mission of life is the manifestation of the divinity already in man. To christen education as a mission, even if true, is not to negate its being an industry. We have to look at educational activity from the angle of the Act, and so viewed the ingredients of education are fulfilled. Education is, therefore, an industry and nothing can stand in the way of that conclusion.

122. It may well be said by realists in the cultural field that educational managements depend so much on governmental support and some of them charge such high fees that schools have become trade and managers merchants. Whether this will apply to universities or

not, schools and colleges have been accused, at least in the private sector, of being tarnished with trade motives.

123. Let us trade romantics for realities and see. With evening classes, correspondence courses, admissions unlimited, fees and government grants escalating, and certificates and degrees for prices, education - legal, medical, technological, school level or collegiate-education - is riskless trade for cultural entrepreneurs and hapless nests of campus (industrial) unrest. Imaginary assumptions are experiments with untruth.

124. Our conclusion is that the *University of Delhi* case was wrongly decided and that education can be and is, in its institutional form, an industry.

Are charitable institutions industries?

125. Can charity be 'industry'? This paradox can be unlocked only by examining the nature of the activity of the charity, for there are charities and charities. The grammar of labour law in a pluralist society tells us that the worker is concerned with wages and conditions of service, the employer with output and economies and the community with peace, production and stream of supply. This complex of work, wealth and happiness, firmly grasped, will dissolve the dilemma of the law bearing on charitable enterprises. Charity is free: industry is business. Then how? A lay look may scare; a legal look will see; a social look will see through a hiatus inevitable in a sophisticated society with organizational diversity and motivational dexterity.

125-A. If we mull over the major decisions, we get a hang of the basic structure of 'industry' in its legal anatomy. Bedrocked on the grundnorms, we must analyse the elements of charitable economic enterprises, established and maintained for satisfying human wants. Easily, three broad categories emerge; more may exist. The charitable element enlivens the operations at different levels in these patterns and the legal consequences are different, viewed from the angle of 'industry'. For income-tax purposes, Trusts Act or company law or registration law or penal code requirements the examination will be different. We are concerned with a benignant disposition towards workmen and a trichotomy of charitable enterprises run for producing and/or supplying goods and services, organized systematically and employing workmen, is scientific.

126. The first is one where the enterprise, like any other, yields profits but they are siphoned off for altruistic objects. The second is one where the institution makes no profit but hires the services of employees as in other like businesses but the goods and services, which are the output, are made available, at low or no cost, to the indigent needy who are priced out of the market. The third is where the establishment is oriented on a humane mission fulfilled by men who work, not because they are paid wages, but because they share the passion for the cause and derive job satisfaction from their contribution. The first two are industries, the third not. What is the test of identity whereby these institutions with eleemosynary inspiration fall or do not fall under the definition of industry?

127. All industries are organized, systematic activity. Charitable adventures which do not possess this feature, of course, are not industries. Sporadic or fugitive strokes of charity do not become industries. All three philanthropic entities, we have itemised, fall for consideration only if they involve co-operation between employers and employees to produce

and/or supply goods and/or services. We assume, all three do. The crucial difference is over the presence of charity in the quasi-business nature of the activity. Shri Tarkunde, based on *Safdarjung*, submits that, *ex hypothesi*, charity frustrates commerciality and thereby deprives it of the character of industry.

128. It is common ground that the first category of charities is disqualified for exemption. If a business is run for production and or supply of goods and services with an eye on profit, it is plainly an industry. The fact that the whole or substantial part of the profits so earned is diverted for purely charitable purposes does not affect the nature of the economic activity which involves the co-operation of employer and employee and results in the production of goods and services. The workers are not concerned about the destination of the profits. They work and receive wages. They are treated like any other workmen in any like industry. All the features of an industry, as spelt out from the definition by the decisions of this Court, are fully present in these charitable businesses. In short, they are industries. The application of the income for philanthropic purposes, instead of filling private coffers, makes no difference either to the employees or to the character of the activities. Good Samaritans can be clever industrialists.

129. The second species of charity is really an allotropic modification of the first. If a kind-hearted businessman or high-minded industrialist or service-minded operator hires employees like his non-philanthropic counterparts and, in co-operation with them, produces and supplies goods or services to the lowly and the lost, the needy and the ailing without charging them any price or receiving a negligible return, people regard him as of charitable disposition and his enterprise as a charity. But then, so far as the workmen are concerned, it boots little whether he makes available the products free to the poor. They contribute labour in return for wages and conditions of service. For them the charitable employer is exactly like a commercial-minded employer. Both exact hardwork, both pay similar wages, both treat them as human machine cogs and nothing more. The material difference between the commercial and the compassionate employers is not with reference to the workmen but with reference to the recipients of goods and services. Charity operates not *vis-a-vis* the workmen in which case they will be paying a liberal wage and generous extras with no prospect of strike. The beneficiaries of the employer's charity are the indigent consumers. Industrial law does not take note of such extraneous factors but regulates industrial relations between employers and employees, employers and workmen and workmen and workmen. From the point of view of the workmen there is no charity. For him charity must begin at home. From these strands of thought flows the conclusion that the second group may legitimately and legally be described as industry. The fallacy in the contrary contention lies in shifting the focus from the worker and the industrial activity to the disposal of the end product. This law has nothing to do with that. The income-tax law may have, social opinion may have.

130. Some of the appellants may fall under the second category just described. While we are not investigating into the merits of those appeals, we may as well indicate, in a general way, that the Gandhi Ashram, which employs workers like spinners and weavers and supplies cloth or other handicraft at concessional rates to needy rural consumers, may not qualify for exemption. Even so, particular incidents may have to be closely probed before pronouncing with precision upon the nature of the activity. If cotton or yarn is given free to workers, if

charkhas are made available free for families, if fair price is paid for the net product and substantial charity thus benefits the spinners, weavers and other handicraftmen, one may have to look closely into the character of the enterprise. If employees are hired and their services are rewarded by wages - whether on cottage industry or factory basis - the enterprises become industries, even if some kind of concession is shown and even if the motive and project may be to encourage and help poor families and find them employment. A compassionate industrialist is nevertheless an industrialist. However, if raw material is made available free and the finished product is fully paid for - rather exceptional to imagine - the conclusion may be hesitant but for the fact that the integrated administrative, purchase, marketing, advertising and other functions are like in trade and business. This makes them industries. Noble objectives, pious purposes, spiritual foundations and developmental projects are no reason not to implicate these institutions as industries.

131. We now move on to economic activities and occupations of an altruistic character falling under the third category.

132. The heart of trade or business or analogous activity is organisation with an eye on competitive efficiency, by hiring employees, systematising processes, producing goods and services needed by the community and obtaining money's worth of work from employees. If such be the nature of operations and employer-employee relations which make an enterprise an industry, the motivation of the employer in the final disposal of products or profits is immaterial. Indeed the activity is patterned on a commercial basis, judged by what other similar undertakings and commercial adventures do. To qualify for exemption from the definition of 'industry' in a case where there are employers and employees and systematic activities and production of goods and services, we need a totally different orientation, organisation and method which will stamp on the enterprise the imprint of commerciality. Special emphasis, in such cases, must be placed on the central fact of employer-employee relations. If a philanthropic devotion is the basis for the charitable foundation or establishment, the institution is headed by one who whole-heartedly dedicates himself for the mission and pursues it with passion, attracts others into the institution, not for wages but for sharing in the cause and its fulfilment, then the undertaking is not 'industrial'. Not that the presence of charitable impulse extricates the institution from the definition in Section 2(j) but that there is no economic relationship such as is found in trade or business between the head who employs and the others who emotively flock to render service. In one sense, there are no employers and employees but crusaders all. In another sense, there is no wage basis for the employment but voluntary participation in the production, inspired by lofty ideals and unmindful of remuneration, service conditions and the like. Supposing there is an Ashram or Order with a guru or other head. Let us further assume that there is a band of disciples, devotees or priestly subordinates in the Order, gathered together for prayers, ascetic practices, bhajans, meditation and worship. Supposing, further, that outsiders are also invited daily or occasionally, to share in the spiritual proceedings. And, let us assume that all the inmates of the Ashram and members of the Order, invitees, guests and other outside participants are fed, accommodated and looked after by the institution. In such a case, as often happens, the cooking and the cleaning, the bed-making and service, may often be done, at least substantially by the Ashramites themselves. They may chant in spiritual ecstasy even as

material goods and services are made and served. They may affectionately look after the guests, and, all this they may do, not for wages but for the chance to propitiate the Master, work selflessly and acquire spiritual grace. It may well be that they may have surrendered their lucrative employment to come into the holy institution. It may also be that they take some small pocket money from the donations or takings of the institution. Nay more; there may be a few scavengers and servants, a part-time auditor or accountant employed on wages. If the substantial number of participants in making available goods and services, if the substantive nature of the work, as distinguished from trivial items, is rendered by voluntary wage-less *sishtyas*, it is impossible to designate the institution as an industry, notwithstanding a marginal few who are employed on a regular basis for hire. The reason is that in the crucial, substantial and substantive aspects of institutional life the nature of the relations between the participants is non-industrial. Perhaps, when Mahatma Gandhi lived in Sabarmati, Aurobindo had his hallowed silence in Pondicherry, the inmates belonged to this chastened brand. Even now, in many foundations, centres, monasteries, holy orders and Ashrams in the East and in the West, spiritual fascination pulls men and women into the precincts and they work tirelessly for the Maharishi or Yogi or Swamiji and are not wage-earners in any sense of the term. Such people are not workmen and such institutions are not industries despite some menials and some professionals in a vast complex being hired. We must look at the predominant character of the institution and the nature of the relations resulting in the production of goods and services. Stray wage-earning employees do not shape the soul of an institution into an industry.

Research

135. Does research involve collaboration between employer and employee ? It does. The employer is the institution, the employees are the scientists, para-scientists and other personnel. Is scientific research service? Undoubtedly it is. Its discoveries are valuable contributions to the wealth of the nation. Such discoveries may be sold for a heavy price in the industrial or other markets. Technology has to be paid for and technological inventions and innovations may be patented and sold. In our scientific and technological age nothing has more cash value, as intangible goods and invaluable services, than discoveries. For instance, the discoveries of Thomas Alva Edison made from fabulously rich. It has been said that his brain had the highest cash value in history for he made the world vibrate with the miraculous discovery of recorded sound. Unlike most inventors, he did not have to wail to get his reward in heaven; he received it munificently on this gratified and grateful earth, thanks to conversion of his inventions into money aplenty. Research benefits industry. Even though a research institute may be a separate entity disconnected from the many industries which funded the institute itself, it can be regarded as an organisation, propelled by systematic activity, modelled on co-operation between employer and employee and calculated to throw up discoveries and inventions and useful solutions which benefit individual industries and the nation in terms of goods and services and wealth. It follows that research institutes, albeit run without profit-motive, are industries.

Clubs

137. Are clubs industries? The wide words used in Section 2(j) if applied without rational limitations, may cover every bilateral activity even spiritual, religious, domestic, conjugal,

pleasurable or political. But functional circumscriptions spring from the subject-matter and other cognate considerations already set out early in this judgment. Industrial law, any law, may insanely run amok if limitless lexical liberality were to innately burst into bursting point or proliferate odd judicial arrows which at random sent, hit many an irrelevant mark the legislative archer never meant. To read down words to yield relevant sense is a pragmatic art, if care is taken to eschew subjective projections masked as judicial processes. The true test, as we apprehend from the economic history and functional philosophy of the Act is based on the pathology of industrial friction and explosion impeding community production and consumption and imperilling peace and welfare. This social pathology arises from the exploitative potential latent in organized employer-employee relations. So, where the dichotomy of employer and workmen in the process of material production is present, the service of economic friction and need for conflict resolution show up. The Act is meant to obviate such confrontation and 'industry' cannot functionally and dysfunctionally exceed this object. The question is whether in a club situation - or of a co-operative or even a monastery situation, for that matter - a dispute potential of the nature suggested exists. If it does, it is an industry, since the basic elements are satisfied. If productive co-operation between employer and employee is necessary, conflict between them is on the cards, be it a social club, mutual benefit society, panjarapole, public service or professional office. Tested on this touchstone, most clubs will fail to qualify for exemption. For clubs - gentlemen's clubs, proprietary clubs, service clubs, investment clubs, sports clubs, art clubs, military clubs or other brands of recreational associations - when X-rayed from the industrial angle, project a picture on the screen typical of employers hiring employees for wages for rendering services and/or supplying goods on a systematic basis at specified hours. There is a co-operation, the club management providing the capital, the raw material, the appliances and auxiliaries and the cooks, waiters, bell boys, pickers, barmaids or other servants making available enjoyable eats, pleasures and other permissible services for price paid by way of subscriptions or bills charged. The club life, the warm company, the enrichment of the spirits and freshening of the mind are there. But these blessings do not contradict the co-existence of an 'industry' in the technical sense. Even tea-tasters, hired for high wages, or commercial art troupes or games teams remunerated fantastically, enjoy company, taste, travel and games; but, elementally, they are workmen with employers above and together constitute not merely entertainment groups but industries under the Act. The protean hues of human organization project delightfully different designs depending upon the legal prism and the filtering process used. No one can deny the cultural value of club life; neither can anyone blink at the legal result of the organization.

138. The only ground to extricate clubs from the coils of industrial law (except specific statutory provision) is absence of employer-employee co-operation on the familiar luring-firing pattern. Before we explain this possible exemption and it applies to many clubs at the poorer levels of society we must meet another submission made by Counsel. Clubs are exclusive; they cater to needs and pleasures of members, not of the community as such and this latter feature salvages them from the clutches of industrial regulation. We do not agree. Clubs are open to the public for membership subject to their own bye-laws and rules. But any member of the community complying with those conditions and waiting for his turn has a reasonable chance of membership. Even the world's summit club - the United Nations has

cosmic membership subject to vetoes, qualifications, voting and what not. What we mean is that a club is not a limited partnership but formed from the community. Moreover, even the most exclusive clubs of imperial vintage and class snobbery admit members' guests who are not specific souls but come from the undefused community or part of a community. Clubs, speaking generally are social institutions enlivening community life and are the fresh breath of relaxation in a faded society. They serve a section and answer the doubtful test of serving the community. They are industry.

141. Even these people's organs cannot be non-industries unless one strict condition is fulfilled. They should be - and usually are - self-serving. They are poor men's clubs without the wherewithal of a *Gymkhana* or *Cricket Club of India* which reached this Court for adjudication. Indeed, they rarely reach a Court being easily priced out of our expensive judicial market. These self-service clubs do not have hired employees to cook or serve, to pick or chase balls, to tie up nets or arrange the cards table, the billiards table, the bar and the bath or do those elaborate business management chores of the well-run city or country clubs. The members come and arrange things for themselves. The secretary, an elected member, keeps the key. Those interested in particular pursuits organize those terms themselves. Even the small accounts or clerical items are maintained by one member or other. On special evenings all contribute efforts to make a good show, excursion, joy picnic or anniversary celebration. The dynamic aspect is self-service. In such an institution, a part-time sweeper or scavenger or multi-purpose attendant may sometimes exist. He may be an employee. This marginal element does not transform a little association into an industry. We have projected an imprecise profile and there may be minor variations. The central thrust of our proposition is that if a club or other like collectivity has a basic and dominant self-service mechanism, a modicum of employees at the periphery will not metamorphose it into a conventional club whose verve and virtue are taken care of by paid staff, and the members' role is to enjoy. The small man's Nehru Club, Gandhi Granthasala, Anna Manram, Netaji Youth Centre, Brother Music Club, Muslim Sports Club and like organs often named after national or provincial heroes and manned by members themselves as contrasted with the upper bracket's Gymkhana Club, Cosmopolitan Club, Cricket Club of India, National Sports Club of India whose badge is pleasure paid for and provided through skilled or semi-skilled catering staff. We do not deal with hundred per cent social service clubs which meet once in a way, hire a whole evening in some hotel, have no regular staff and devote their energies and resources also to social service projects. There are many brands and we need not deal with every one. Only if they answer the test laid down affirmatively they qualify.

143. The *Madras Gymkhana Club*, a blue-blooded members' club, has the socialite cream of the city on its rolls. It offers choice facilities for golf, tennis and billiards, arranges dances, dinners and refreshments, entertains and accommodates guests and conducts tournaments for members and non-members. These are all activities richly charged with pleasurable service. For fulfilment of these objects the club employs officers, caterers, and others on reasonable salaries. Does this club become an industry? The label matters little; the substance is the thing. A night-club for priced nocturnal sex is a lascivious 'industry'. But a literary club, meeting weekly to read or discuss poetry, hiring a venue and running solely by the self-help of the participants, is not. Hidayatullah, C.J., in *Gymkhana* ruled that the club

was not an 'industry'. Reason? 'An industry is thus said to involve co-operation between employer and employees for the object of satisfying material human needs but not for oneself nor for pleasure nor necessarily for profit'.

It is not of any consequence that there is no profit motive because that is considered immaterial. It is also true that the affairs of the club are organised in the way business is organised, and that there is production of material and other services and in a limited way production of material goods mainly in the catering department. But these circumstances are not truly representative in the case of the club because the services are to the members themselves for their own pleasure and amusement and the material goods are for their consumption. In other words, the club exists for its members. No doubt occasionally strangers also take benefit from its services but they can only do so on invitation of members. No one outside the list of members has the advantage of these services as of right. Nor can these privileges be bought. In fact they are available only to members or through members.

If today the club were to stop entry of outsiders, no essential change in its character vis-a-vis the members would take place. In other words, the circumstances that guests are admitted is irrelevant to determine if the club is an industry. Even with the admission of guests being open the club remains the same, that is to say, a member's self-serving institution. No doubt the material needs or wants of a section of the community is catered for but that is not enough. This must be done as part of trade or business or as an undertaking analogous to trade or business. This element is completely missing in a members' club.

144. Why is the club not an industry? It involves co-operation of employer and employees, organised like in a trade and calculated to supply pleasurable utilities to members and others. The learned Judge agrees that "the material needs or wants of a section of the community is catered for but that is not enough. This must be done as part of trade or business or as an undertaking analogous to trade or business. This element is completely missing in a members' club".

145. 'This element'? What element makes it analogous to trade? Profit motive? No, says the learned Judge. Because it is a self-serving institution? Yes? Not at all. For, if it is self-service then why the expensive establishment and staff with high salary bills? It is plain as day-light that the club members do nothing to produce the goods or services. They are rendered by employees who work for wages. The members merely enjoy club life, the geniality of company and exhilarating camaraderie, to the accompaniment of dinners, dances, games and thrills. The 'reason' one may discover is that it is a members' club in the sense that "the club belongs to members for the time being on its list of members and that is what matters. Those members can deal with the club as they like. Therefore, the club is identified with its members at a given point of time. Thus it cannot be said that the club has an existence apart from the members".

146. We are intrigued by this reason. The ingredients necessary for an industry are present here and yet it is declared a non-industry because the club belongs to members only. A company belongs to the shareholders only; a co-operative belongs to the members only; a

firm of experts belongs to the partners only. And yet, if they employ workmen with whose co-operation goods and services are made available to a section of the community and the operations are organised in the manner typical of business method and organisation, the conclusion is irresistible that an 'industry' emerges. Likewise, the members of a club may own the institution and become the employers for that reason. It is transcendental logic to jettison the inference of an 'industry' from such a factual situation on the ingenious plea that a club "belongs to members for the time being and that is what matters". We are inclined to think that that just does not matter. The *Gymkhana* case, we respectfully. hold, is wrongly decided.

147. The *Cricket Club of India* stands in a worse position. It is a huge undertaking with activities wide-ranging, with big budgets, army of staff and profit-making adventures. Indeed, the members share in the gains of these adventures by getting money's worth by cheaper accommodation, free or low priced tickets for entertainment and concessional refreshments; and yet Bhargava, J. speaking for the Court held this mammoth industry a non-industry. Why? Is the promotion of sports and games by itself a *legal* reason for excluding the organisation from the category of industries if all the necessary ingredients are present? Is the fact that the residential facility is exclusive for members an exemptive factor? Do not the members share in the profits through the invisible process of lower charges? When all these services are rendered by hired employees, how can the nature of the activity be described as self-service, without taking liberty with reality? A number of utilities which have money's worth, are derived by the members. An indefinite section of the community entering as the guests of the members also share in these services. The testimony of the activities can leave none in doubt that this colossal 'club' is a vibrant collective undertaking which offers goods and services to a section of the community for payment and there is co-operation between employer and employees in this project. The plea of non-industry is un-presentable and exclusion is possible only by straining law to snapping point to salvage a certain class of socialite establishments. *Presbyter* is only priest writ large. Club is industry *manu brevi*.

Co-operatives

Co-operative societies ordinarily cannot, we feel, fall outside Section 2(j). After all, the society, a legal person, is the employer. The members and/or others are employees and the activity partakes of the nature of trade. Merely because co-operative enterprises deserve State encouragement the definition cannot be distorted. Even if the society is worked by the members only, the entity (save where they are few and self-serving) is an industry because the member-workers are paid wages and there can be disputes about rates and different scales of wages among the categories i.e. workers and workers or between workers and employer. These societies - credit societies, marketing co-operatives, producers' or consumers' societies or apex societies - are industries.

148. Do credit unions, organised on a co-operative basis, scale the definitional walls of industry? They do. There, a credit union, which was a co-operative association which pooled the savings of small people and made loans to its members at low interest, was considered from the point of view of industry. Admittedly, they were credit unions incorporated as co-operative societies and the thinking of Mason, J. was that such institutions were industrial in character. The industrial mechanism of society according to Starke, J. included "all those

bodies 'of men associated, in various degrees of competition and co-operation, to win their living by providing the community with some service which it requires' ". Mason, J., went a step further to hold that even if such credit unions were an adjunct of industry, they could be regarded as industry.

149. It is enough, therefore, if the activities carried on by credit unions can accurately be described as incidental to industry or to the organized production, transportation or distribution of commodities or other forms of material wealth. To our minds the evidence admits of no doubt that the activities of credit unions are incidental in this sense.

150. This was sufficient, in his view, to conclude that credit unions constituted an industry under an Act which has resemblance to our own. In our view, therefore, societies are industries.

The Safdarjung Hospital case

151. A sharp bend in the course of the law came when *Safdarjung* was decided. The present reference has come from *that landmark case*, and, necessarily, it claims our close attention. Even so, no lengthy discussion is called for, because the connotation of 'industry' has already been given by us at sufficient length to demarcate our deviation from the decision in *Safdarjung*.

152. Hidayatullah, C.J., considered the facts of the appeals, clubbed together there and held that all the three institutions in the bunch of appeals were not industries. Abbreviated reasons were given for the holding in regard to each institution, which we may extract for precise understanding:

It is obvious that Safdarjung Hospital is not embarked on an economic activity which can be said to be analogous to trade or business. There is no evidence that it is more than a place where persons can get treated. This is a part of the functions of Government and the hospital is run as a Department of Government. It cannot, therefore, be said to be an industry.

The Tuberculosis Hospital is not an independent institution. It is a part of the Tuberculosis Association of India. The hospital is wholly charitable and is a research institute. The dominant purpose of the hospital is research and training, but as research and training cannot be given without beds in a hospital, the hospital is run. Treatment is thus a part of research and training. In these circumstances the Tuberculosis Hospital cannot be described as industry.

The objects of the Kurji Holy Family Hospital are entirely charitable. It carries on work of training, research and treatment. Its income is mostly from donations and distribution of surplus as profit is prohibited. It is, therefore, clear that it is not an industry as laid down in the Act.

153. Even a cursory glance makes it plain that the learned Judge took the view that a place of treatment of patients, run as a department of government, was not an industry because it was a part of the functions of the government. We cannot possibly agree that running a hospital, which is a welfare activity and not a sovereign function, cannot be an industry. Likewise, dealing with the *Tuberculosis Hospital* case, the learned Judge held that

the hospital was wholly charitable and also was a research institute. Primarily, it was an institution for research and training. Therefore, the Court concluded, the institution could not be described as industry. *Non-sequitur*. Hospital facility, research products and training services are surely services and hence industry. It is difficult to agree that a hospital is not an industry. In the third case the same factors plus the prohibition of profit are relied on by the Court. We find it difficult to hold that absence of profit, or functions of training and research, take the institution out of the scope of industry.

154. Although the facts of the three appeals considered in *Safdarjung* related only to hospitals with research and training component, the Bench went extensively into a survey of the earlier precedents and crystallisation of criteria for designating industries. After stating that trade and business have a wide connotation, Hidayatullah, C.J., took the view that professions must be excluded from the ambit of industry: “A profession ordinarily is an occupation requiring intellectual skill, often coupled with manual skill. Thus a teacher uses purely intellectual skill, while a painter uses both. In any event, they are not engaged in an occupation in which employers and employees co-operate in the production or sale of commodities or arrangement for their production or sale or distribution and their services cannot be described as material services”.

155. We are unable to agree with this rationale. It is difficult to understand why a school or a painting institute or a studio which uses the services of employees and renders the service to the community cannot be regarded as an industry. What is more baffling is the subsequent string of reasons presented by the learned Judge:

What is meant by “material services” needs some explanation too. Material services are not services which depend wholly or largely upon the contribution of professional knowledge, skill or dexterity for the production of a result. Such services being given individually and by individuals are services no doubt but not material services. Even an establishment where many such operate cannot be said to convert their professional services into material services. Material services involve an activity carried on through co-operation between employers and employees to provide the community with the use of something such as electric power, water, transportation, mail delivery, telephones and the like. In providing these services there may be employment of trained men and even professional men, but the emphasis is not on what these men do but upon the productivity of a service organised as an industry and commercially valuable. Thus the services of professional men involving benefit to individuals according to their needs, such as doctors, teachers, lawyers, solicitors etc., are easily distinguishable from an activity such as transport service. The latter is of a commercial character in which something is brought into existence quite apart from the benefit to particular individuals. It is the production of this something which is described as the production of material services.

156. With the greatest respect to the learned Chief Justice, the arguments strung together in this paragraph are too numerous and subtle for us to imbibe. It is transcendental to define *material* services as excluding professional services. We have explained this position at some length elsewhere in this judgment and do not feel the need to repeat. Nor are we convinced that *Gymkhana* and *Cricket Club of India* are correctly decided. The learned Judge placed

accent on the non-profit making members' club as being outside the pale of trade or industry. We demur to this proposition.

157. Another intriguing reasoning in the judgment is that the Court has stated "it is not necessary that there must be a profit motive but the enterprises must be analogous to trade or business in a commercial sense". However, somewhat contrary to this reasoning we find, in the concluding part of the judgment, emphasis on the non-profit making aspect of the institutions. Equally puzzling is the reference to "commercial sense": what precisely does this expression mean? It is interesting to note that the word "commercial" has more than one semantic shade. If it means profit-making, the reasoning is self-contradictory. If it merely means a commercial pattern of organisation, of hiring and firing employees, of indicating the nature of employer-employee relation as in trade or commercial house, then the activity-oriented approach is the correct one. On that footing, the conclusions reached in that case do not follow. As a matter of fact, Hidayatullah, C.J., had in *Gymkhana* turned down the test of commerciality: "Trade is only one aspect of industrial activity This requires co-operation in some form between employers and workmen and the result is directly the product of this association but *not necessarily commercial*". Indeed, while dealing with the reasoning in *Hospital Mazdoor Sabha* he observes: "if a hospital, nursing home or a dispensary is run as a business, in a commercial way, there may be found elements of an industry there". This facet suggests either profit motive, which has been expressly negated in the very case, or commercial-type of activity, regardless of profit, which affirms the test which we have accepted, namely, that there must be employer-employee relations more or less on the pattern of trade or business. All that we can say is that there are different strands of reasoning in the judgment which are somewhat difficult to reconcile. Of course, when the learned Judge states that the use of the first schedule to the Act depends on the condition precedent of the existence of an industry, we agree. But, that by itself does not mean that a hospital cannot be regarded as an industry, profit or no profit, research or no research. We have adduced enough reasons in the various portions of this judgment to regard hospitals, research institutions and training centres as valuable material services to the community, qualifying for coming within Section 2(j). We must plainly state that *vis-a-vis* hospitals, *Safdarjung* was wrong and *Hospital Mazdoor Sabha* was right.

158. Because of the problems of reconciliation of apparently contradictory strands of reasoning in *Safdarjung* we find subsequent cases of this Court striking different notes. In fact, one of us (Bhagwati, J.) in *Indian Standards Institution* referred, even at the opening, to the baffling, perplexing question which judicial ventures had not solved. We fully endorse the observations of the Court in *ISI*:

So infinitely varied and many-sided is human activity and with the incredible growth and progress in all branches of knowledge and ever widening areas of experience at all levels, it is becoming so diversified and expanding in so many directions hitherto unthought of, that no rigid and doctrinaire approach can be adopted in considering this question. Such an approach would fail to measure up to the needs of the growing welfare state which is constantly engaged in undertaking new and varied activities as part of its social welfare policy. The concept of industry, which is intended to be a convenient and effective tool in the hands of industrial

adjudication for bringing about industrial peace and harmony, would lose its capacity for adjustment and change. It would be petrified and robbed of its dynamic content. The Court should, therefore, so far as possible, avoid formulating or adopting generalisations and hesitate to cast the concept of industry in a narrow rigid mould which would not permit of expansion as and when necessity arises. Only some working principles may be evolved which would furnish guidance in determining what are the attributes or characteristics which would ordinarily indicate that an undertaking is analogous to trade or business.

159. Our endeavour in this decision is to provide such working principles. This Court, within a few years of the enactment of the salutary statute, explained the benign sweep of 'industry' in *Banerji* which served as beacon in later years - *Ahmedabad Textile Research* acted on it, *Hospital Mazdoor Sabha* and *Nagpur Corporation* marched in its sheen. The law shed steady light on industrial inter-relations and the country's tribunals and courts settled down to evolve a progressive labour jurisprudence, burying the bad memories of *laissez faire* and bitter struggles in this field and nourishing new sprouts of legality fertilised by the seminal ratio in *Banerji*. Indeed, every great judgment is not merely an adjudication of an existing *lis* but an appeal addressed by the present to the emerging future. And here the future responded, harmonising with the human-scape hopefully projected by Part IV of the Constitution. But the drama of a nation's life, especially when it confronts die-hard forces, develops situations of imbroglio and tendencies to back-track. And law quibbles where life wobbles. Judges only read signs and translate symbols in the national sky. So, ensued an era of islands of exception dredged up by judicial process. Great clubs were privileged out, liberal professions swam to safety, educational institutions, vast and small, were helped out, divers charities, disinclined to be charitable to their own weaker workmen, made pious pleas and philanthropic appeals to be extricated. A procession of decisions - *Solicitors' case*, *University of Delhi*, *Gymkhana Club*, *Cricket Club of India*, *Chartered Accountants* climaxed by *Safdarjung*, - carved out sanctuaries. The six-member Bench, the largest which sat on this Court conceptually to reconstruct 'industry', affirmed and reversed, held profit motive irrelevant but upheld charitable service as exemptive, and in its lights and shadows, judicial thinking became ambivalent and industrial jurisprudence landed itself in a legal quagmire. Pinjrapoles sought salvation and succeeded in principle (Bombay Panjrapole), Chambers of Commerce fought and failed, hospitals battled to victory [*Dhanrajgirji Hospital*], standards institute made a vain bid to extricate [*ISI case*], research institutes, at the High Court level, waged and won non-industry status in Madras and Kerala. The murky legal sky paralysed tribunals and courts and administrations, and then came, in consequence, this reference to a larger Bench of seven Judges.

160. *Banerji*, amplified by *Corporation of Nagpur*, in effect met with its Waterloo in *Safdarjung*. But in this latter case two voices could be heard and subsequent rulings zigzagged and conflicted precisely because of this built-in ambivalence. It behoves us, therefore, hopefully to abolish blurred edges, illumine penumbral areas and overrule what we regard as wrong. Hesitancy, half-tones and hunting with the hounds and running with the hare can claim heavy penalty in the shape of industrial confusion, adjudicatory quandary and administrative perplexity at a time when the nation is striving to promote employment

through diverse strategies which need, for their smooth fulfilment, less stress and distress, more mutual understanding and trust based on a dynamic rule of law which speaks clearly, firmly and humanely. If the salt of law lose its savour of progressive certainty wherewith shall it be salted? So we proceed to formulate the principles, deducible from our discussion, which are decisive, positively and negatively, of the identity of 'industry' under the Act. We speak, not exhaustively, but to the extent covered by the debate at the bar and, to that extent, authoritatively, until overruled by a larger Bench or superseded by the legislative branch.

I

'Industry', as defined in Section 2(j) and explained in *Banerji* (supra), has a wide import.

(a) Where (i) systematic activity, (ii) organized by co-operation between employer and employee (the direct and substantial element is chimerical) (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss e.g. making, on a large scale *prasad* or food), prima facie, there is an 'industry' in that enterprise.

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

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

(d) If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking.

II

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

(a) 'Undertaking' must suffer a contextual and associational shrinkage as explained in *Banerji* and in this judgment; so also, service, calling and the like. This yields the inference that all organized activity possessing the triple elements in I (supra), although not trade or business, may still be 'industry' provided *the nature of the activity*, viz. the employer-employee basis, bears resemblance to what we find in trade or business. This takes into the fold of 'industry' undertakings, callings and services, adventures 'analogous to the *carrying* on the trade or business'. All features, other than the methodology of carrying on the activity viz. in organizing the co-operation between employer and employee, may be dissimilar. It does not matter, if on the employment terms there is analogy.

III

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

(a) The consequences are (i) professions, (ii) clubs, (iii) educational institutions, (iv) co-operatives, (v) research institutes (vi) charitable projects and (vii) other kindred adventures, if they fulfil the triple tests listed in I (supra), cannot be exempted from the scope of Section 2(j).

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

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

IV

The dominant nature test

(a) Where a complex of activities, some of which qualify for exemption, others not, involves employees on the total undertaking, some of whom are not ‘workmen’ as in the *University of Delhi* case or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the *Corporation of Nagpur*, will be the true test. The whole undertaking will be ‘industry’ although those who are not ‘workmen’ by definition may not benefit by the status.

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

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

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

V

We overrule *Safdarjung. Solicitors’* case, *Gymkhana, Delhi University, Dhanrajgirji Hospital* and other rulings whose ratio runs counter to the principles enunciated above, and *Hospital Mazdoor Sabha* is hereby rehabilitated.

We conclude with diffidence because Parliament, which has the commitment to the political nation to legislate promptly in vital areas like Industry and Trade and articulate the welfare expectations in the 'conscience' portion of the Constitution, has hardly intervened to re-structure the rather clumsy, vapourous and tall-and-dwarf definition or tidy up the scheme although judicial thesis and anti-thesis, disclosed in the two-decades-long decisions, should have produced a legislative synthesis becoming of a welfare state and socialistic society, in a world setting where I.L.O. norms are advancing and India needs updating. We feel confident, in another sense, since Counsel stated at the bar that a bill on the subject is in the offing. The rule of law, we are sure, will run with the rule of life - Indian life - at the threshold of the decade of new development in which labour and management, guided by the State, will constructively partner the better production and fair diffusion of national wealth. We have stated that, save the Bangalore Water Supply and Sewerage Board appeal, we are not disposing of the others on the merits. We dismiss that appeal with costs and direct that all the others be posted before a smaller Bench for disposal on the merits in accordance with the principles of law herein laid down.

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State of U.P. v. Jai Bir Singh
(2005) 5 SCC 1

D.M. DHARMADHIKARI, J. - This present appeal along with other connected cases has been listed before this Constitution Bench of five Judges on a reference made by a Bench of three Hon'ble Judges of this Court finding an apparent conflict between the decisions of two Benches of this Court in the cases of ***Chief Conservator of Forests v. Jagannath Maruti Kondhare*** [(1996) 2 SCC 293] of *three Judges* and ***State of Gujarat v. Pratamsingh Narsinh Parmar*** [(2001) 9 SCC 713] of *two Judges*.

2. On the question of whether "Social Forestry Department" of State, which is a welfare scheme undertaken for improvement of the environment, would be covered by the definition of "industry" under Section 2(j) of the Industrial Disputes Act, 1947, the aforesaid Benches (supra) of this Court culled out differently the ratio of the seven-Judge Bench decision of this Court in the case of ***Bangalore Water Supply & Sewerage Board v. A. Rajappa*** [(1978) 2 SCC 213] (shortly hereinafter referred to as ***Bangalore Water Supply*** case). The Bench of three Judges in the case of ***Chief Conservator of Forests v. Jagannath Maruti Kondhare*** based on the decision of ***Bangalore Water Supply*** case came to the conclusion that "Social Forestry Department" is covered by the definition of "industry" whereas the two-Judge Bench decision in ***State of Gujarat v. Pratamsingh Narsinh Parmar*** took a different view.

3. As the cleavage of opinion between the two Benches of this Court seems to have been on the basis of the seven-Judge Bench decision of this Court in the case of ***Bangalore Water Supply***, the present case along with the other connected cases, in which correctness of the decision in the case of ***Bangalore Water Supply*** is doubted, has been placed before this Bench.

4. Various decisions rendered by this Court prior to and after the decision in ***Bangalore Water Supply*** on interpretation of the definition of the word "industry" under the Industrial Disputes Act, 1947 have been cited before us. It has been strenuously urged on behalf of the employers that the expansive meaning given to the word "industry" with certain specified exceptions carved out in the judgment of ***Bangalore Water Supply*** is not warranted by the language used in the definition clause. It is urged that the Government and its departments while exercising its "sovereign functions" have been excluded from the definition of "industry". On the question of "what is sovereign function", there is no unanimity in the different opinions expressed by the Judges in ***Bangalore Water Supply*** case. It is submitted that in a constitutional democracy where sovereignty vests in the people, all welfare activities undertaken by the State in discharge of its obligation under the directive principles of State policy contained in Part IV of the Constitution are "sovereign functions". To restrict the meaning of "sovereign functions" to only specified categories of so-called "inalienable functions" like law and order, legislation, judiciary, administration and the like is uncalled for. It is submitted that the definition of "industry" given in the Act is, no doubt, wide but not so wide as to hold it to include in it all kinds of "*systematic organised activities*" undertaken by the State and even individuals engaged in professions and philanthropic activities.

5. On behalf of the employers, it is also pointed out that there is no unanimity in the opinions expressed by the Judges in *Bangalore Water Supply* case on the ambit of the definition of “industry” given in the Act. Pursuant to the observations made by the Judges in their different opinions in the judgment of *Bangalore Water Supply* the legislature responded and amended the Act by the Industrial Disputes (Amendment) Act, 1982. In the amended definition, certain specified types of activities have been taken out of the purview of the word “industry”. The Act stands amended but the amended provision redefining the word “industry” has not been brought into force because notification to bring those provisions into effect has not been issued in accordance with sub-section (2) of Section 1 of the Amendment Act. The amended definition thus remains on the statute unenforced for a period now of more than 23 years.

6. On behalf of the employers, it is pointed out that all other provisions of the Amendment Act of 1982, which introduced amendments in various other provisions of the Industrial Disputes Act have been brought into force by issuance of a notification, but the Amendment Act to the extent of its substituted definition of “industry” with specified categories of industries taken out of its purview, has not been brought into force. Such a piecemeal implementation of the Amendment Act, it is submitted, is not contemplated by sub-section (2) of Section 1 of the Amendment Act. The submission made is that if in response to the opinions expressed by the seven Judges in *Bangalore Water Supply* case the legislature intervened and provided a new definition of the word “industry” with exclusion of certain public utility services and welfare activities, the unamended definition should be construed and understood with the aid of the amended definition, which although not brought into force is nonetheless part of the statute.

7. On behalf of the employees, learned counsel vehemently urged that the decision in the case of *Bangalore Water Supply* being in the field as binding precedent for more than 23 years and having been worked to the complete satisfaction of all in the industrial field, on the principle of *stare decisis*, this Court should refrain from making a reference to a larger Bench for its reconsideration. It is strenuously urged that upsetting the law settled by *Bangalore Water Supply* is neither expedient nor desirable.

8. It is pointed out that earlier an attempt was made to seek enforcement of the amended Act through this Court [see *Aeltemesh Rein v. Union of India* [(1988) 4 SCC 54]]. The Union came forward with an explanation that for employees of the categories of industries excluded under the amended definition, no alternative machinery for redressal of their service disputes has been provided by law and therefore, the amended definition was not brought into force.

9. We have heard the learned counsel appearing on behalf of the employers and on the other side on behalf of the employees at great length. With their assistance, we have surveyed critically all the decisions rendered so far by this Court on the interpretation of the definition of “industry” contained in Section 2(j) of the Act. We begin with a close examination of the decision in the case of *Bangalore Water Supply* for considering whether a reference to a larger Bench for reconsideration of that decision is required.

10. Justice Krishna Iyer who delivered the main opinion on his own behalf and on behalf of Bhagwati and Desai, JJ. in his inimitable style has construed the various expressions used in the definition of “industry”. After critically examining the previous decisions, he has recorded his conclusions.

11. What is to be noted is that the opinion of Krishna Iyer, J. on his own behalf and on behalf of Bhagwati and Desai, JJ. was only generally agreed to by Beg, C.J. who delivered a separate opinion with his own approach on interpretation of the definition of the word “industry”. He agreed with the conclusion that Bangalore Water Supply and Sewerage Board is an “industry” and its appeal should be dismissed but he made it clear that since the judgment was being delivered on his last working day which was a day before the day he was to retire, he did not have enough time to go into a discussion of the various judgments cited, particularly on the nature of sovereign functions of the State and whether the activities in discharge of those functions would be covered in the definition of “industry”. What he stated reads thus:

“165. I have contented myself with a very brief and hurried outline of my line of thinking partly because I am in agreement with the conclusions of my learned Brother Krishna Iyer and I also endorse his reasoning almost wholly, but even more because the opinion I have dictated just now must be given today if I have to deliver it at all. From tomorrow I cease to have any authority as a judge to deliver it. Therefore, I have really no time to discuss the large number of cases cited before us, including those on what are known as ‘sovereign’ functions.”

12. Beg, C.J. clearly seems to have dissented from the opinion of his other three brethren on excluding only certain State-run industries from the purview of the Act. According to him, that is a matter purely of legislation and not of interpretation. See his observations contained in para 163:

“163. I would also like to make a few observations about the so-called ‘sovereign’ functions which have been placed outside the field of industry. I do not feel happy about the use of the term ‘sovereign’ here. I think that the term ‘sovereign’ should be reserved, technically and more correctly, for the sphere of ultimate decisions. Sovereignty operates on a sovereign plane of its own as I suggested in *Kesavananda Bharati* case [(1973) 4 SCC 225] supported by a quotation from Ernest Barker’s *Social and Political Theory*. Again, the term ‘Regal’, from which the term ‘sovereign’ functions appears to be derived, seems to be a misfit in a Republic where the citizen shares the political sovereignty in which he has even a legal share, however small, inasmuch as he exercises the right to vote. What is meant by the use of the term ‘sovereign’, in relation to the activities of the State, is more accurately brought out by using the term ‘governmental’ functions although there are difficulties here also inasmuch as the Government has entered largely new fields of industry. Therefore, only those services which are governed by separate rules and constitutional provisions, such as Articles 310 and 311 should, strictly speaking, be excluded from the sphere of industry by necessary implication.”(emphasis supplied)

13. Since Beg, C.J. was to retire on 22-2-1978, the Bench delivered the judgment on 21-2-1978 with its conclusion that the appeal should be dismissed. The above conclusion was unanimous but the three Hon'ble Judges namely Chandrachud, J. on behalf of himself and Jaswant Singh, J. speaking for himself and Tulzapurkar, J., on the day the judgment was delivered i.e. as on 21-2-1978, had not prepared their separate opinions. They only declared that they would deliver their separate opinions later. This is clear from para 170 of the judgment which reads thus:

“170. We are in respectful agreement with the view expressed by Krishna Iyer, J. in his critical judgment that the Bangalore Water Supply and Sewerage Board appeal should be dismissed. *We will give our reasons later indicating the area of concurrence and divergence, if any, on the various points in controversy on which our learned Brother has dwelt.*”(emphasis supplied)

14. On the retirement of Beg, C.J., Chandrachud, J. took over as the Chief Justice and he delivered his separate opinion on 7-4-1978 which was obviously neither seen by Beg, C.J. nor dealt with by the other three Judges: Krishna Iyer, Bhagwati and Desai, JJ. As can be seen from the contents of the separate opinion subsequently delivered by Chandrachud, C.J. (as he then was), he did not fully agree with the opinion of Krishna Iyer, J. that the definition of “industry” although of wide amplitude can be restricted to take out of its purview certain sovereign functions of the State limited to its “inalienable functions” and other activities which are essentially for self and spiritual attainments. Chandrachud, C.J. seems to have projected a view that all kinds of organised activities giving rise to employer and employee relationship are covered by the wide definition of “industry” and its scope cannot be restricted by identifying and including certain types of industries and leaving some other types impliedly outside its purview.

15. A separate opinion was delivered much later by Jaswant Singh, J. for himself and Tulzapurkar, J., after they had gone through the separate opinion given by Chandrachud, C.J. (as he then was). The opinion of Jaswant Singh for himself and Tulzapurkar, J. is clearly a dissenting opinion in which it is said that they are not agreeable with categories 2 and 3 of the charities excluded by Brother Krishna Iyer, J.

16. In the dissenting opinion of the two Judges, the definition covers only such activities *systematically and habitually carried on commercial lines for production of goods or for rendering material services to the community.*

The dissenting opinion is on the lines of the opinion of Gajendragadkar, J. in the case of ***State of Bombay v. Hospital Mazdoor Sabha*** where it was observed that although the definition in the Act is very wide, “*a line has to be drawn in a fair and just manner*” to exclude some callings of services or undertakings which do not fit in with the provisions of the Act. We may quote from the dissenting opinion of Jaswant Singh, J. (for himself and for Tulzapurkar, J.):

“However, bearing in mind the collocation of the terms in which the definition is couched and applying the *doctrine of noscitur a sociis* (which, as pointed out by this Court in ***State of Bombay v. Hospital Mazdoor Sabha*** means that, when two or more words which are susceptible of analogous meaning are coupled together they are

understood to be used in their cognate sense. They take as it were their colour from each other, that is, the more general is restricted to a sense analogous to a less general. Expressed differently, it means that the meaning of a doubtful word may be ascertained by reference to the meaning of words associated with it), we are of the view that despite the width of the definition it could not be the intention of the legislature that categories 2 and 3 of the charities alluded to by our learned Brother Krishna Iyer in his judgment, hospitals run on charitable basis or as a part of the functions of the Government or local bodies like municipalities and educational and research institutions whether run by private entities or by Government and liberal and learned professions like that of doctors, lawyers and teachers, the pursuit of which is dependent upon an individual's own education, intellectual attainments and special expertise should fall within the pale of the definition. We are inclined to think that the definition is limited to those activities systematically or habitually undertaken on commercial lines by private entrepreneurs with the cooperation of employees for the production or distribution of goods or for the rendering of material services to the community at large or a part of such community. It is needless to emphasise that in the case of liberal professions, the contribution of the usual type of employees employed by the professionals to the value of the end product (viz. advice and services rendered to the client) is so marginal that the end product cannot be regarded as the fruit of the cooperation between the professional and his employees.”

17. The Judges delivered different opinions in the case of *Bangalore Water Supply* at different points of time and in some cases without going through or having an opportunity of going through the opinions of other Judges. They have themselves recorded that the definition clause in the Act is so wide and vague that it is not susceptible to a very definite and precise meaning. In the opinions of all of them it is suggested that to avoid reference of the vexed question of interpretation to larger Benches of the Supreme Court it would be better that the legislature intervenes and clarifies the legal position by simply amending the definition of “industry”. The legislature did respond by amending the definition of “industry” but unfortunately 23 years were not enough for the legislature to provide Alternative Disputes Resolution Forums to the employees of specified categories of industries excluded from the amended definition. The legal position thus continues to be unclear and to a large extent uncovered by the decision of *Bangalore Water Supply* case as well.

18. Krishna Iyer, J. himself, who delivered the main judgment in *Bangalore Water Supply* case at various places in his opinion expressed that the attempt made by the Court to impart definite meaning to the words in the wide definition of “industry” is only a workable solution until a more precise definition is provided by the legislature. See the following observations:

“2. ... Our judgment here has no pontifical flavour but seeks to serve the future hour till changes in the law or in industrial culture occur.

3. Law, especially industrial law, which regulates the rights and remedies of the working class, unfamiliar with the sophistications of definitions and shower of decisions, unable to secure expert legal opinion, what with poverty pricing them out of the justice market and denying them the staying power to withstand the multi-

decked litigative process, de facto denies social justice if legal drafting is vagarious, definitions indefinite and court rulings contradictory. *Is it possible, that the legislative chambers are too preoccupied with other pressing business to listen to court signals calling for clarification of ambiguous clauses? A careful, prompt amendment of Section 2(j) would have pre-empted this docket explosion before tribunals and courts.* This Court, perhaps more than the legislative and executive branches, is deeply concerned with law's delays and to devise a prompt delivery system of social justice.”(emphasis added)

It is to be noted further that in the order of reference made to the seven-Judge Bench in ***Bangalore Water Supply and Sewerage Board*** case the Judges referring the case had stated thus:

“ ... the chance of confusion from the crop of cases in an area where the common man has to understand and apply the law makes it desirable that *there should be a comprehensive, clear and conclusive declaration as to what is an industry under the Industrial Disputes Act as it now stands.* Therefore, we think it necessary to place this case before the learned Chief Justice for consideration by a larger Bench. *If in the meantime Parliament does not act, this Court may have to illumine the twilight area of law and help the industrial community carry on smoothly.*”(emphasis supplied)

19. In the separate opinion of other Hon'ble Judges in ***Bangalore Water Supply*** case similar observations have been made by this Court to give some precision to the very wide definition of “industry”. It was an exercise done with the hope of a suitable legislative change on the subject which all the Judges felt was most imminent and highly desirable. See the following concluding remarks:

“145. We conclude with diffidence because Parliament, which has the commitment to the political nation to legislate promptly in vital areas like industry and trade and articulate the welfare expectations in the ‘conscience’ portion of the Constitution, has hardly intervened to restructure the rather clumsy, vaporous and tall-and-dwarf definition or tidy up the scheme although judicial thesis and antithesis, disclosed in the two-decades-long decisions, should have produced a legislative synthesis becoming of a welfare State and socialistic society, in a world setting where ILO norms are advancing and India needs updating.”

20. The separate opinion of Beg, C.J. has the same refrain and he also observes that the question can be solved only by more satisfactory legislation. Chandrachud, C.J. (as he then was) in his separate opinion delivered on 7-4-1978 concurred partly but went a step further in expanding the definition of “industry”. He has felt the necessity for legislative intervention at the earliest and has observed thus:

“175. But having thus expressed its opinion in a language which left no doubt as to its meaning, the Court went on to observe that though Section 2(j) used words of a very wide denotation, ‘it is clear’ that a *line would have to be drawn in a fair and just manner so as to exclude some callings, services or undertakings from the scope of the definition.* This was considered necessary because if all the words used in the definition were given their widest meaning, all services and all callings would come

within the purview of the definition including services rendered by a person in a purely personal or domestic capacity or in a casual manner. The Court then undertook for examination what it euphemistically called ‘a somewhat difficult’ problem to decide and it proceeded to draw a line in order to ascertain what limitations could and should be reasonably implied in interpreting the wide words used in Section 2(j). I consider, with great respect, *that the problem is far too policy-oriented to be satisfactorily settled by judicial decisions. Parliament must step in and legislate in a manner which will leave no doubt as to its intention.* That alone can afford a satisfactory solution to the question which has agitated and perplexed the judiciary at all levels.”(emphasis added)

21. The dissenting opinion of Justice Jaswant Singh for himself and Tulzapurkar, J. concludes with the following observations:

“187. In view of the difficulty experienced by all of us in defining the true denotation of the term ‘industry’ and divergence of opinion in regard thereto - as has been the case with this Bench also - *we think, it is high time that the legislature steps in with a comprehensive Bill to clear up the fog and remove the doubts and set at rest once for all the controversy which crops up from time to time in relation to the meaning of the aforesaid term rendering it necessary for larger Benches of this Court to be constituted which are driven to the necessity of evolving a working formula to cover particular cases.*”(emphasis added)

The above observations contained in the dissenting view of Jaswant Singh, J. have proved prophetic. The legislature has intervened and amended the definition of “industry” in 1982 but for more than 23 years the amended provision not having been brought into force, the unamended definition with the same vagueness and lack of precision continues to confuse the courts and the parties. The inaction of the legislative and executive branches has made it necessary for the judiciary to reconsider the subject over and over again in the light of the experience of the working of the provisions on the basis of the interpretation in the judgment of ***Bangalore Water Supply*** case rendered as far back as in the year 1978.

22. In the case of ***Coir Board v. Indira Devai P.S.*** [(1998) 3 SCC 259], a two-Judge Bench of this Court speaking through Sujata Manohar, J. surveyed all previous decisions of this Court including the seven-Judge Bench decision in ***Bangalore Water Supply*** and passed an order of reference to the Chief Justice for constituting a larger Bench of more than seven Judges if necessary. See the following part of that order:

“24. Since the difficulty has arisen because of the judicial interpretation given to the definition of ‘industry’ in the Industrial Disputes Act, there is no reason why the matter should not be judicially re-examined. In the present case, the function of the Coir Board is to promote coir industry, open markets for it and provide facilities to make the coir industry’s products more marketable. It is not set up to run any industry itself. Looking to the predominant purpose for which it is set up we would not call it an industry. However, if one were to apply the tests laid down by ***Bangalore Water Supply and Sewerage Board*** case, it is an organisation where there are employers and employees. The organisation does some useful work for the

benefit of others. Therefore, it will have to be called an industry under the Industrial Disputes Act.

25. We do not think that such a sweeping test was contemplated by the Industrial Disputes Act, nor do we think that every organisation which does useful service and employs people can be labelled as industry. We, therefore, direct that the matter be placed before the Hon'ble Chief Justice of India to consider whether a larger Bench should be constituted to reconsider the decision of this Court in ***Bangalore Water Supply and Sewerage Board.***"

23. When the matter was listed before a three-Judge Bench [in the case of ***Coir Board v. Indira Devai P.S.***, (2000) 1 SCC 224] the request for constituting a larger Bench for reconsideration of the judgment in ***Bangalore Water Supply*** case was refused both on the ground that the Industrial Disputes Act has undergone an amendment and that the matter does not deserve to be referred to a larger Bench as the decision of seven Judges in ***Bangalore Water Supply*** case is binding on Benches of this Court of less than seven Judges. The order refusing reference of the seven-Judge Bench decision by the three-Judge Bench in ***Coir Board v. Indira Devai P.S.*** reads thus:

"1. We have considered the order made in Civil Appeals Nos. 1720-21 of 1990. The judgment in ***Bangalore Water Supply & Sewerage Board v. A. Rajappa*** was delivered almost two decades ago and the law has since been amended pursuant to that judgment though the date of enforcement of the amendment has not been notified.

2. The judgment delivered by seven learned Judges of this Court in ***Bangalore Water Supply*** case does not, in our opinion, require any reconsideration on a reference being made by a two-Judge Bench of this Court, which is bound by the judgment of the larger Bench.

3. The appeals, shall, therefore, be listed before the appropriate Bench for further proceedings."

Thus, the reference sought by the two Judges to a larger Bench of more than seven Judges was declined by the three-Judge Bench. As has been held by this Court subsequently in the case of ***Central Board of Dawoodi Bohra Community v. State of Maharashtra*** [(2005) 2 SCC 673] it was open to the Chief Justice on a reference made by two Hon'ble Judges of this Court, to constitute a Bench of more than seven Judges for reconsideration of the decision in ***Bangalore Water Supply*** case.

24. In any case, no such inhibition limits the power of this Bench of five Judges which has been constituted on a reference made due to apparent conflict between judgments of two Benches of this Court. As has been stated by us above, the decision in ***Bangalore Water Supply*** is not a unanimous decision. Of the five Judges who constituted the majority, three have given a common opinion but two others have given separate opinions projecting a view partly different from the views expressed in the opinion of the other three Judges. Beg, C.J. having retired had no opportunity to see the opinions delivered by the other Judges subsequent to his retirement. Krishna Iyer, J. and the two Judges who spoke through him did not have the benefit of the dissenting opinion of the other two Judges and the separate partly

dissenting opinion of Chandrachud, J., as those opinions were prepared and delivered subsequent to the delivery of the judgment in *Bangalore Water Supply* case.

25. In such a situation, it is difficult to ascertain whether the opinion of Krishna Iyer, J. given on his own behalf and on behalf of Bhagwati and Desai, JJ., can be held to be an authoritative precedent which would require no reconsideration even though the Judges themselves expressed the view that the exercise of interpretation done by each one of them was tentative and was only a temporary exercise till the legislature stepped in. The legislature subsequently amended the definition of the word “industry” but due to the lack of will both on the part of the legislature and the executive, the amended definition, for a long period of 23 years, has remained dormant.

26. Shri Andhyarujina, learned Senior Counsel appearing for M/s National Remote Sensing Agency, which is an agency constituted by the Government in discharge of its sovereign functions dealing with defence, research, atomic energy and space falling in the excluded category in sub-clause (6) of the amended definition of “industry” in Section 2(j), relies on the following decisions in support of his submission that where the unamended definition in the Act is ambiguous and has been interpreted by the Court not exhaustively but tentatively until the law is amended, the amendment actually brought into the statute can be looked at for construction of the unamended provisions.

27. Shri Andhyarujina further argues that by the Industrial Disputes (Amendment) Act of 1982, not only was the definition of “industry” as provided in the clause amended but various other provisions of the principal Act were also amended. Sub-section (2) of Section 1 of the Amendment Act states that the Act “shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint”. It is submitted that either the whole of the Act should have been notified for enforcement or not at all. The Amendment Act does not contemplate a situation where the Central Government may notify only some of the provisions of the Amendment Act for enforcement and withhold from enforcement other provisions of the Amendment Act. It is argued that such piecemeal enforcement of the Act is not permissible by sub-section (2) of Section 1 of the Amendment Act. Bennion: *Statutory Interpretation*, 3rd Edn. is relied on in support of the submission that when the Amendment Act mandates the Central Government to issue a notification specifying the date on which the provisions of the Act should be brought into force, such enabling provision implies that the enforcement of the Act has to be done within a *reasonable time*. Failure to enforce the Act for a period of more than 23 years is an unconstitutional attempt by the executive branch of the State to frustrate the clear intention of the legislature. Reliance has been placed by Senior Advocate Shri Andhyarujina, on the Court of Appeal decision in *R. v. Secy. of State for the Home Dept., ex p Fire Brigades Union* [(1995)1 All ER 888] which was upheld by the House of Lords in the decision reported in the same volume. It was held in that case thus:

“Having regard to the overriding legislative role of Parliament, the enacted provisions represented a detailed scheme approved by the legislature which until repealed stood as an enduring statement of its will; that while the provisions remained unrepealed it was not open to the Secretary of State to introduce a radically different scheme under his prerogative powers; and that, accordingly, in purporting to implement the tariff scheme, he had acted unlawfully and in abuse of those powers.”

The House of Lords in approving the decision of the Court of Appeal held:

“That Section 171(1) of the Criminal Justice Act, 1988 imposed a continuing obligation on the Secretary of State to consider whether to bring the statutory scheme in Sections 108 to 117 into force; that he could not lawfully bind himself not to exercise the discretion conferred on him; that the tariff scheme was inconsistent with the statutory scheme; and that, accordingly, the Secretary of State’s decision not to bring Sections 108 to 117 into force and to introduce the tariff scheme in their place had been unlawful.”

28. Senior Advocates Ms Indira Jaising and Mr Colin Gonsalves, counsel appearing for the employees, very vehemently oppose the prayer made on behalf of the employers for referring the matter to a larger Bench for reconsideration of the decision in **Bangalore Water Supply** case. It is submitted that even though the definition in the Industrial Disputes Act has been amended in 1982, it has not been brought into force for more than 23 years and the reasons disclosed to the Court, when the enforcement of the Amendment Act was sought in the case of **Aeltemesh Rein v. Union of India** is a sound justification. The stand of the Union of India was that for the category of industries excluded in the amended definition no Alternative Industrial Disputes Resolution Forums could be created. For the aforesaid reason the Central Government did not enforce the provisions of the Amendment Act which provided a new and restrictive definition of “industry”. Learned counsel on behalf of the employees relied on **A.K. Roy v. Union of India** [(1982) 1 SCC 271] in support of their submissions that it is not open to the court to issue a mandamus to the Government to bring into force the provisions of an Act. It is submitted that it is the prerogative of the Government in accordance with the provisions of sub-section (2) of Section 1 of the Amendment Act to enforce the provisions of the Act when it finds that there are conditions suitable to take out of the purview of the definition of “industry” certain categories of “industries” in which the employees have been provided separate forums for redressal of their industrial disputes.

29. For the purpose of these cases, we need not go into the aforesaid side issue because neither is there any substantive petition nor has a prayer been made in any of the cases before us seeking issuance of mandamus to the Government to publish notification in the Official Gazette for enforcement of the amended definition of “industry” as provided in the Amendment Act of 1982. The only question before us is as to whether the amended definition, which is now undoubtedly a part of the statute, although not enforced, is a relevant piece of subsequent legislation which can be taken aid of to amplify or restrict the ambit of the definition of “industry” in Section 2(j) of the Act as it stands in its original form.

30. On behalf of the employees, it is submitted that pursuant to the decision in **Bangalore Water Supply** case although the legislature responded by amending the definition of “industry” to exclude certain specified categories of industries from the purview of the Act, employees of the excluded categories of industries could not be provided with alternative forums for redressal of their grievances. The unamended definition of industry, as interpreted by **Bangalore Water Supply** case has been the settled law of the land in the industrial field. The settled legal position, it is urged, has operated well and no better enunciation of scope and effect of the “definition” could be made either by the legislature or by the Indian Labour Organisation in its report.

31. After hearing learned counsel for the contesting parties, we find there are compelling reasons more than one before us for making a reference on the interpretation of the definition of “industry” in Section 2(j) of the Act, to a larger Bench and for reconsideration by it, if necessary, of the decision rendered in the case of **Bangalore Water Supply & Sewerage Board**. The larger Bench will have to necessarily go into all legal questions in all dimensions and depth. We briefly indicate why we find justification for a reference although it is stiffly opposed on behalf of the employees.

32. In the judgment of **Bangalore Water Supply**, Krishna Iyer, J. speaking for himself and on behalf of the other two Hon’ble Judges agreeing with him proceeded to deal with the interpretation of the definition of “industry” on a legal premise stating thus:

“A worker-oriented statute must receive a construction where, conceptually, keynote thought must be the worker and the community, as the Constitution has shown concern for them, inter alia, in Articles 38,39 and 43.”

33. With utmost respect, the statute under consideration cannot be looked at only as a worker-oriented statute. The main aim of the statute as is evident from its preamble and various provisions contained therein, is to regulate and harmonise relationships between employers and employees for maintaining industrial peace and social harmony. The definition clause read with other provisions of the Act under consideration deserves interpretation keeping in view interests of the employer, who has put his capital and expertise into the industry and the workers who by their labour equally contribute to the growth of the industry. The Act under consideration has a historical background of industrial revolution inspired by the philosophy of Karl Marx. It is a piece of social legislation. Opposed to the traditional industrial culture of open competition or *laissez faire*, the present structure of industrial law is an outcome of long-term agitation and struggle of the working class for participation on equal footing with the employers in industries for its growth and profits. In interpreting, therefore, the industrial law, which aims at promoting social justice, interests both of employers, employees and in a democratic society, people, who are the ultimate beneficiaries of the industrial activities, have to be kept in view.

34. Ms Indira Jaising fervently appealed that in interpreting industrial law in India which is obliged by the Constitution to uphold democratic values, as has been said in some other judgment by Krishna Iyer, J. “the court should be guided not by ‘Maxwell’ but ‘Gandhi’ who advocated protection of the interest of the weaker sections of the society as the prime concern in democratic society. In the legal field, the court has always derived guidance from the immortal saying of the great Judge Oliver W. Holmes that ‘the life of law has never been logic, it has been experience’.” The spirit of law is not to be searched in any ideology or philosophy which might have inspired it but it may be found in the experience of the people who made and put it into practice.

35. In the case of **Coir Board-I**, Sujata V. Manohar, J., speaking for the Bench while passing an order of reference to the larger Bench for reconsideration of the judgment of **Bangalore Water Supply & Sewerage Board** has observed thus:

“19. Looking to the uncertainty prevailing in this area and in the light of the experience of the last two decades in applying the test laid down in the case of

Bangalore Water Supply & Sewerage Board it is necessary that the decision in *Bangalore Water Supply & Sewerage Board* case is re-examined. The experience of the last two decades does not appear to be entirely happy. Instead of leading to industrial peace and welfare of the community (which was the avowed purpose of artificially extending the definition of industry), the application of the Industrial Disputes Act to organisations which were, quite possibly, not intended to be so covered by the machinery set up under the Industrial Disputes Act, might have done more damage than good, not merely to the organisations but also to employees by the curtailment of employment opportunities.”

The abovequoted observations were criticised on behalf of the employees stating that for making them, there was no material before the Court. We think that the observations of the learned Judges are not without foundation. The experience of Judges in the Apex Court is not derived from the case in which the observations were made. The experience was from the cases regularly coming to this Court through the Labour Courts. It is experienced by all dealing in industrial law that overemphasis on the rights of the workers and undue curtailment of the rights of the employers to organise their business, through employment and non-employment, has given rise to a large number of industrial and labour claims resulting in awards granting huge amounts of back wages for past years, allegedly as legitimate dues of the workers, who are found to have been illegally terminated or retrenched. Industrial awards granting heavy packages of back wages, sometimes result in taking away the very substratum of the industry. Such burdensome awards in many cases compel the employer having moderate assets to close down industries causing harm to interests of not only the employer and the workers but also the general public who is the ultimate beneficiary of material goods and services from the industry. The awards of reinstatement and arrears of wages for past years by Labour Courts by treating even small undertakings of employers and entrepreneurs as industries is experienced as a serious industrial hazard particularly by those engaged in private enterprises. The experience is that many times idle wages are required to be paid to the worker because the employer has no means to find out whether and where the workman was gainfully employed pending adjudication of industrial dispute raised by him. Exploitation of workers and the employers has to be equally checked. Law and particularly industrial law needs to be so interpreted as to ensure that neither the employers nor the employees are in a position to dominate the other. Both should be able to cooperate for their mutual benefit in the growth of industry and thereby serve public good. An over-expansive interpretation of the definition of “industry” might be a deterrent to private enterprise in India where public employment opportunities are scarce. The people should, therefore, be encouraged towards self-employment. To embrace within the definition of “industry” even liberal professions like lawyers, architects, doctors, chartered accountants and the like, which are occupations based on talent, skill and intellectual attainments, is experienced as a hurdle by professionals in their self-pursuits. In carrying on their professions, if necessarily, some employment is generated, that should not expose them to the rigors of the Act. No doubt even liberal professions are required to be regulated and reasonable restrictions in favour of those employed for them can, by law, be imposed, but that should be the subject of a separate suitable legislation.

36. If we adopt an ideological or philosophical approach, we would be treading on the wrong path against which learned Shri Justice Krishna Iyer himself recorded a caution in his inimitable style thus: [*Bangalore Water Supply* case]

“Here we have to be cautious not to fall into the trap of definitional expansionism bordering on *reduction ad absurdum* nor to truncate the obvious amplitude of the provision to fit it into our mental mould of beliefs and prejudices or social philosophy conditioned by class interests. Subjective wish shall not be father to the forensic thought, if credibility with a pluralist community is a value to be cherished. ‘Courts do not substitute their social and economic beliefs for the judgment of legislative bodies’.” (emphasis in original)

37. A worker-oriented approach in construing the definition of industry, unmindful of the interest of the employer or the owner of the industry and the public who are the ultimate beneficiaries, would be a one-sided approach and not in accordance with the provisions of the Act.

38. We also wish to enter a caveat on confining “sovereign functions” to the traditional so described as “inalienable functions” comparable to those performed by a monarch, a ruler or a non-democratic government. The learned Judges in *Bangalore Water Supply & Sewerage Board* case seem to have confined only such sovereign functions outside the purview of “industry” which can be termed strictly as constitutional functions of the three wings of the State i.e. executive, legislature and judiciary. The concept of sovereignty in a constitutional democracy is different from the traditional concept of sovereignty which is confined to “law and order”, “defence”, “law-making” and “justice dispensation”. In a democracy governed by the Constitution the sovereignty vests in the people and the State is obliged to discharge its constitutional obligations contained in the directive principles of State policy in Part IV of the Constitution of India. From that point of view, wherever the Government undertakes public welfare activities in discharge of its constitutional obligations, as provided in Part IV of the Constitution, such activities should be treated as activities in discharge of sovereign functions falling outside the purview of “industry”. Whether employees employed in such welfare activities of the Government require protection, apart from the constitutional rights conferred on them, may be a subject of separate legislation but for that reason, such governmental activities cannot be brought within the fold of industrial law by giving an undue expansive and wide meaning to the words used in the definition of industry.

39. In response to *Bangalore Water Supply & Sewerage Board* case Parliament intervened and substituted the definition of “industry” by including within its meaning some activities of the Government and excluding some other specified governmental activities and “public utility services” involving sovereign functions. For the past 23 years, the amended definition has remained unenforced on the statute-book. The Government has been experiencing difficulty in bringing into effect the new definition. Issuance of notification as required by sub-section (2) of Section 1 of the Amendment Act, 1982 has been withheld so far. It is, therefore, high time for the court to re-examine the judicial interpretation given by it to the definition of “industry”. The legislature should be allowed greater freedom to come forward with a more comprehensive legislation to meet the demands of employers and employees in the public and private sectors. The inhibition and the difficulties which are

being exercised (*sic* experienced) by the legislature and the executive in bringing into force the amended industrial law, more due to judicial interpretation of the definition of “industry” in ***Bangalore Water Supply & Sewerage Board*** case need to be removed. The experience of the working of the provisions of the Act would serve as a guide for a better and more comprehensive law on the subject to be brought into force without inhibition.

40. The word “industry” seems to have been redefined under the Amendment Act keeping in view the judicial interpretation of the word “industry” in the case of ***Bangalore Water Supply***. Had there been no such expansive definition of “industry” given in ***Bangalore Water Supply*** case it would have been open to Parliament to bring in either a more expansive or a more restrictive definition of industry by confining it or not confining it to industrial activities other than sovereign functions and public welfare activities of the State and its departments. Similarly, employment generated in carrying on of liberal professions could be clearly included or excluded depending on social conditions and demands of social justice. Comprehensive change in law and/or enactment of new law had not been possible because of the interpretation given to the definition of “industry” in ***Bangalore Water Supply*** case. The judicial interpretation seems to have been one of the inhibiting factors in the enforcement of the amended definition of the Act for the last 23 years.

41. In ***Bangalore Water Supply*** case not all the Judges in interpreting the definition clause invoked the doctrine of *noscitur a sociis*. We are inclined to accept the view expressed by the six-Judge Bench in the case of ***Safdarjung Hospital*** that keeping in view the other provisions of the Act and words used in the definition clause, although “profit motive” is irrelevant, in order to encompass the activity within the word “industry”, the activity must be “*analogous to trade or business in a commercial sense*”. We also agree that the mere enumeration of “public utility services” in Section 2(n) read with the First Schedule should not be held decisive. Unless the public utility service answers the test of it being an “industry” as defined in clause (j) of Section 2, the enumeration of such public utility service in the First Schedule to the Act would not make it an “industry”. The six Judges also considered the inclusion of services such as hospitals and dispensaries as public utility services in the definition under Section 2(n) of the Act and rightly observed thus: (SCC p.746, para 29)

“29. When Parliament added the sixth clause under which other services could be brought within the protection afforded by the Act to public utility services, it did not intend that the entire concept of industry in the Act, could be ignored and anything brought in. Therefore, it said that an industry could be declared to be a public utility service. But what could be so declared had to be an industry in the first place.”

The decision in the case of ***Safdarjung Hospital*** was a unanimous decision of all the six Judges and we are inclined to agree with the following observations in the interpretation of the definition clause:

“But in the collocation of the terms and their definitions these terms have a definite economic content of a particular type and on the authorities of this Court have been uniformly accepted as excluding professions and are only concerned with the production, distribution and consumption of wealth and the production and availability of material services. Industry has thus been accepted to mean only trade

and business, manufacture, or *undertaking analogous to trade or business for the production of material goods or wealth and material services.*”(emphasis supplied)

The six Judges unanimously upheld the observations in ***Gymkhana Club*** case:

“... before the work engaged in can be described as an industry, it must bear the definite character of ‘trade’ or ‘business’ or ‘manufacture’ or ‘calling’ or must be capable of being described as an undertaking resulting in material goods or material services.”

42. In construing the definition clause and determining its ambit, one has not to lose sight of the fact that in activities like hospitals and education, concepts like right of the workers to go on “strike” or the employer’s right to “close down” and “lay off” are not contemplated because they are services in which the motto is “service to the community”. If the patients or students are to be left to the mercy of the employer and employees exercising their rights at will, the very purpose of the service activity would be frustrated.

43. We are respectfully inclined to agree with the observations of Shri Justice P.B. Gajendragadkar in the case of ***Harinagar Cane Farm***:

“As we have repeatedly emphasised, in dealing with industrial matters, industrial adjudication should refrain from enunciating any general principles or adopting any doctrinaire considerations. It is desirable that industrial adjudication should deal with problems as and when they arise and confine its decisions to the points which strictly arise on the pleadings between the parties.”

44. We conclude agreeing with the conclusion of the Hon’ble Judges in the case of ***Hospital Mazdoor Sabha***:

“[T]hough Section 2(j) used words of very wide denotation, *a line would have to be drawn in a fair and just manner so as to exclude some callings, services or undertakings.*”(emphasis supplied)

This Court must, therefore, reconsider where the line should be drawn and what limitations can and should be reasonably implied in interpreting the wide words used in Section 2(j). That no doubt is rather a difficult problem to resolve more so when both the legislature and the executive are silent and have kept an important amended provision of law dormant on the statute-book.

45. We do not consider it necessary to say anything more and leave it to the larger Bench to give such meaning and effect to the definition clause in the present context with the experience of all these years and keeping in view the amended definition of “industry” kept dormant for long 23 years. Pressing demands of the competing sectors of employers and employees and the helplessness of the legislature and the executive in bringing into force the Amendment Act compel us to make this reference.

46. Let the cases be now placed before Hon’ble Chief Justice of India for constituting a suitable larger Bench for reconsideration of the judgment of this Court in the case of ***Bangalore Water Supply***.

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Topic-05: 'Industrial Dispute, v. 'Individual Dispute'- Contrast

Workmen of Dimakuchi Tea Estate v. Dimakuchi Tea Estate

AIR 1958 SC 353 : 1958 SCR 1156

S.K. DAS, J. - 2. The appellants before us are the workmen of the Dimakuchi Tea Estate represented by the Assam Chah Karmachari Sangha, Dibrugarh. The respondent is the management of the Dimakuchi tea estate, District Darrang in Assam. One Dr K.P. Banerjee was appointed Assistant Medical Officer of the Dimakuchi tea estate with effect from November 1, 1950. He was appointed subject to a satisfactory medical report and on probation for three months. It was stated in his letter of appointment: "While you are on probation or trial, your suitability for permanent employment will be considered. If during the period of probation you are considered unsuitable for employment, you will receive seven days' notice in writing terminating your appointment. If you are guilty of misconduct, you are liable to instant dismissal. At the end of the period of probation, if you are considered suitable, you will be confirmed in the garden's service." In February 1951 Dr Banerjee was given an increment of Rs 5 per mensem, but on April 21, Dr Banerjee received a letter from one Mr Booth, Manager of the tea estate, in which it was stated: "It has been found necessary to terminate your services with effect from the 22nd instant. You will of course receive one month's salary in lieu of notice." As no reasons were given in the notice of termination, Dr Banerjee wrote to the Manager to find out why his services were being terminated. To this Dr Banerjee received a reply to this effect: "The reasons for your discharge are on the medical side, which are outside my jurisdiction, best known to Dr Cox but a main reason is because of the deceitful manner in which you added figures to the requirements of the last medical indent after it had been signed by Dr Cox, evidence of which is in my hands."

(O)n December 23, 1953, the Government of Assam published a notification in which it was stated that whereas an industrial dispute had arisen between the appellants and the respondent herein and whereas it was expedient that the dispute should be referred for adjudication to a tribunal constituted under Section 7 of the Act, the Governor of Assam was pleased to refer the dispute to Shri U.K. Gohain, Additional District and Sessions Judge, under clause (c) of sub-Section (1) of Section 10 of the Act. The dispute which was thus referred to the Tribunal was described in these terms:

“(i) Whether the management of Dimakuchi Tea Estate was justified in dismissing Dr K.P. Banerjee, A.M.O?

(ii) If not, is he entitled to reinstatement or any other relief in lieu thereof?”

6. (T)he question whether Dr K.P. Banerjee is or is not a workman within the meaning of the Act is no longer open to the parties and we must proceed on the footing that Dr K.P. Banerjee was not a workman within the meaning of the Act and then decide the question if the dispute in relation to the termination of his service still fell within the scope of the definition of the expression “industrial dispute” in the Act.

8. (T)he question is whether a dispute in relation to a person who is not a workman within the meaning of the Act still falls within the scope of the definition clause in Section 2(k). If we analyse the definition clause it falls easily and naturally into three parts: first, there must be a dispute or difference; second, the dispute or difference must be between employers and employers, or between employers and workmen or between workmen and workmen; third, the dispute or difference must be connected with the employment or non-employment or the terms of employment or with the conditions of labour, *of any person*. The first part obviously refers to the factum of a real or substantial dispute; the second part to the parties to the dispute; and the third to the subject-matter of that dispute. That subject-matter may relate to any of two matters - (i) employment or non-employment, and (ii) terms of employment or conditions of labour, of any person. On behalf of the appellants it is contended that the conditions referred to in the first and second parts of the definition clause are clearly fulfilled in the present case, because there is a dispute or difference over the termination of service of Dr K.P. Banerjee and the dispute or difference is between the employer, namely, the management of the Dimakuchi tea estate on one side, and its workmen on the other, even taking the expression "workmen" in the restricted sense in which that expression is defined in the Act. The real difficulty arises when we come to the third part of the definition clause. Learned counsel for the appellants has submitted that the expression "of any person" occurring in the third part of the definition clause is an expression of very wide import and there are no reasons why the words "any person" should be equated with "any workman", as the tribunals below have done. The argument is that inasmuch as the dispute or difference between the employer and the workmen is connected with the non-employment of a person called Dr K.P. Banerjee (even though he was not a workman), the dispute is an industrial dispute within the meaning of the definition clause. At first sight, it does appear that there is considerable force in the argument advanced on behalf of the appellants. It is rightly pointed out that the definition clause does not contain any words of qualification or restriction in respect of the expression "any person" occurring in the third part, and if any limitations as to its scope are to be imposed, they must be such as can be reasonably inferred from the definition clause itself or other provisions of the Act.

9. A little careful consideration will show, however, that the expression "any person" occurring in the third part of the definition clause cannot mean anybody and everybody in this wide world. First of all, the subject-matter of dispute must relate to (i) employment or non-employment or (ii) terms of employment or conditions of labour of any person; these necessarily import a limitation in the sense that a person in respect of whom the employer-employee relation *never existed or can never possibly exist* cannot be the subject-matter of a dispute between employers and workmen.

11. Thus, an examination of the salient provisions of the Act shows that the principal objects of the Act are -

- (1) the promotion of measures for securing and preserving amity and good relations between the employer and workmen;
- (2) an investigation and settlement of industrial disputes, between employers and employers, employers and workmen, or workmen and workmen, with a right of

representation by a registered trade union or federation of trade unions or association of employers or a federation of associations of employers;

(3) prevention of illegal strikes and lock-outs;

(4) relief to workmen in the matter of lay-off and retrenchment; and

(5) collective bargaining.

The Act is primarily meant for regulating the relations of employers and workmen — past, present and future. It draws a distinction between “workmen” as such and the managerial or supervisory staff, and confers benefit on the former only.

12. It is in the context of all these provisions of the Act that the definition clause in Section 2(k) has to be interpreted. It seems fairly obvious to us that if the expression “any person” is given its ordinary meaning, then the definition clause will be so wide as to become inconsistent not merely with the objects and other provisions of the Act, but also with the other parts of that very clause. Let us see how the definition clause works if the expression “any person” occurring therein is given its ordinary meaning. The workmen may then raise a dispute about a person with whom they have no possible community of interest; they may raise a dispute about the employment of a person in another industry or a different establishment - a dispute in which their own employer is not in a position to give any relief, in the matter of employment or non-employment or the terms of employment or conditions of labour of such a person. In order to make our meaning clear, we may take a more obvious example. Let us assume that for some reason or other the workmen of a particular industry raise a dispute with their employer about the employment or terms of employment of the District Magistrate or District Judge of the district in which the industry is situate. It seems clear to us that though the District Magistrate or District Judge undoubtedly comes within the expression “any person” occurring in the definition clause, a dispute about his employment or terms of employment is not an industrial dispute; firstly, because such a dispute does not come within the scope of the Act, having regard to the definition of the words “employer”, “industry”, and “workman” and also to other provisions of the Act; secondly, there is no possible community of interest between the District Magistrate or District Judge on the one hand and the disputants, employer and workmen, on the other. The absurd results that will follow such an interpretation have been forcefully expressed by Chagla, C.J., in his decision in *Narendra Kumar Sen v. All India Industrial Disputes (Labour Appellate) Tribunal* [(1953) 55 Bom LR 125]:

“If ‘any person’ were to be read as an expression without any limitation and qualification whatsoever, then we must not put even any territorial restriction on that expression. In other words, it would be open to the workmen not only to raise a dispute with regard to the terms of employment of persons employed in the same industry as themselves, not only to raise a dispute with regard to the terms of employment in corresponding or similar industries, not only a dispute with regard to the terms of employment of people employed in our country, but the terms of employment of any workman or any labourer anywhere in the world. The proposition has only to be stated in order to make one realise how entirely untenable it is.”

Take, for example, another case where the workmen raise an objection to the salary or remuneration paid to a Manager or Chief Medical Officer by the employer but without

claiming any benefit for themselves, and let us assume that a dispute or difference arises between the workmen on one side and the employer on the other over such an objection. If such a dispute comes within the definition clause and is referred to an Industrial Tribunal for adjudication, the parties to the dispute will be the employer on one side and his workmen on the other. The Manager or the Chief Medical Officer cannot obviously be a party to the dispute, because he is not a "workman" within the meaning of the Act and there is no dispute between him and his employer. That being the position, the award, if any, given by the Tribunal will be binding, under clause (a) of Section 18, on the parties to the dispute and not on the Manager or the Chief Medical Officer. It is extremely doubtful if in the circumstances stated the Tribunal can summon the Manager or the Chief Medical Officer as a party to the dispute, because there is no dispute between the Manager or Chief Medical Officer on one side and his employer on the other. Furthermore, Section 36 of the Act does not provide for representation of a person who is not a party to the dispute. If, therefore, an award is made by the Tribunal in the case which we have taken by way of illustration, that award, though binding on the employer, will not be binding on the Manager or Chief Medical Officer. It should be obvious that the Act could not have contemplated an eventuality of this kind, which does not promote any of the objects of the Act, but rather goes against them.

13. When these difficulties were pointed out to learned counsel for the appellants, he conceded that some limitations must be put on the width of the expression "any person" occurring in the definition clause. He formulated four such limitations:

(1) The dispute must be a real and substantial one in respect of which one of the parties to the dispute can give relief to the other; e.g. when the dispute is between workmen and employer, the employer must be in a position to give relief to the workmen. This, according to learned counsel for the appellants, will exclude those cases in which the workmen ask for something which their employer is not in a position to give. It would also exclude mere ideological differences or controversies.

(2) The industrial dispute if raised by workmen must relate to the particular establishment or part of establishment in which the workmen are employed so that the definition clause may be consistent with Section 18 of the Act.

(3) The dispute must relate to the employment, non-employment or the terms of employment or with the conditions of labour of any person, but such person must be an employee discharged or in service or a candidate for employment. According to learned counsel for the appellants, the person about whom the dispute has arisen, need not be a workman within the meaning of the Act, but he must answer to the description of an employee, discharged or in service, or a candidate for employment.

(4) The workmen raising the dispute must have a nexus with the dispute, either because they are personally interested or because they have taken up the cause of another person in the general interest of labour welfare. The further argument of learned counsel for the appellants is that even imposing the aforesaid four limitations on the width of the expression "any person" occurring in the definition clause, the dispute in the present case is an industrial dispute within the meaning of Section 2(k) of the Act, because (1) the employer could give relief in the matter of the termination of service of Dr K.P. Banerjee,

(2) Dr K.P. Banerjee belonged to the same establishment, namely, the same tea garden, (3) the dispute related to a discharged employee (though not a workman) and (4) the workmen raising the dispute were vitally interested in it by reason of the fact that Dr Banerjee (it is stated) belonged to their trade union and the dismissal of an employee without the formulation of a charge and without giving him an opportunity to meet any charge was a matter of general interest to all workmen in the same establishment.

14. We now propose to examine the question whether the limitations formulated by learned counsel for the appellants are the only true limitations to be imposed with regard to the definition clause. In doing so we shall also consider what is the true scope and effect of the definition clause and what are the correct tests to be applied with regard to it. We think that there is no real difficulty with regard to the first two limitations. They are, we think, implicit in the definition clause itself. It is obvious that a dispute between employers and employers, employers and workmen, or between workmen and workmen must be a real dispute capable of settlement or adjudication by directing one of the parties to the dispute to give necessary relief to the other. It is also obvious that the parties to the dispute must be directly or substantially interested therein, so that if workmen raise a dispute, it must relate to the establishment or part of establishment in which they are employed. With regard to limitation (3), while we agree that the expression "any person" cannot be completely equated with "any workman" as defined in the Act, we think that the limitation formulated by learned counsel for the appellants is much too widely stated and is not quite correct. We recognise that if the expression "any person" means "any workman" within the meaning of the Act, then it is difficult to understand why the legislature instead of using the expression "any workman" used the much wider expression "any person" in the third part of the definition clause. The very circumstance that in the second part of the definition clause the expression used is "between employers and workmen or between workmen and workmen" while in the third part the expression used is "any person" indicates that the expression "any person" cannot be completely equated with "any workman". The reason for the use of the expression "any person" in the definition clause is, however, not far to seek. The word "workman" as defined in the Act (before the amendments of 1956) included, for the purposes of any proceedings under the Act in relation to an industrial dispute, a workman *discharged during the dispute*. This definition corresponded to Section 2(j) of the old Trade Disputes Act, 1929 except that the words "including an apprentice" were inserted and the words "industrial dispute" were substituted for the words "trade dispute". It is worthy of note that in the Trade Disputes Act, 1929, the word "workman" meant any person employed in any trade or industry to do any skilled or unskilled manual or clerical work for hire or reward. It is clear enough that prior to 1956 when the definition of "workman" in the Act was further widened to include a person dismissed, discharged or retrenched in connection with, or as a consequence of the dispute or whose dismissal, discharge or retrenchment led to the dispute, a workman who had been discharged earlier and not during the dispute was not a workman within the meaning of the Act. If the expression "any person" in the third part of the definition clause were to be strictly equated with "any workman", then there could be no industrial dispute, prior to 1956, with regard to a workman who had been discharged earlier than the dispute, even though the discharge itself had led to the dispute. That seems to be the reason why the legislature used the expression "any person" in the third part of the definition clause so as to put it beyond any

doubt that the non-employment of such a dismissed workman was also within the ambit of an industrial dispute. There was a wide gap between a “workman” and an “employee” under the definition of the word “workman” in Section 2(s) as it stood prior to 1956; all existing workmen were no doubt employees; but all employees were not workmen. The supervisory staff did not come within the definition. The gap has been reduced to some extent by the amendments of 1956; part of the supervisory staff (who draw wages not exceeding five hundred rupees per mensem) and those who were otherwise workmen but were discharged or dismissed earlier have also come within the definition. If and when the gap is completely bridged, “workmen” will be synonymous with “employees”, whether engaged in any skilled or unskilled manual, supervisory, technical or clerical work etc. But till the gap is completely obliterated, there is a distinction between workmen and non-workmen and that distinction has an important bearing on the question before us. Limitation (3) as formulated by learned counsel for the appellants ignores the distinction altogether and equates “any person” with “any employee” - past, present or future: this we do not think is quite correct or consistent with the other provisions of the Act. The Act avowedly gives a restricted meaning to the word “workman” and almost all the provisions of the Act are intended to confer benefits on that class of persons who generally answer to the description of workmen. The expression “any person” in the definition clause means, in our opinion, a person in whose employment, or non-employment, or terms of employment, or conditions of labour the workmen as a class have a direct or substantial interest — with whom they have, under the scheme of the Act, a community of interest. Our reason for so holding is not merely that the Act makes a distinction between workmen and non-workmen, but because a dispute to be a real dispute must be one in which the parties to the dispute have a direct or substantial interest. Can it be said that workmen as a class are directly or substantially interested in the employment, non-employment, terms of employment or conditions of labour of persons who belong to the supervisory staff and are, under the provisions of the Act, non-workmen on whom the Act has conferred no benefit, who cannot by themselves be parties to an industrial dispute and for whose representation the Act makes no particular provision? We venture to think that the answer must be in the negative. Limitation (4) formulated by learned counsel for the appellants is also too generally stated. We recognise that solidarity of labour or general interest of labour welfare may furnish, in some cases, the necessary nexus of direct or substantial interest in a dispute between employers and workmen, but the principle of solidarity of the labour movement or general welfare of labour must be based on or correlated to the principle of community of interest; the workmen can raise a dispute in respect of those persons only in the employment or non-employment or the terms of employment or the conditions of labour of whom they have a direct or substantial interest. We think that Chagla, C.J., correctly put the crucial test when he said in *Narendra Kumar Sen v. All India Industrial Disputes (Labour Appellate) Tribunal*:

“Therefore, when Section 2(k) speaks of the employment or non-employment or the terms of employment or the conditions of labour of any person, it can only mean the employment or non-employment or the terms of employment or the conditions of labour of only those persons in the employment or non-employment or the terms of employment or with the conditions of labour of whom the workmen themselves are directly and substantially interested. If the workmen have no direct or substantial

interest in the employment or non-employment of a person or in his terms of employment or his conditions of labour, then an industrial dispute cannot arise with regard to such person.”

19. More in point is the decision of the Full Bench of the Labour Appellate Tribunal in a number of appeals reported in 1952 *Labour Appeal Cases*, p. 198, where the question now before us arose directly for decision. The same question arose for decision before the All India Industrial Tribunal (Bank Disputes) and the majority of members (Messrs. K.C. Sen and J.N. Majumdar) expressed the view that a dispute between employers and workmen might relate to employment or non-employment or the terms of employment or conditions of labour of persons who were not workmen, and the words “any person” used in the definition clause were elastic enough to include an officer, that is, a member of the supervisory staff. The majority view will be found in Chapter X of the Report. The minority view was expressed by Mr N. Chandrasekhara Aiyar, who said:

“It is fairly clear to my mind that ‘any person’ in the Act means any one who belongs to the employer class or the workmen class and the cases in whose favour or against whom can be said to be adequately presented by the group or category of persons to which he belongs.

As stated already it should be remembered that the cases relied upon for the view that ‘any person’ may mean others also besides the workmen were all cases relating to workmen. They were discharged or dismissed workmen and when their cases were taken up by the Tribunal the point was raised that they had ceased to be workmen and were therefore outside the scope of the Act. This argument was repelled.

In my opinion, there is no justification for treating such cases as authorities for the wider proposition that a valid industrial dispute can be raised by workmen about the employment or non-employment of someone else who does not belong and never belonged to their class or category.

My view therefore is that the Act does not apply to cases of non-workmen, or officers, if they may be so called.”

Both these views as also other decisions of High Courts and awards of Industrial Tribunals, were considered by the Full Bench of the Labour Appellate Tribunal and the Chairman of the Tribunal (Mr J.N. Majumdar) acknowledged that his earlier view was not correct and expressed his opinion, concurred in by all the other members of the Tribunal, at p. 210 -

“I am, therefore, of opinion that the expression ‘any person’ has to be interpreted in terms of ‘workman’. The words ‘any person’ cannot have, in my opinion, their widest amplitude, as that would create incongruity and repugnancy in the provisions of the Act. They are to be interpreted in a manner that persons, who would come within that expression, can at some stage or other, answer the description of workman as defined in the Act.”

23. To summarise. Having regard to the scheme and objects of the Act, and its other provisions, the expression “any person” in Section 2(k) of the Act must be read subject to such limitations and qualifications as arise from the context; the two crucial limitations are (1) the dispute must be a real dispute between the parties to the dispute (as indicated in the first

two parts of the definition clause) so as to be capable of settlement or adjudication by one party to the dispute giving necessary relief to the other, and (2) the person regarding whom the dispute is raised must be one in whose employment, non-employment, terms of employment, or conditions of labour (as the case may be) the parties to the dispute have a direct or substantial interest. In the absence of such interest the dispute cannot be said to be a real dispute between the parties. Where the workmen raise a dispute as against their employer, the person regarding whose employment, non-employment, terms of employment or conditions of labour the dispute is raised need not be, strictly speaking, a “workman” within the meaning of the Act but must be one in whose employment, non-employment, terms of employment or conditions of labour the workmen as a class have a direct or substantial interest.

24. In the case before us Dr K.P. Banerjee was not a “workman”. He belonged to the medical or technical staff - a different category altogether from workmen. The appellants had no direct, nor substantial interest in his employment or non-employment, and even assuming that he was a member of the same Trade Union, it cannot be said, on the tests laid down by us, that the dispute regarding his termination of service was an industrial dispute within the meaning of Section 2(k) of the Act.

The result, therefore, is that the appeal fails and is dismissed.

Municipal Corporation of Delhi v. Female Workers (Muster Roll)

AIR 2000 SC 1274

S. SAGHIR AHMAD, J. – Female workers (muster roll), engaged by the Municipal Corporation of Delhi (for short “the Corporation”), raised a demand for grant of maternity leave which was made available only to regular female workers but was denied to them on the ground that their services were not regularised and, therefore, they were not entitled to any maternity leave. Their case was espoused by the Delhi Municipal Workers Union (for short “the Union”) and, consequently, the following question was referred by the Secretary (Labour), Delhi Administration to the Industrial Tribunal for adjudication:

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

2. The Union filed a statement of claim in which it was stated that the Municipal Corporation of Delhi employs a large number of persons including female workers on muster roll and they are made to work in that capacity for years together though they are recruited against the work of perennial nature. It was further stated that the nature of duties and responsibilities performed and undertaken by the muster-roll, which have been working with the Municipal Corporation of Delhi for years together, have to work very hard in construction projects and maintenance of roads including the work of digging trenches etc. but the Corporation does not grant any maternity benefit to female workers who are required to work even during the period of mature pregnancy or soon after the delivery of the child. It was pleaded that the female workers required the same maternity benefits as were enjoyed by regular female workers under the Maternity Benefit Act, 1961. The denial of the benefits exhibits a negative attitude of the Corporation in respect of a humane problem.

3. The Corporation in their written statement, filed before the Industrial Tribunal, pleaded that the provisions under the Maternity Benefit Act, 1961 or the Central Civil Services (Leave) Rules were not applicable to the female workers, engaged on muster roll, as they were all engaged only on daily wages. It was also contended that they were not entitled to any benefit under the Employees; State Insurance Act, 1948. It was for these reasons that the Corporation contended that the demand of the female workers (muster roll) for grant of maternity leave was liable to be rejected.

4. The Tribunal, by its award dated 2-4-1996, allowed the claim of the female workers (muster roll) and directed the Corporation to extend the benefits under the Maternity Benefit Act, 1961 to muster-roll female workers who were in the continuous service of the Corporation for three years or more. The Corporation challenged this judgment in a writ petition before the Delhi High Court which was dismissed by the Single Judge on 7-1-1997. The Letters Patent Appeal (LPA No. 64 of 1998), filed thereafter by the Corporation was dismissed by the Division Bench on 9-3-1998 on the ground of delay.

28. The Industrial Tribunal, which has given an award in favour of the respondents, has noticed that women employees have been engaged by the Corporation on muster roll, that is to say, on daily-wage basis for doing various kinds of works in projects like construction of buildings, digging of trenches, making of roads, etc., but have been denied the benefit of

maternity leave. The Tribunal has found that though the women employees were on muster roll and had been working for the Corporation for more than 10 years, they were not regularised. The Tribunal, however, came to the conclusion that the provisions of the Maternity Benefit Act had not been applied to the Corporation and, therefore, it felt that there was a lacuna in the Act. It further felt that having regard to the activities of the Corporation, which had employed more than a thousand women employees, it should have been brought within the purview of the Act so that the maternity benefits contemplated by the Act could be extended to the women employees of the Corporation. It felt that this lacuna could be removed by the State Government by issuing the necessary notification under the proviso to Section 2 of the Maternity Act. This proviso lays down as under:

“Provided that the State Government may, with the approval of the Central Government, after giving not less than two months’ notice of its intention of so doing, by notification in the Official Gazette, declare that all or any of the provisions of this Act shall apply also to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise.”

29. It consequently issued a direction to the management of the Municipal Corporation, Delhi to extend the benefits of the Maternity Benefit Act, 1961 to such muster-roll female employees who were in continuous service of the management for three years or more and who fulfilled the conditions set out in Section 5 of the Act.

30. We appreciate the efforts of the Industrial Tribunal in issuing the above directions so as to provide the benefit of the Act to the muster-roll women employees of the Corporation. This direction is fully in consonance with the reference made to the Industrial Tribunal. The question referred for adjudication has already been reproduced in the earlier part of the judgment. It falls in two parts as under:

- (i) Whether the female workers working on muster roll should be given any maternity benefit.
- (ii) If so, what directions are necessary in this regard.

32. Learned counsel for the Corporation contended that since the provisions of the Act have not been applied to the Corporation, such a direction could not have been issued by the Tribunal. This is a narrow way of looking at the problem which essentially is human in nature and anyone acquainted with the working of the Constitution, which aims at providing social and economic justice to the citizens of this country, would outrightly reject the contention. The relevance and significance of the doctrine of social justice has, times out of number, been emphasised by this Court in several decisions. In *Crown Aluminium Works v. Workmen* [AIR 1958 SC 30] this Court observed that the Constitution of India seeks to create a democratic, welfare State and secure social and economic justice to the citizens. In *J. K. Cotton spg. & Wvg. Mills Co. Ltd. v. Labour Appellate Tribunal of India* [AIR 1964 SC 737], Gajendragadkar, J., (as his Lordship then was), speaking for the Court, said:

“Indeed, the concept of social justice has now become such an integral part of industrial law that it would be idle for any party to suggest that industrial adjudication can or should ignore the claims of social justice in dealing with industrial disputes. The concept of social justice is not narrow, or one-sided, or

pedantic, and is not confined to industrial adjudication alone. Its sweep is comprehensive. It is founded on the basic ideal of socio-economic disparities and inequalities; nevertheless, in dealing with industrial matters, it does not adopt a doctrinaire approach and refuses to yield blindly to abstract notions, but adopts a realistic and pragmatic approach.”

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

34. Next it was contended that the benefits contemplated by the Maternity Benefit Act, 1961 can be extended only to workwomen in an “industry” and not to the muster-roll women employees of the Municipal Corporation. This is too stale an argument to be heard. Learned counsel also forgets that the Municipal Corporation was treated to be an “industry” and, therefore, a reference was made to the Industrial Tribunal, which answered the reference against the Corporation, and it is this matter which is being agitated before us.

35. Now, it is to be remembered that the municipal corporations or boards have already been held to be “industry” within the meaning of “the Industrial Disputes Act”. In *Budge Budge Municipality v. P.R. Mukherjee* [AIR 1953 SC 58] it was observed that the municipal activity would fall within the expression “undertaking” and as such would be an industry. The decision was followed in *Baroda Borough Municipality v. Workmen* [AIR 1957 SC 110] in which the Court observed that those branches of work of the municipalities which could be regarded as analogous to the carrying-on of a trade or business, would be “industry” and the dispute between the municipalities and their employees would be treated as an “industrial dispute”. This view was reiterated in *Corpn. of the City of Nagpur v. Employees* [AIR 1960 SC 675]. In this case, various departments of the Municipality were considered and certain departments of the Municipality were considered and certain departments including the General Administration Department and the Education Department were held to be covered within the meaning of “industry”.

36. Taking into consideration the enunciation of law as settled by this Court as also the High Courts in various decisions referred to above, the activity of the Delhi Municipal Corporation by which construction work is undertaken or roads are laid or repaired or trenches are dug would fall within the definition of “industry”. The workmen or, for that matter, those employed on muster roll for carrying on these activities would, therefore, be “workmen” and the dispute between them and the Corporation would have to be tackled as an

industrial dispute in the light of various statutory provisions of the industrial law, one of which is the Maternity Benefit Act, 1961. This is the domestic scenario. Internationally, the scenario is not different.

37. Delhi is the capital of India. No other city or corporation would be more conscious than the city of Delhi that India is a signatory to various international covenants and treaties. The Universal Declaration of Human Rights, adopted by the United Nations on 10-12-1948, set in motion the universal thinking that human rights are supreme and ought to be preserved at all costs. This was followed by a series of conventions. On 18-12-1979, the United Nations adopted the "Convention on the Elimination of all Forms of Discrimination against Women". Article 11 of this Convention provides as under:

"Article 11

1. States/parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) the right to work as an inalienable right of all human beings;

(b) the right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

(c) the right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;

(e) right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;

(f) the right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;

(g) the right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States/parties shall take appropriate measures:

(a) to prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;

(b) to introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

(c) to encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and

participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;

(d) to provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised repealed or extended as necessary.” (emphasis supplied)

38. These principles which are contained in Article 11, reproduced above, have to be read into the contract of service between the Municipal Corporation of Delhi and the women employees (muster roll); and so read these employees immediately become entitled to all the benefits conceived under the Maternity Benefit Act, 1961. We conclude our discussion by providing that the direction issued by the Industrial Tribunal shall be complied with by the Municipal Corporation of Delhi by approaching the State Government as also the Central Government for issuing necessary notification under the proviso to sub-section (1) of Section 2 of the Maternity Benefit Act, 1961, if it has not already been issued. In the meantime, the benefits under the Act shall be provided to the women (muster roll) employees of the Corporation who have been working with them on daily wages.

39. For the reasons stated above, the special leave petition is dismissed.

* * * * *

J.H. Jadhav v. Forbes Gokak Ltd

(2005) 3 SCC 202

RUMA PAL, J. - 2. The appellant was employed by the respondent. He claimed promotion as a clerk. When this was not granted, the appellant raised an industrial dispute. The question whether the appellant was justified in his prayer for promotion with effect from the date that his juniors were promoted was referred to the Industrial Tribunal by the State Government. In their written statement before the Tribunal the respondent denied the appellant's claim for promotion on merits. In addition, it was contended by the respondent that the individual dispute raised by the appellant was not an industrial dispute within the meaning of Section 2(k) of the Industrial Disputes Act, 1947, as the workman was neither supported by a substantial number of workmen nor by a majority union. The appellant claims that his cause was espoused by the Gokak Mills Staff Union.

3. Before the Tribunal, apart from examining himself, the General Secretary of the Union was examined as a witness in support of the appellant's claim. The General Secretary affirmed that the appellant was a member of the Union and that his cause has been espoused by the Union. Documents including letters written by the Union to the Deputy Labour Commissioner as well as the objection filed by the Union before the Conciliation Officer were adduced in evidence. The Tribunal came to the conclusion that in view of the evidence given by the General Secretary and the documents produced, it was clear that the appellant's cause had been espoused by the Union which was one of the unions of the respondent employer. On the merits, the Tribunal accepted the appellant's contentions that employees who were junior to him had been promoted as clerks. It noted that no record had been produced by the respondent to show that the management had taken into account the appellant's production records, efficiency, attendance or behaviour while denying him promotion. The Tribunal concluded that the act of the respondent in denying promotion to the appellant amounted to unfair labour practice. An award was passed in favour of the appellant and the respondent was directed to promote the appellant as a clerk from the date his juniors were promoted and to give him all consequential benefits.

4. The award of the Industrial Tribunal was challenged by the respondent by way of a writ petition. A Single Judge dismissed the writ petition. The respondent being aggrieved filed a writ appeal before the appellate court. The appellate court construed Section 2(k) of the Industrial Disputes Act, 1947 and came to the conclusion that an individual dispute is not an industrial dispute unless it directly and substantially affects the interest of other workmen. Secondly, it was held that an individual dispute should be taken up by a union which had representative character or by a substantial number of employees, before it would be converted into an industrial dispute neither of which according to the appellate court, had happened in the present case. It was held that there was nothing on record to show that the appellant was a member of the Union or that the dispute had been espoused by the Union by passing any resolution in that regard.

5. The definition of "industrial dispute" in Section 2(k) of the Act shows that an industrial dispute means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the

employment or non-employment or the terms of the employment or with the conditions of labour, of any person. The definition has been the subject-matter of several decisions of this Court and the law is well settled. The *locus classicus* is the decision in **Workmen v. Dharampal Premchand (Saughandhi)** [AIR 1966 SC 182] where it was held that for the purposes of Section 2(k) it must be shown that: (1) The dispute is connected with the employment or non-employment of a workman. (2) The dispute between a single workman and his employer was sponsored or espoused by the union of workmen or by a number of workmen. The phrase “the union” merely indicates the union to which the employee belongs even though it may be a union of a minority of the workmen. (3) The establishment had no union of its own and some of the employees had joined the union of another establishment belonging to the same industry. In such a case it would be open to that union to take up the cause of the workmen if it is sufficiently representative of those workmen, despite the fact that such union was not exclusively of the workmen working in the establishment concerned. An illustration of what had been anticipated in **Dharampal** case is to be found in **Workmen v. Indian Express (P) Ltd.** [(1969) 1 SCC 228] where an “outside” union was held to be sufficiently representative to espouse the cause.

6. In the present case, it was not questioned that the appellant was a member of the Gokak Mills Staff Union. Nor was any issue raised that the Union was not of the respondent establishment. The objection as noted in the issues framed by the Industrial Tribunal was that the Union was not the majority union. Given the decision in **Dharampal** case the objection was rightly rejected by the Tribunal and wrongly accepted by the High Court.

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

8. The Division Bench misapplied the principles of judicial review under Article 226 in interfering with the decision. It was not a question of there being no evidence of espousal before the Industrial Tribunal. There was evidence which was considered by the Tribunal in coming to the conclusion that the appellant’s cause had been espoused by the Union. The High Court should not have upset this finding without holding that the conclusion was irrational or perverse. The conclusion reached by the High Court is therefore unsustainable.

9. For all these reasons the decision of the High Court cannot stand and must be set aside.

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

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

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

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Topic-06: Concept of 'Workman'

Dharangadhara Chemical Works Ltd. v. State of Saurashtra

AIR 1957 SC 264 : 1957 SCR 152

N.H. BHAGWATI, J. - This Appeal with a certificate of fitness granted by the High Court of Saurashtra raises an interesting question whether the agarias working in the Salt Works at Kuda in the Rann of Cutch are workmen within the meaning of the term as defined in the Industrial Disputes Act, 1947, hereinafter referred to as "the Act".

2. The facts as found by the Industrial Tribunal are not in dispute and are as follows. The appellants are lessees of the Salt Works from the erstwhile State of Dharangadhara and also hold a licence for the manufacture of salt on the land. The appellants require salt for the manufacture of certain chemicals and part of the salt manufactured at the Salt Works is utilised by the appellants in the manufacturing process in the Chemical Works at Dharangadhara and the remaining salt is sold to outsiders. The appellants employ a Salt Superintendent who is in charge of the Salt Works and generally supervises the Works and the manufacture of salt carried on there. The appellants maintain a railway line and sidings and also have arrangements for storage of drinking water. They also maintain a grocery shop near the Salt Works where the agarias can purchase their requirements on credit.

3. The salt is manufactured not from sea water but from rain water which soaking down the surface becomes impregnated with saline matter. The operations are seasonal in character and commence sometime in October at the close of the monsoon. Then the entire area is parcelled out into plots called pattas and they are in four parallel rows intersected by the railway lines. Each agaria is allotted a patta and in general the same patta is allotted to the same agaria year after year. If the patta is extensive it is allotted to two agarias who work the same in partnership. At the time of such allotment, the appellants pay a sum of Rs 400 for each of the pattas and that is to meet the initial expenses. Then the agarias commence their work. They level the lands and enclose and sink wells in them. Then the density of the water in the wells is examined by the Salt Superintendent of the appellants and then the brine is brought to the surface and collected in the reservoirs called condensers and retained therein until it acquires by natural process a certain amount of density. Then it is flowed into the pattas and kept there until it gets transformed into crystals. The pans have got to be prepared by the agarias according to certain standards and they are tested by the Salt Superintendent. When salt crystals begin to form in the pans they are again tested by the Salt Superintendent and only when they are of a particular quality the work of collecting salt is allowed to be commenced. After the crystals are collected, they are loaded into the railway wagons and transported to the depots where salt is stored. The salt is again tested there and if it is found to be of the right quality, the agarias are paid therefor at the rate of Rs 0-5-6 per maund. Salt which is rejected belongs to the appellants and the agarias cannot either remove the salt manufactured by them or sell it. The account is made up at the end of the season when the advances which have been paid to them from time to time as also the amounts due from the agarias to the grocery shop are taken into account. On a final settlement of the accounts, the

amount due by the appellants to the agarias is ascertained and such balance is paid by the appellants to the agarias. The manufacturing season comes to an end in June when the monsoon begins and then the agarias return to their villages and take up agricultural work.

4. The agarias work themselves with their families on the pattas allotted to them. They are free to engage extra labour but it is they who make the payments to these labourers and the appellants have nothing to do with the same. The appellants do not prescribe any hours of work for these agarias. No muster roll is maintained by them nor do they control how many hours in a day and for how many days in a month the agarias should work. There are no rules as regards leave or holidays. They are free to go out of the Works as they like provided they make satisfactory arrangements for the manufacture of salt.

5. In about 1950, disputes arose between the agarias and the appellants as to the conditions under which the agarias should be engaged by the appellants in the manufacture of salt. The Government of Saurashtra, by its letter of Reference dated November 5, 1951, referred the disputes for adjudication to the Industrial Tribunal, Saurashtra State, Rajkot. The appellants contested the proceedings on the ground, *inter alia*, that the status of the agarias was that of independent contractors and not of workmen and that the State was not competent to refer their disputes for adjudication under Section 10 of the Act.

6. This question was tried as a preliminary issue and by its order dated August 30, 1952, the Tribunal held that the agarias were workmen within the meaning of the Act and that the reference was *intra vires* and adjourned the matter for hearing on the merits. Against this order the appellants preferred an appeal being Appeal No. 302 of 1952 before the Labour Appellate Tribunal of India, and having failed to obtain stay of further proceedings before the Industrial Tribunal pending the appeal, they moved the High Court of Saurashtra in M.P. No. 70 of 1952 under Articles 226 and 227 of the Constitution for an appropriate writ to quash the reference dated November 5, 1951 on the ground that it was without jurisdiction. Pending the disposal of this writ petition, the appellants obtained stay of further proceedings before the Industrial Tribunal and in view of the same the Labour Appellate Tribunal passed an order on September 27, 1953 dismissing the appeal leaving the question raised therein to the decision of the High Court. By their judgment dated January 8, 1954 the learned Judges of the High Court agreed with the decision of the Industrial Tribunal that the agarias were workmen within Section 2(s) of the Act and accordingly dismissed the application for writ. They, however, granted a certificate under Article 133(1)(c) of the Constitution and that is how the appeal comes before us.

The essential condition of a person being a workman within the terms of this definition is that he should be *employed* to do the work in that industry, that there should be, in other words, an employment of his by the employer and that there should be the relationship between the employer and him as between employer and employee or master and servant. Unless a person is thus *employed* there can be no question of his being a workman within the definition of the term as contained in the Act.”

8. The principles according to which the relationship as between employer and employee or master and servant has got to be determined are well settled. The test which is uniformly applied in order to determine the relationship is the existence of a right of control in respect of

the manner in which the work is to be done. A distinction is also drawn between a contract for services and a contract of service and that distinction is put in this way: “In the one case the master can order or require what is to be done while in the other case he can not only order or require what is to be done but how itself it shall be done”. [Per Hilbery, J. in *Collins v. Hertfordshire County Council* (1947) KB 598, 615].

13. The principle which emerges from these authorities is that the prima facie test for the determination of the relationship between master and servant is the existence of the right in the master to supervise and control the work done by the servant not only in the matter of directing what work the servant is to do but also the manner in which he shall do his work. “The proper test is whether or not the hirer had authority to control the manner of execution of the act in question”.

14. The nature or extent of control which is requisite to establish the relationship of employer and employee must necessarily vary from business to business and is by its very nature incapable of precise definition. As has been noted above, recent pronouncements of the Court of Appeal in England have even expressed the view that it is not necessary for holding that a person is an employee, that the employer should be proved to have exercised control over his work, that the test of control was not one of universal application and that there were many contracts in which the master could not control the manner in which the work was done (Vide observations of Somervelle, L.J. in *Cassidy v. Ministry of Health* [(1951) 2 KB 343, 352-3]).

15. The correct method of approach, therefore, would be to consider whether having regard to the nature of the work there was due control and supervision by the employer.

16. The Industrial Tribunal on a consideration of the facts in the light of the principles enunciated above came to the conclusion that though certain features which are usually to be found in a contract of service were absent, that was due to the nature of the industry and that on the whole the status of the agarias was that of workmen and not independent contractors. It was under the circumstances strenuously urged before us by the learned counsel for the respondents that the question as regards the relationship between the appellants and the agarias was a pure question of fact, that the Industrial Tribunal had jurisdiction to decide that question and had come to its own conclusion in regard thereto, that the High Court, exercising its jurisdiction under Articles 226 and 227 of the Constitution, was not competent to set aside the finding of fact recorded by the Industrial Tribunal and that we, here, entertaining an appeal from the decision of the High Court, should also not interfere with that finding of fact.

17. Reliance was placed on the observations of Mahajan, J., as he then was, in *Ebrahim Aboobakar v. Custodian General of Evacuee Property* [(1952) SCR 696, 702:]

“It is plain that such a writ cannot be granted to quash the decision of an inferior court within its jurisdiction on the ground that the decision is wrong. Indeed, it must be shown before such a writ is issued that the authority which passed the order acted without jurisdiction or in excess of it or in violation of the principles of natural justice.... But once it is held that the court has jurisdiction but while exercising it, it made a mistake, the wronged party can only take the course prescribed by law for

setting matters right inasmuch as a court has jurisdiction to decide rightly as well as wrongly”.

18. There is considerable force in this contention of the respondents. The question whether the relationship between the parties is one as between employer and employee or between master and servant is a pure question of fact. Learned counsel for the appellants relied upon a passage from Batt’s *Law of Master and Servant* 4th Edn., at p. 10:

“The line between an independent contractor and a servant is often a very fine one; it is a mixed question of fact and law, and the judge has to find and select the facts which govern the true relation between the parties as to the control of the work, and then he or the jury has to say whether the person employed is a servant or a contractor.”

It is equally well settled that the decision of the Tribunal on a question of fact which it has jurisdiction to determine is not liable to be questioned in proceedings under Article 226 of the Constitution unless at the least it is shown to be fully unsupported by evidence.

19. Now the argument of Mr Kolah for the appellants is that even if all the facts found by the Tribunal are accepted they only lead to the conclusion that the agarias are independent contractors and that the finding, therefore, that they are workmen is liable to be set aside on the ground that there is no evidence to support it. We shall, therefore, proceed to determine the correctness of this contention.

20. Apart from the facts narrated above in regard to which there is no dispute, there was the evidence of the Salt Superintendent of the appellants which was recorded before the Tribunal:

“The Panholders are allotted work on the salt pans by oral agreement. The Company has no control over the panholders in regard to the hours of work or days of work. The Company’s permission is not sought in matter of sickness or in matter of going out to some village. The Company has no control over the panholders as to how many labourers they should engage and what wages they should pay them. The Company’s supervision over the work of the panholders is limited to the proper quality as per requirements of the Company and as per standard determined by the Government in matter of salt. The Company’s supervision is limited to this extent.”

21. The Company acts in accordance with clause 6 of the said agreement in order to get the proper quality of salt.

22. Panholders are not the workmen of the Company, but are contractors. The men who are entrusted with pattas, work themselves. They can engage others to help them and so they do. There is upto this day no instance that any panholder who is entrusted with a patta, has not turned up to work on it. But we do not mind whether he himself works or not.

23. If any panholder after registering his name (for a patta) gets work done by others, we allow it to be done.

24. We own 319 pattas. Some pattas have two partners. In some, one man does the job. In all the pans, mainly the panholders work with the help of their (respective) families”.

25. **Clause 6** of the agreement referred to in the course of his evidence by the Salt Superintendent provided:

“6. We bind ourselves to work as per advice and instructions of the officers appointed by them in connection with the drawing of brine or with the process of salt production in the pattas and if there is any default, negligence or slackness in executing it on our part or if we do not behave well in any way, the Managing Agent of the said Company can annul this agreement and can take possession of the patta, brine, well, etc., and as a result we will not be entitled to claim any sort of consideration or compensation for any half processed salt lying in our patta; or in respect of any expense incurred or labour employed in preparing kiwa patta, well bamboo lining, etc.”

26. There was also the evidence of Shiva Daya, an agaria, who was examined on behalf of the respondents:

“There is work of making enclosures and then of sinking wells. The company supervises this work. While the wells are being sunk, the Company measures the density of the brine of wells. In order to bring the brine of wells to the proper density, it is put in a condenser and then the Company tests this and then this brine is allowed to flow in the pattas....

The bottom of a patta is prepared after it is properly crushed under feet and after the company inspects and okays that it is alright, water is allowed to flow into it. When salt begins to form at the bottom of a patta, an officer of the company comes and inspects it. At the end of 2½ months, the water becomes saturated i.e. useless, and so it is drained away under the supervision of the company. Then fresh brine is allowed to flow into the patta from the condenser. This instruction is also given by the company’s officer.”

27. It was on a consideration of this evidence that the Industrial Tribunal came to the conclusion that the supervision and control exercised by the appellants extended to all stages of the manufacture from beginning to end. We are of opinion that far from there being no evidence to support the conclusion reached by the Industrial Tribunal there were materials on the record on the basis of which it could come to the conclusion that the agarias are not independent contractors but workmen within the meaning of the Act.

28. Learned counsel for the appellants laid particular stress on two features in this case which, in his submission, were consistent only with the position that the agarias are independent contractors. One is that they do piece-work and the other that they employ their own labour and pay for it. In our opinion neither of these two circumstances is decisive of the question. As regards the first, the argument of the appellants is that as the agarias are under no obligation to work for fixed hours or days and are to be paid wages not per day or hours but for the quantity of salt actually produced and passed, at a certain rate, the very basis on which the relationship of employer and employees rests is lacking, and that they can only be regarded as independent contractors. There is, however, abundant authority in England that a person can be a workman even though he is paid not per day but by the job.

29. As regards the second feature relied on for the appellants it is contended that the agarias are entitled to engage other persons to do the work, that these persons are engaged by the agarias and are paid by them, that the appellants have no control over them and that these facts can be reconciled only with the position that the agarias are independent contractors. This argument, however, proceeds on a misapprehension of the true legal position. The broad distinction between a workman and an independent contractor lies in this that while the former agrees himself to work, the latter agrees to get other persons to work. Now a person who agrees himself to work and does so work and is therefore a workman does not cease to be such by reason merely of the fact that he gets other persons to work along with him and that those persons are controlled and paid by him. What determines whether a person is a workman or an independent contractor is whether he has agreed to work personally or not. If he has, then he is a workman and the fact that he takes assistance from other persons would not affect his status. The position is thus summarised in *Halsbury's Laws of England*, Vol. 14, pp. 651-52:

“The workman must have consented to give his personal services and not merely to get the work done, but if he is bound under his contract to work personally, he is not excluded from the definition, simply because he has assistance from others, who work under him”.

30. In the instant case the agarias are professional labourers. They themselves personally work along with the members of their families in the production of salt and would, therefore, be workmen. The fact that they are free to engage others to assist them and pay for them would not, in view of the above authorities, affect their status as workmen.

31. There are no doubt considerable difficulties that may arise if the agarias were held to be workmen within the meaning of Section 2(s) of the Act. Rules regarding hours of work, etc., applicable to other workmen may not be conveniently applied to them and the nature as well as the manner and method of their work would be such as cannot be regulated by any directions given by the Industrial Tribunal. These difficulties, however, are no deterrent against holding the agarias to be workmen within the meaning of the definition if they fulfil its requirements. The Industrial Tribunal would have to very well consider what relief, if any, may possibly be granted to them having regard to all the circumstances of the case and may not be able to regulate the work to be done by the agarias and the remuneration to be paid to them by the employer in the manner it is used to do in the case of other industries where the conditions of employment and the work to be done by the employees is of a different character. These considerations would necessarily have to be borne in mind while the Industrial Tribunal is adjudicating upon the disputes which have been referred to it for adjudication. They do not, however, militate against the conclusion which we have come to above that the decision of the Industrial Tribunal to the effect that the agarias are workmen within the definition of the term contained in Section 2(s) of the Act was justified on the materials on the record.

32. We accordingly see no ground for interfering with that decision and dismiss this appeal with costs.

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A. Sundarambal v. Government of Goa, Daman & Diu

AIR 1988 SC 1700

E.S. VENKATARAMIAH, J. – The short question which arises for consideration in this case is whether a teacher employed in a school falls within the definition of the expression ‘workman’ as defined in S. 2(s) of the Industrial Disputes Act, 1947 (the Act’).

2. The appellant, Miss A. Sundarambal, was appointed as a teacher in a school conducted by the Society of Franciscan Sisters of Mary at Caranzalem, Goa. Her services were terminated by the Management by a letter dated 25th April, 1975. After she failed in her several efforts in getting the order of termination cancelled, she raised an industrial dispute before the Conciliation Officer under the Act. The conciliation proceedings failed and the Conciliation Officer reported accordingly to the Government of Goa, Daman and Diu by his letter dated 2nd May, 1982. On receipt of the report the Government considered the question whether it could refer the matter for adjudication under S. 10(1)(c) of the Act but on reaching the conclusion that the appellant was not a ‘workman’ as defined in the Act which alone would have converted a dispute into an industrial dispute as defined in S. 2(k) of the Act, it declined to make a reference. Thereupon the appellant filed a writ petition before the High Court of Bombay, Panaji Bench, Goa for issue of a writ in the nature of mandamus requiring the Government to make a reference under S. 10(1)(c) of the Act to a Labour Court to determine the validity of the termination of her services. That petition was opposed by the respondents. After hearing the parties concerned, the High Court dismissed the writ petition holding that the appellant was not a workman by its judgment dated 5th September, 1983. Aggrieved by the judgment of the High Court the appellant has filed this appeal by special leave.

3. Two questions arise for consideration in this case: (1) whether the school, in which the appellant was working, was an industry, and (2) whether the appellant was a ‘workman’ employed in that industry. It is, however, not disputed that if the applicant was not a ‘workman’ no reference under S. 10(1)(c) of the Act could be sought.

4. The first question need not detain us long. In *University of Delhi v. Ram Nath* [AIR 1963 SC 1873] a bench consisting of three learned Judges of this Court held that the University of Delhi which was an educational institution and Miranda House, a college affiliated to the said University, also being an educational institution would not come within the definition of the expression ‘industry’ as defined in S. 2(j) of the Act. Section 2(j) of the Act states that ‘industry’ means any business, trade, undertaking manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen. Gajendragadkar, J. (as he then was) who decided the said case, held that the educational institutions which were predominantly engaged in teaching could not be considered as industries within the meaning of the said expression in S. 2(j) of the Act and, therefore, a driver who was employed by the Miranda House could not be considered as a workman employed in an industry. The above decision came up for consideration in *Bangalore Water Supply & Sewerage Board v. A. Rajappa* [AIR 1978 SC 548] before a larger bench of this Court. In that case the decision in *University of Delhi* was overruled. Krishna Iyer, J. who delivered the majority judgment observed (at 596) thus:

“(a) Where a complex of activities, some of which qualify for exemption, others not, involves, employees on the total undertaking, some of whom are not ‘workmen’ as in the University of Delhi Case or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the *Corporation of Nagpur*, will be true test. The whole undertaking will be ‘industry’ although those who are not ‘workmen’ by definition may not benefit by the status.”

5. The learned Judge, however, observed that while an educational institution was an industry it was possible that some of the employees in that industry might not be workmen. At page 548 with reference to *University of Delhi* the learned Judge observed thus:

“The first ground relied on by the Court is based upon the preliminary conclusion that teachers are not ‘workmen’ by definition. Perhaps, they are not, because teachers do not do manual work or technical work. We are not too sure whether it is proper to disregard, with contempt, manual work and separate it from education, nor are we too sure whether in our technological universe, education has to be excluded. However, that may be a battle to be waged on a later occasion by litigation and we do not propose to pronounce on it at present. The Court, in the University of Delhi proceeded on that assumption viz. that teachers are not workmen, which we will adopt to test the validity of the argument.”

6. Thus it is seen that even though an educational institution has to be treated as an industry in view of the decision in the *Bangalore Water Supply*, the question whether teachers in an educational institution can be considered as workmen still remains to be decided.

8. In order to be a workman, a person should be one who satisfies the following conditions: (i) he should be a person employed in an industry for hire or reward; (ii) he should be engaged in skilled or unskilled manual, supervisory, technical or clerical work; and (iii) he should not be a person falling under any of the four clauses, i.e. (i) to (iv) mentioned in the definition of ‘workman’ in section 2(s) of the Act. The definition also provides that a workman employed in an industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, an industrial dispute, or whose dismissal, discharge or retrenchment has led to that dispute.

9. We are concerned in this case primarily with the meaning of the words ‘skilled or unskilled manual, supervisory, technical or clerical work.’ If an employee in an industry is not a person engaged in doing work falling in any of these categories, he would not be a workman at all even though he is employed in an industry. The question for consideration before us is whether a teacher in a school falls under any of the four categories, namely, a person doing any skilled or unskilled manual work, supervisory work, technical work or clerical work. If he does not satisfy any one of the above descriptions he would not be a workman even though he is an employee of an industry as settled by this Court in *May and Baker (India) Ltd. v. Their Workmen* [AIR 1967 SC 678]. In that case this Court had to consider the question whether a person employed by a pharmaceutical firm as a representative

(for canvassing orders) whose duties consisted mainly of canvassing orders and any clerical or manual work that he had to do was only incidental to his main work of canvassing could be considered as a workman as defined in the Act. Dealing with the said question, Wanchoo, J. (as he then was) observed thus (at 679-80):

“A ‘workman’ was then defined as any person employed in any industry to do any skilled or unskilled manual or clerical work for hire or reward. Therefore, doing manual or clerical work was necessary before a person could be called a workman. This definition came for consideration before industrial tribunals and it was consistently held that the designation of the employee was not of great moment and what was of importance was the nature of his duties. If the nature of the duties is manual or clerical, then the person must be held to be a workman. On the other hand if manual or clerical work is only a small part of the duties of the person concerned and incidental to his main work which is not manual or clerical, then such a person would not be a workman. It has, therefore, to be seen in each case from the nature of the duties whether a person employed is a workman or not, under the definition of that word as it existed before the amendment of 1956. The nature of the duties of Mukerjee is not in dispute in this case and the only question therefore is whether looking to the nature of the duties it can be said that Mukerjee was a workman within the meaning of S. 2(s) as it stood at the relevant time. We find from the nature of the duties assigned to Mukerjee that his main work was that of canvassing and any clerical or manual work that he had to do was incidental to his main work of canvassing and could not take more than a small fraction of the time for which he had to work. In the circumstances the tribunal’s conclusion that Mukerjee was a workman is incorrect. The tribunal seems to have been led away by the fact that Mukerjee had no supervisory duties and had to work under the directions of his superior officers. That, however, would not necessarily mean that Mukerjee’s duties were mainly manual or clerical. From what the tribunal itself has found it clear that Mukerjee’s duties were mainly neither clerical nor manual. Therefore, as Mukerjee was not a workman, his case would not be covered by the Industrial Disputes Act and the tribunal would have no jurisdiction to order his reinstatement. We, therefore, set aside the order of the tribunal directing reinstatement of Mukerjee along with other reliefs.

10. The Court held that the employee Mukerjee involved in that case was not a workman under section 2(s) of the Act because he was not mainly employed to do any skilled or unskilled manual or clerical work for hire or reward, which were the only two classes of employees who qualified for being treated as ‘workman’ under the definition of the expression ‘workman’ in the Act, as it stood then. As a result of the above decision, in order to give protection regarding security of employment and other benefits to sales representatives, Parliament passed a separate law entitled the Sales Promotion Employees (Conditions of Service) Act, 1976. It is no doubt true that after the events leading to the above decision took place section 2(s) of the Act was amended by including persons doing technical work as well as supervisory work. The question for consideration is whether even after the inclusion of the above two classes of employees in the definition of the expression

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

11. We may at this stage observe that teachers as a class cannot be denied the benefits of social justice. We are aware of the several methods adopted by unscrupulous managements to exploit them by imposing on them unjust conditions of service. In order to do justice to them it is necessary to provide appropriate machinery so that teachers may secure what is rightly due to them. In a number of States in India laws have been passed for enquiring into the validity of illegal and unjust terminations of services of teachers by providing for appointment of judicial tribunals to decide such cases. We are told that in the State of Goa there is no such Act in force. If it is so, it is time that the State of Goa takes necessary steps to bring into force an appropriate legislation providing for adjudication of disputes between teachers and the Managements of the educational institutions. We hope that this lacuna in the legislative area will be filled up soon.

12. This appeal, however, fails and it is dismissed. Before we conclude we record the statement made on our suggestion by the learned counsel for the Management, Shri G.B. Pai that the Management would give a sum of Rs.40,000/- to the appellant in full and final settlement of all her claims. The learned counsel for the appellant has agreed to receive Rs. 40,000/- accordingly. We direct the Management to pay the above sum of Rs.40,000/- to the appellant in six instalments.

H.R. Adyanthaya v. Sandoz (India) Ltd.

(1994) 5 SCC 737

P.B. SAWANT, J. – The question that falls for consideration in these matters is whether the ‘medical representatives’ as they are commonly known, are workmen according to the definition of ‘workman’ under Section 2(s) of the Industrial Disputes Act, 1947 (the ‘ID Act’). The definition under this section has undergone changes since its first enactment. It is necessary to keep in mind the said changes since the decisions of this Court delivered on the point from time to time are based on the definition, as it stood at the relevant time. The definition, as it stood originally when the ID Act came into force w.e.f. 1.4.1947, read as follows:

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

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

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

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

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

3. The first change brought about by this amendment was that whereas earlier only those who were doing unskilled or skilled manual work were included in the said definition, now those who did any unskilled or skilled work, whether manual or not, came to be included in

it. The second and the most important change that was brought about was that those persons who were employed to do 'operational' work were also brought within the fold of the said definition.

4. We are not referring to the other changes which the definition of 'workman' underwent, after its enactment in 1947 since they are not relevant for our purpose.

5. What is further necessary to remember is that the Amending Act 46 of 1982 simultaneously brought about a change in the definition of 'wages' under Section 2(rr) of the ID Act and for the first time included the following in the said definition:

“(iv) any commission payable on the promotion of sales or business or both.”

6. It is also instructive to point out, in this connection that along with the change in the definition of 'wages,' the definition of 'industry' under Section 2(j) has also been amended. The relevant part of the amended definition reads as follows:

7. It will be seen that by the amended definition of 'industry', an activity relating to the promotion of sales or business or both, carried on by any establishment is for the first time sought to be brought within the said definition. However, the amended definition of 'industry' has not till date come into force.

8. In the light of the amended definitions of 'workman' and 'wages' and that of 'industry' which has not yet become operative, we may now refer to the decisions of this Court on the subject.

9. A three-Judge Bench of this court in *May & Baker (India) Ltd. v. Workmen* [AIR 1967 SC 678] had to deal directly with the question as to whether the medical representative of the company, who was discharged from service, was a workman under the ID Act and the order of reinstatement passed by the Industrial Tribunal was, therefore, valid. The Court referred to the undisputed nature of the duties of the employee and found that his main work was that of canvassing sales. Any clerical or manual work that he had to do was incidental to the said main work, and could not take more than a small fraction of the time for which he had to work. In the circumstances, the Court held that the Tribunal's conclusion that the employee was a workman under the ID Act was incorrect. The Court also observed that the Tribunal in that case seemed to have been led away by the fact that the employee had no supervisory duties and had to work under the direction of his superior officers. The Court held that this would not necessarily mean that the employee's duties were mainly manual or clerical. The Court held that from what the Tribunal had found, it was clear that the employee's duties were mainly neither clerical nor manual and, therefore, he was not a workman. Hence the Court set aside the Tribunal's direction for reinstating the employee.

10. It is thus obvious from the decision that the contention on behalf of the workman before the Industrial Tribunal as well as before this Court was that the employee was doing either manual or clerical work, and that not only he had no supervisory duties but he was doing his work under the direction of his superiors and, therefore, he was a workman within the meaning of the definition of workman as it stood then. The dispute in question had arisen prior to 6.1.1956. The definition of 'workman' at the relevant time included only those persons who were employed to do any skilled or unskilled manual or clerical work. Hence

the relevant contention on behalf of the workman was negated by this Court. An inference from this decision is also possible, viz., that if the employee's work was mainly manual or clerical, he would have, even as the definition stood then, been covered by it.

11. The next decision is also of the same three-judge Bench in *Western India Match Co. Ltd. v. Workmen* [AIR 1964 SC 472]. The dispute there was whether the workmen employed by the sales-office of the company were entitled to production bonus as were those employed in the factory and the factory-office. The incidental question which arose in this case was whether the sales-office was entirely independent of the factory or was a department of the one and the same unit of production, and whether inspectors, salesmen, and retail salesmen of the sales-office were workmen within the meaning of the U.P. Industrial Disputes Act. The 'workman' was defined under that Act to mean "any person ...to do any manual, supervisory, technical or clerical work for hire or reward..." which definition was the same as under the Central Act, viz. the ID Act. This dispute was referred by the State Government for adjudication to the Industrial Tribunal on 18.8.1961. The Tribunal had accepted the evidence of the workmen that the writing work of the inspectors, salesmen and retail salesmen took 75 per cent of the time. This Court accepted the said finding. On the question whether the sales-office and the factory and factory-office formed one and the same unit of the industrial establishment, the Court held that all those growing or making articles as well as those transporting them and also those ultimately completing the process of bringing them to the ultimate consumer, were engaged in the activity of producing wealth. It would, therefore, be unreasonable to say that those who made the matches were 'producing' and those who 'sold' them were not. The functional integrity, interdependence or community of financial control and management; community of manpower and of its control, recruitment and discipline; the manner in which the employer has organised the different activities; whether he has treated them as independent of one another or as interconnected and interdependent, are some of the tests to find out whether the two units are parts of one and the same establishment. The Court further held that the difference in the rules and practice in connection with their recruitment, control and discipline, in the standing orders applicable to them, and in the maintenance of their muster-rolls made no difference to the situation. So also the fact that the sales-office was paying rent to the factory for the area occupied by it. It would thus appear that this decision mainly turned on the nature of the work done by the said salesmen, viz. 75 per cent clerical work. We have referred to the other aspect, viz., the integrality of the sales-office and the other parts of the establishment to emphasise that sales is as much an essential part of an undertaking which is established for the manufacture and sale of a product. It must be mentioned that there is no reference in this decision to the earlier decision of the same Bench in *May & Baker* case.

12. In *Burmah Shell Oil Storage & Distribution Co. of India Ltd. v. Burmah Shell Management Staff Assn.* [AIR 1971 SC 922], the dispute, among others, was whether the Sales Engineering Representatives and District Sales Representatives employed in the company were workmen within the meaning of the ID Act. The dispute had arisen prior to 28.10.1967. The argument on behalf of the workmen was that the definition of the 'workmen' (which at the relevant time also included persons doing supervisory and technical work) was all comprehensive and contemplated that all persons employed in an industry must necessarily

fall in one or the other of the four classes mentioned in the main body of the definition, viz., those doing skilled or unskilled manual work, supervisory work, technical work or clerical work, and consequently the court should proceed on the assumption that every person is a workman unless he fell under one of the four exceptions to the definition. The Court rejected this contention. The Court referred to its earlier decision in *May & Baker* case and pointed out that the Court had held that since duties of the employee there were not mainly manual or clerical the employee was not a workman. The Court also pointed out that although that decision was based on the definition as it stood then, when the words 'supervisory' and 'technical' did not occur there, if every employee of an industry was to be a workman except those mentioned in the four exceptions, the four classifications, viz., manual, supervisory, technical and clerical need not have been mentioned in the definition, and the workman could have been defined so as to include every person employed in an industry except where he was covered by one of the exceptions. The specification of the four types of work, according to the Court, was obviously intended to lay down that an employee was to be a workman only if he was employed to do work of one of those types. There may be employees who do not do any such work and hence would be out of the scope of the definition. The Court then gave an example of such workman who would be outside the definition of workman even if he did not fall in any of the exceptions. Coincidentally, the example given was that of a person employed in canvassing sales of an industry. According to the Court, he may not be required to do any paper work nor may he be required to have any technical knowledge. He may not be supervising the work of any other employees, nor would he be doing any skilled or unskilled manual work. Even if he is an employee of the industry, he would not be a workman because the work for which he is employed is not covered by the four types mentioned in the definition and not because he could be taken out of the definition being under one of the exceptions. The Court then referred to a case where employees are employed to do work of more than one of the types mentioned in the definition, and pointed out that in such cases the principle was well-settled that a person must be held to be employed to do that work which is the main work he is required to do, even though he may be incidentally doing several types of work. Referring in this connection to the *May & Baker* case, the Court pointed out that in that case, it was noticed that the employee's duties were mainly neither clerical nor manual although his duties did involve some clerical and manual work and hence he was held not to be a workman. The Court then referred to the nature of the duties of Sales Engineering Representatives and the District Sales Representatives with whom, among others, the Court was concerned there. With regard to the Sales Engineering Representatives, the Court approved of the finding of the Tribunal that he was not employed on a supervisory work, but found fault with the Tribunal for not proceeding further to examine whether he was employed on any other work of such a type that he could be brought within the definition of workman. The Court then itself examined the said question. Since there was no suggestion at all that he was employed on clerical or manual work, and all that was canvassed was that he was doing technical work, the Court found that the amount of technical work that he did was of ancillary nature to his chief duty of promoting sales and giving advice. The mere fact that he was required to have technical knowledge, for such a purpose, did not make his work technical. According to the Court the work of advising and removing complaints so as to promote sales remains outside the scope of technical work. Consequently, the Tribunal's

finding that the Sales Engineering Representative was a workman was set aside. Referring to the District Sales Representatives, the Court held that they were not doing clerical work, and that they were principally employed for the purpose of promoting sales of the company. Their main work was canvassing and obtaining orders. In that connection, of course, they had to carry on some correspondence, but that correspondence was incidental to the main work of pushing sales of the company. In connection with promotion of sales, they had to make recommendations for selection of agents and dealers; extension or curtailment of credit facilities to agents, dealers and customers; investments of capital and revenue in the shape of facilities at agent's premises or retail outlets; and selection of suitable sites for retail outlets to maximise sales and negotiations for terms of new sites. On these facts, the Court held that the work that they were doing was neither manual nor clerical nor technical nor supervisory, and further added that the work of canvassing and promoting sales could not be included in any of the said four classifications and the decision given by the Tribunal that they were not workmen was valid.

13. In *S.K. Verma v. Mahesh Chandra* [(1983) 4 SCC 214] the dispute was whether Development Officers of the Life Insurance Corporation of India (LIC) were workmen. The dispute arose on account of the dismissal of the appellant-Development Officer w.e.f. 8.2.1969. The court noticed that the change in the definition of workman brought about by the Amending Act 36 of 1956 which, as stated above, added to the originally enacted definition, two more categories of employees, viz., those doing 'supervisory' and 'technical' work. The three-Judge Bench of this Court did not refer to the earlier decisions in *May & Baker*, *WIMCO* and *Burmah Shell* cases. The Bench only referred to the decision of this Court in *Workmen v. Indian Standards Institution* [(1975) 2 SCC 847] where while considering whether ISI was an 'industry' or not, it was held that since the ID Act was a legislation intended to bring about peace and harmony between management and labour in an 'industry,' the test must be so applied as to give the widest possible connotation to the term 'industry' and, therefore, a broad and liberal and not a rigid and doctrinaire approach should be adopted to determine whether a particular concern was an industry or not. The Court, therefore, held that to decide the question whether the Development Officers in the LIC were workmen or not, it should adopt pragmatic and not a pedantic approach and consider the broad question as to on which side of the line the workman fell, viz., labour or management, and then to consider whether there were any good reasons for moving them on from one side to the other. The Court then noticed that the LIC Staff Regulations classified the staff into four categories, viz., (i) Officers, (ii) Development Officers, (iii) Supervisors and Clerical Staff, and (iv) Subordinate Staff. The Court pointed out that Development Officers were classified separately both from Officers on the one hand and Supervisors and Clerical Staff on the other and that they as well as Class III and Class IV staff other than Superintendents were placed on par inasmuch as their appointing and disciplinary authority was the Divisional Manager whereas that of Officers was Zonal Manager. The Court also referred to their scales of pay and pointed out that the appellation "Development Officer" was no more than a glorified designation. The Court then referred to the nature of duties of the Development Officers and pointed out that a Development Officer was to be a whole-time employee and that his operations were to be restricted to a defined area and that he was liable to be transferred. He had no authority whatsoever to bind the Company in any way. His principal

duty appeared to be to organise and develop the business of the Corporation in the area allotted to him, and for that purpose, to recruit active and reliable agents, to train them, to canvass new business and to render post-sale services to policyholders. He was expected to assist and inspire the agents. Even so, he had not the authority either to appoint them or to take disciplinary action against them. He did not even supervise the work of the agents though he was required to train them and assist them. He was to be a friend, philosopher and guide of the agents working within his jurisdiction and no more. He was expected to “stimulate and excite” the agents to work while exercising no administrative control over them. The agents were not his subordinates. He had no subordinate staff working under him. The Court, therefore, held that it was clear that the Development Officer could not by any stretch of imagination be said to be engaged in any administrative or managerial work and, therefore, he was a workman within the meaning of the ID Act. Accordingly, the order of the Industrial Tribunal and the judgment of the High Court holding that he was not a workman were set aside. As has been pointed out above, this decision did not refer to the earlier three decisions in *May & Baker*, *WIMCO* and *Burmah Shell* cases, and obviously proceeded on the basis that if an employee did not come within the four exceptions to the definition, he should be held to be a workman. This basis was in terms considered and rejected in *Burmah Shell* case by a Coordinate Bench of three Judges. Further no finding is given by the Court whether the Development Officer was doing clerical or technical work. He was admittedly not doing manual work. We may have, therefore, to treat this decision as *per incuriam*.

14. *Ved Prakash Gupta v. Delton Cable India (P) Ltd.* [(1984) 2 SCC 569] was decided by the same three-Judge Bench which decided the *S.K. Verma* case [(1983) 4 SCC 214]. The question there was whether the Security Inspector at the gate of the factory was a workman within the meaning of the ID Act. The dispute had arisen on account of his dismissal from service on 13.9.1979. The Court referred to the nature of duties performed by the employee and found that a substantial part of the work of the employee consisted of looking after the security of the factory and its property by deputing the watchmen working under him to work at the factory gate or sending them to the watch-tower or around the factory or to accompany visitors to the factory and making entries in the visitors register and also making entries regarding the material entering in and going out of the premises of the factory. No written list of duties was given to the employee. The appellant was also doing other items of work such as signing identity cards of workmen, issuing some small items of stores like torch-cells to his subordinate watchmen and filling up application forms of other workmen and counter-signing them or recommending advances and loans or for promotion of his subordinates. He could not appoint or dismiss any workmen or order any enquiry against any workmen. He was working under the Security Officer and various other heads of departments of the management. He was also performing the duties of chowkidar when one of the chowkidars left the place temporarily for taking tea etc. He was also accompanying Accounts Branch people as a guard whenever they carried money. On these facts, the Court held that the substantial duty of the employee was that of a security inspector at the gate of the factory and it was neither managerial nor supervisory in nature in the sense in which those terms were understood in industrial law. The Court, therefore, held that he was a workman under the ID Act. This decision also did not refer to the earlier decisions in *May & Baker*, *WIMCO* and *Burmah*

Shell cases and instead followed the ratio of the earlier decision in *S.K. Verma* case. What is further, the decision turned on the facts of the case.

15. In *Arkal Govind Raj Rao v. Ciba Geigy of India Ltd.* [(1995) 3 SCC 371], the employee was first appointed as a Stenographer-cum Accountant and later as Assistant. His services were terminated on 10.10.1982 which formed the subject-matter of an industrial dispute. One of the preliminary points raised on behalf of the employer before the Labour Court was whether he was a workman within the meaning of the ID Act. The Court accepted the finding of the Labour Court that primarily the duties of the employee were of a clerical nature and held that he was a workman. The Court also referred to the earlier decision in *S.K. Verma* and *Delton Cable* [(1984) 2 SCC 569] cases.

16. *A. Sundarambal v. Government of Goa, Daman & Diu* [(1988) 4 SCC 42] was a case of a teacher in a school conducted by a private society. Her services were terminated on 25.4.1975 which gave rise to the industrial dispute. Two questions raised were whether the school was an industry and whether the teacher was a workman under the ID Act. We are not concerned with the first question in this case. While answering the second question, the Court considered the meaning of the words “skilled or unskilled, manual, supervisory, technical or clerical work” in the definition of workman under the ID Act and held that if an employee is not a person engaged in doing work falling in any of the said categories, he would not be a workman at all even though he is employed in an industry. For this purpose, the Court relied on *May & Baker* case, and further held that teachers employed by educational institutions whether they are imparting primary, secondary, graduate or postgraduate education, cannot be called workmen. Imparting of education which is the main function of a teacher cannot be considered as unskilled or skilled, manual or supervisory or technical or clerical work. The clerical work a teacher does is only incidental to his principal work of teaching. The Court did not accept the suggestion that having regard to the object of the ID Act, all employees in an industry except those falling under the four exceptions to the definition should be treated as workmen. The Court held that to accept the said argument would render the words “to do any skilled or unskilled manual, supervisory, technical or clerical work” meaningless. The Court held that a liberal construction as suggested would have been possible only in the absence of the said words. The Court, therefore, upheld the decision of the High Court that the appellant was not a workman though the school was an industry. It is thus obvious from this decision given as late as in 1988 that the Court reiterated the earlier decision in *May & Baker* case and instead that before a person could qualify to be a workman within the meaning of the ID Act, he had to satisfy that he did work of any of the four types mentioned in the main body of the definition and that it was not enough that he did not fall within any of the four exceptions in the definition.

17. A still later decision of a two-Judge Bench of this court in *T.P. Srivastava v. National Tobacco Co. of India Ltd.* [(1992) 1 SCC 281] by referring to the decision in *Burmah Shell* case has also reiterated the law laid down in *May & Baker* case. There the employee concerned was a Section Salesman of the company whose services were terminated w.e.f. 12.7.1973. The Court held that in order to come within the definition of workman under the ID Act the employee had to be employed to do the work of one of the types referred to in the main body of the definition. The Court also referred to the Sales Promotion Employees

(Conditions of Service) Act, 1976 and pointed out that the provisions of that Act were not made applicable to the employees of the company. The Court further pointed out that the object of the said Act would show that persons employed for sales promotion normally would not come within the definition of workman under the ID Act. The Court accordingly upheld the decision of the Labour Court that the employee was not a workman within the meaning of the ID Act.

18. The legal position that arises from the statutory provisions and from the aforesaid survey of the decisions may now be summarised as follows.

19. Till 29.8.1956 the definition of workman under the ID Act was confined to skilled and unskilled manual or clerical work and did not include the categories of persons who were employed to do 'supervisory' and 'technical' work. The said categories came to be included in the definition w.e.f. 29.8.1956 by virtue of the Amending Act 36 of 1956. It is, further, for the first time that by virtue of the Amending Act 46 of 1982, the categories of workmen employed to do 'operational' work came to be included in the definition. What is more, it is by virtue of this amendment that for the first time those doing non-manual unskilled and skilled work also came to be included in the definition with the result that the persons doing skilled and unskilled work whether manual or otherwise, qualified to become workmen under the ID Act.

20. The decision in *May & Baker* case was delivered when the definition did not include either 'technical' or 'supervisory' or 'operational' categories of workmen. That is why the contention on behalf of the workmen had to be based on the manual and clerical nature of the work done by the sales representatives in that case. The Court had also, therefore, to decide the category of the sales representatives with reference to whether the work done by him was of a clerical or manual nature. The Court's finding was that the canvassing for sale was neither clerical nor manual, and the clerical work done by him formed a small fraction of his work. Hence, the sales representative was not a workman.

21. In *WIMCO* case, the dispute had arisen on 18.8.1961 under the U.P. Industrial Disputes Act and at the relevant time the definition of the workman in that Act was the same as under the Central Act, i.e. the ID Act which had by virtue of the Amending Act 36 of 1956 added to the categories of workmen, those doing supervisory and technical work. However, the argument advanced before the Court was not on the basis of the supervisory or technical nature of the work done by the employees concerned, viz., inspectors, salesmen and retail salesmen. The argument instead, both before the Industrial Tribunal and this Court was based on the clerical work put in by them, which were found to be 75 per cent of their work. This Court confirmed the finding of the Tribunal that the employees concerned were workmen because 75 per cent of their time was devoted to the writing work. The incidental question was whether the sales-office and the factory and the factory-office formed part of one and the same industrial establishment or were independent of each other. The Court observed that it would be unreasonable to say that those who were producing matches were workmen and those who sold them were not. In other words, the Court did not hold that the work of selling matches was as much as operational part of the industrial establishment as was that of manufacturing.

22. In *Burmah Shell* case, the workmen involved were Sales Engineering Representatives and District Sales Representatives. The dispute had arisen on 28.10.1967 when the categories of workmen doing supervisory and technical work stood included in the definition of workman. The Court found that the work done by the Sales Engineering Representatives as well as District Sales Representatives was neither clerical nor supervisory nor technical. An effort was made on behalf of the workmen to contend that the work of Sales Engineering Representatives was technical. The Court repelled that contention by pointing out that the amount of technical work that they did was ancillary to the chief work of promoting sales and the mere fact that they possessed technical knowledge for such purpose, did not make their work technical. The Court also found that advising and removing complaints so as to promote sales remained outside the scope of the technical work. As regards the District Sales Representatives, the argument was that their work was mainly of clerical nature which was negated by the Court by pointing out that the clerical work involved was incidental to their main work of promoting sales. What is necessary further to remember in this case is that the Court relied upon its earlier decision in *May & Baker* and pointed out that in order to qualify to be a workman under the ID Act, a person concerned had to satisfy that he fell in any of the four categories of manual, clerical, supervisory or technical workman.

24. We thus have three three-Judge Bench decisions which have taken the view that a person to be qualified to be a workman must be doing the work which falls in any of the four categories, viz., manual, clerical, supervisory or technical and two two-Judge Bench decisions which have by referring to one or the other of the said three decisions have reiterated the said law. As against this, we have three three-Judge Bench decisions which have without reference to the decisions in *May & Baker*, *WIMCO* and *Burmah Shell* cases have taken the other view which was expressly negated, viz., if a person does not fall within the four exceptions to the said definition he is a workman within the meaning of the ID Act. These decisions are also based on the facts found in those cases. They have, therefore, to be confined to those facts. Hence the position in law as it obtains today is that a person to be a workman under the ID Act must be employed to do the work of any of the categories, viz., manual, unskilled, skilled, technical, operational, clerical or supervisory. It is not enough that he is not covered by either of the four exceptions to the definition. We reiterate the said interpretation.

25. What is further necessary to remember is that in none of the aforesaid decisions which we have discussed above, the word 'operational' or the words 'skilled' and 'unskilled' independently of 'manual' fell for consideration as the amendment under which they were introduced came into operation for the first time w.e.f. 21.8.1984 and the dispute involved in aforesaid decisions were of the prior dates.

26. We may now refer to the relevant provisions of the Sales Promotion Employees (Conditions of Service) Act, 1976 (the 'SPE Act') which came into force w.e.f. 6.3.1976 and applied forthwith to every establishment engaged in pharmaceutical industry by virtue of its Section 1(4). The definition of the Sales Promotion Employee in clause (d) of Section 2 of the SPE Act as it was originally enacted reads as follows:

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

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

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

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

27. It will be noticed that under the SPE Act, the sales promotion employee was firstly, one who was engaged to do any work relating to promotion of sales or business or both, and secondly, only such of them who drew wages not exceeding Rs. 750 per mensem (excluding commission) or those who had drawn wages (including commission) or commission not exceeding Rs. 9000 per annum whether they were doing supervisory work or not were included in the said definition. The only nature/type of work which was excluded from the said definition was that which was mainly in managerial or administrative capacity.

28. The SPE Act was amended by the Amending Act 48 of 1986 which came into force w.e.f. 6.5.1987. By the said amendment, among others, the definition of sales promotion employee was expanded so as to include all sales promotion employees without a ceiling on their wages except those employed or engaged in a supervisory capacity drawing wages exceeding Rs. 1600 per mensem and those employed or engaged mainly in managerial or administrative capacity.

29. Section 6 of that Act made the Workmen Compensation Act, 1923, Industrial Disputes Act, 1947, (the ID Act), Minimum Wages Act, 1948, Maternity Benefit Act, 1961, Payment of Bonus Act, 1965 and Payment of Gratuity Act, 1972 applicable forthwith to the medical representatives. Sub-section (2) of the said section while making the provisions of the ID Act, as in force for the time being, applicable to the medical representatives stated as follows:

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

In other words, on and from 6.3.1976 the provisions of the ID Act became applicable to the medical representatives depending upon their wages up to 6.5.1987 and without the limitation on their wages thereafter and upon the capacity in which they were employed or engaged.

30. It appears that the SPE Act was brought on the statute book, as the Statement of Objects and Reasons accompanying the Bill shows, as a result of this Court's judgment in *May & Baker* case. The Committee of Petitions (Rajya Sabha) in its 13th Report submitted on 14.3.1972 had come to the conclusion that the ends of social justice would be met only by suitably amending the definition of the term 'workman' in the ID Act in the manner that the medical representatives were also covered by the definition of workman under the ID Act. The Committee also felt that other workers engaged in sales promotion should similarly be considered as workmen. The legislature, however, considered it more appropriate to have a separate legislation for governing the conditions of services of the sale promotion employees instead of amending the ID Act, and hence the SPE Act.

31. It also appears that Parliament has amended the definition of 'industry' by the Amending Act 46 of 1982 to include, in the definition of industry in Section 2(j) of the ID Act, among others, any activity relating to the promotion of sales or business, or both carried on by any establishment. However, that amendment has not yet come into force. But the amendment made by the very same Amending Act of 1982 to the definition of 'workman' in Section 2(s) to include those employed to do 'operational work,' and to the definition of 'wages' in Section 2(rr) to include "any commission payable on the promotion of sales or business or both" has come into force w.e.f. 21.8.1984.

33. It was contended by Shri Sharma, appearing for the workmen that the definition of workmen under the ID Act includes all employees except those covered by the four exceptions to the said definition. His second contention was that in any case, the medical representatives perform duties of skilled and technical nature and, therefore, they are workmen within the meaning of the said definition. We are afraid that both these contentions are untenable in the light of the position of law discussed above. The first contention was expressly negated by two three-Judge Benches in *May & Baker* and *Burmah Shell* cases as has been pointed out in detail above. As regards the second contention, it really consists of two sub-contentions, viz., that the medical representatives are engaged in 'skilled' and 'technical' work. As regards the word 'skilled,' we are of the view that the connotation of the said word in the context in which it is used, will not include the work of a sales promotion employee such as the medical representative in the present case. That word has to be construed *ejusdem generis* and thus construed, would mean skilled work whether manual or non-manual, which is of a genre of the other type of work mentioned in the definition. The work of promotion of sales of the product or services of the establishment is distinct from and independent of the types of work covered by the said definition. Hence the contention that the medical representatives were employed to do skilled work within the meaning of the said definition, has to be rejected. As regards the 'technical' nature of their work, it has been expressly rejected by this Court in *Burmah Shell* case. Hence the contention has also to be rejected.

34. Shri Napathe, the learned counsel appearing for the petitioner in WP No. 5259 of 1980 contended that inasmuch as the SPE Act, as it was originally enacted, made a distinction between sales promotion employees drawing wages not exceeding Rs. 750 per mensem (excluding commission) or Rs. 9000 per annum (including commission) and those drawing wages above the said amounts, included not only the first category of employees in the said

definition, it was discriminatory as against those who fell in the second category and was violative of Article 14 of the Constitution. According to him, the classification made had no rational nexus with the object sought to be achieved by the enactment. We are afraid that this argument is not tenable. The service conditions and their protection are not fundamental rights. They are creatures either of statute or of the contract of employment. What service conditions would be available to particular employees, whether they are liable to be varied, and to what extent are matters governed either by the statute or the terms of the contract. The legislature cannot be mandated to prescribe and secure particular service conditions to the employees or to a particular set of employees. The service conditions and the extent of their protection as well as the set of employees in respect of which they may be prescribed and protected, are all matters to be left to the legislature. Hence when a legislation extends protective umbrella to the employees of a particular class, it cannot be faulted so long as the classification made is intelligible and has a rational nexus with the object sought to be achieved. In the present case, the classification made between two categories of the sales promotion employees, viz., those drawing wages up to a particular limit and those drawing wages above it, is fairly intelligible. The object of the legislation further appears to be to give protection of the service conditions to the weaker sections of the employees belonging to the said category. The legislature at that particular time thought that it was not either necessary to extend the said protection to all the employees belonging to the said category irrespective of their income or that at that stage the circumstances including the conditions and the nature of the employment and the sales business or operation did not warrant protection to the economically stronger section of the said employees, and that economically weaker among them alone needed the protection. Hence it cannot be said that the classification made of the said employees on the basis of their income had no rational nexus with the object sought to be achieved, viz., the protection of the weaker section of the said employees. The extension of the protective umbrella could not as a matter of right, therefore, be demanded by those who draw more wages. Even in the definition of the workman under the ID Act as well as under the very SPE Act, the classification of those employed to do supervisory work has been made on the basis of their monthly income although the work done by the two sections of the workmen is the same, viz., supervisory and those drawing wages above the particular limit have been excluded from the said definition. According to us, it is permissible to classify workmen on the basis of their income although the work that they do is of the same nature. The protective umbrella need not cover all the workmen doing the particular type of work. It can extend to them in stages. At what stage which of the said section of the employees should come under the said umbrella is a matter which should be left to the legislature which is the best judge of the matter. We, therefore, do not see any merit in the contention.

37. We have already pointed out as to why the word 'skilled' would not include the kind of work done by the sale promotion employees. For the very same reason, the word 'operational' would also not include the said work. To hold that everyone who is connected with any operation of manufacturing or sales is a workmen would render the categorisation of the different types of work mentioned in the main part of the definition meaningless and redundant. The interpretation suggested would in effect mean that all employees of the establishment other than those expressly excepted in the definition are workmen within the meaning of the said definition. The interpretation was specifically rejected by this Court in

May & Baker, WIMCO, Burmah Shell and *A. Sundarambal* cases. Although such an interpretation was given in *S.K. Verma, Delton Cables* and *Ciba Geigy* cases the legislature impliedly did not accept the said interpretation as is evident from the fact that instead of amending the definition of 'workman' on the lines interpreted in the said latter cases, the legislature added three specific categories, viz., unskilled, skilled and operational. The 'unskilled,' 'skilled' were divorced from 'manual' and were made independent categories. If the interpretation suggested was accepted by the legislature, nothing would have been easier than to amend the definition of 'workman' by stating that any person employed in connection with any operation of the establishment other than those specifically expected is a workman. It must further be recommended that the independent categories of 'unskilled', 'skilled' and 'operational' were added to the main part of the definition after the SPE Act was placed on the statute book.

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Topic-07: 'Strike' & Lock Out'

Management of Chandramalai Estate v. Its Workmen

AIR 1960 SC 902

K.C. DAS GUPTA, J. – On August 9, 1955, the Union of the workmen of the Chandramalai Estate submitted to the Manager of the Estate a memorandum containing fifteen demands. Though the Management agreed to fulfil some of the demands the principal demands remained unsatisfied. On August 29, 1955, the Labour Officer, Trichur, who had in the meantime been apprised of the position by both the management of the Estate as well as the Labour Union advised mutual negotiations between the representatives of the management and workers. Ultimately the matter was recommended by the Labour Officer to the Conciliation Officer Trichur for conciliation. The Conciliation Officer's efforts proved in vain. The last meeting for Conciliation appears to have been held on November 30, 1955. On the following day the Union gave a notice and the workmen went on a strike with effect from December 9, 1955. The strike ended on January 5, 1956. Prior to this, on January 5, the Government had referred the dispute as regards five of the demands for adjudication to the Industrial Tribunal, Trivandrum. Thereafter by an order dated June 11, 1956, the dispute was withdrawn from the Trivandrum Tribunal and referred to the Industrial Tribunal, Ernakulam. By its award dated October 17, 1957, the Tribunal granted the workmen's demands on all these issues. The present appeal has been preferred by the management of the Chandramalai Estate against the Tribunal's award on three of these issues. These three issues are stated in the reference thus:

“1. Was the price realised by the management for the rice sold to the workers after decontrol excessive; and if so, are the workers entitled to get refund of the excessive value so collected?

2. Are the workers entitled to get cumbly allowance with retrospective effect from the date it was stopped and what should be the rate of such allowance?

3. Are the workers entitled to get wages for the period of the strike?”

(2) On the first issue the workmen's case was that after the control on rice was lifted by the Travancore-Cochin Government in April 1954, the management which continued to sell rice to the workmen, charged at the excessive rate of 12 annas per measure for the rice brought in excess of a quota for 1-1/2 measure per head. This according to the workmen was improper and unjustified and they claimed refund of the excess which they have been made to pay. The management's case was that the workmen were not bound to buy rice from the Estate's management and secondly, that only the actual cost price and not any excess had been charged. The tribunal held on a consideration of oral and documentary evidence that the management had charged more than the cost price and held that they were bound to refund the same.

(3) The second issue was in respect of a claim for cumbly allowance. Chandramalai Tea Estate is situated at a high altitude. It is not disputed that it had been customary for the Estates in this region to pay blanket allowance to workmen to enable them to furnish

themselves with blankets to meet the rigours of the weather and that it had really become a part of the terms and conditions of service. But in spite of it the management of this Estate stopped payment of the allowance from 1949 onwards and resumed payment only in 1954. The management's defence was that any dispute not having been raised about this till August 9, 1955, there was no reason for raising it at this late stage. The Tribunal rejected this contention and awarded cumbly allowance of Rs. 39 per workman – made up of Rs.7 per year for the year 1949, 1950 and 1951 and Rs. 9 per year for the years 1952 and 1953.

(4) On the third issue while the workmen pleaded that the strike was justified the management contended that it was illegal and unjustified. The Tribunal held that both parties were to blame for the strike and ordered the management to pay workers 50 per cent of their total emoluments for the strike period.

(5) On the question of excess price of rice having been collected the appellant's contention before us is limited to the question of fact, whether the Tribunal was right in its conclusion that more than cost price was realised. The Tribunal has based its conclusion as regards the price realised by the management on entries made in the management's own documents. As regards what such rice cost the management it held that for the months of April, July and August and September the price was shown by the management's documents while for May and June these documents did not disclose the price. For these two months the Tribunal held the market price of rice as proved by the workers' witness No. 6 to have been the price at which the Estate's management procured their rice. We are unable to see anything that would justify us in interfering with these conclusions of facts. Indeed the documents on which the Tribunal has based its conclusions were not even made part of the Paper-Book so that even if we had wanted to consider this question ourselves it would be impossible for us to do so. We are satisfied that the Tribunal was right in its conclusion as regards the cost price of rice to the management and the price actually realised by the management from workmen. The management's case that the workmen were charged only the cost price of rice has rightly been rejected by the Tribunal. The fact that workmen were not compelled to purchase rice from the management is hardly material; the management had opened the shop to help the workmen and if it is found that it charged excess rates, in fairness, the workmen must be reimbursed. The award in so far as it directed refund of the excess amount collected on the basis of the figures found by the Tribunal cannot therefore be successfully challenged.

(6) On the question of the cumbly allowance it is important to note that the only defence raised was that the demand had been made too late. The admitted fact that it had been regularly paid year after year for many years till it was stopped in 1949 is sufficient to establish the workmen's case that payment of a proper cumbly allowance had become a part of their conditions of service. We do not think that the mere fact that the workmen did not raise any dispute on the management's refusal to implement this condition of service till August 9, 1955 would be a sufficient reason to refuse them such payment. The management had acted arbitrarily and illegally in stopping payment of these allowances from 1949 to 1954. They cannot now be heard to say that they should not be asked to pay it merely because the years have already gone by. It is reasonable to think that even though the management did not pay the allowance the workmen had to provide blankets for themselves at their own expense.

The Tribunal has acted justly in directing payment of the allowances to the workmen for the years 1949 to 1953. The correctness of the rates awarded by the Tribunal is not challenged before us. The Tribunal's award on this issue also is therefore maintained.

(7) This brings us to the question whether the tribunal was right in awarding 50 per cent of emoluments to the workmen for the strike period. It is clear that on November 30, 1955, the Union knew that conciliation attempts had failed. The next step would be a report by the Conciliation Officer, of such failure to the Government and it would have been proper and reasonable for the Union to address the Government at the same time and request that a reference should be made to the Industrial Tribunal. The Union however did not choose to wait and after giving notice on December 1, 1955 to the management that it had decided to strike from December 9, 1955, actually started the strike from that day. It has been urged on behalf of the appellant that there was nothing in the nature of the demands to justify such hasty action and in fairness the Union should have taken the normal and reasonable course provided by law by asking the Government to make a reference under the Industrial Disputes Act before it decided to strike. The main demands of the Union were about the cumbly allowance and the price of rice. As regards the cumbly allowance they had said nothing since 1949 when it was first stopped till the Union raised it on August 9, 1955. The grievance for collection of excess price of rice was more recent but even so it was not of such urgent nature that the interests of labour would have suffered irreparably if the procedure prescribed by law for settlement of such disputes through industrial tribunals was resorted to. After all it is not the employer only who suffers if production is stopped by strikes. While on the one hand it has to be remembered that strike is a legitimate and sometimes unavoidable weapon in the hands of labour it is equally important to remember that indiscriminate and hasty use of this weapon should not be encouraged. It will not be right for labour to think that for any kind of demand a strike can be commenced with impunity without exhausting reasonable avenues for peaceful achievement of their objects. There may be cases where the demand is of such urgent and serious nature that it would not be reasonable to expect labour to wait till after making the Government to make a reference, in such cases, strike even before such a request has been made may well be justified. The present is not however one of such cases. In our opinion the workmen might well have waited for some time after conciliation efforts failed before starting a strike and in the meantime to have asked the Government to make the reference. They did not wait at all. The conciliation efforts failed on November 30, 1955, and on the very next day the Union made its decision on strike and sent the notice of the intended strike from 9th December, 1955, and on the 9th December, 1955 the workmen actually struck work. The Government appear to have acted quickly and referred the dispute on January 3, 1956. It was after this that the strike was called off. We are unable to see how the strike in such circumstances could be held to be justified.

(8) The Tribunal itself appears to have been in two minds on the question. Its conclusion appears to be that the strike though not fully justified, was half justified and half unjustified; we find it difficult to appreciate this curious concept of half justification. In any case, the circumstances of the present case do not support the conclusion that the strike was justified at all. We are bound to hold in view of the circumstances mentioned above that the Tribunal erred in holding that the strike was at least partially justified. The error is so serious that we are bound in the interests of justice to set aside the decision. There is, in our view, no escape

from the conclusion that the strike was unjustified and so the workmen are not entitled to any wages for the strike period. We therefore allow the appeal in it and set aside the award in so far as it directed the payment of 50 per cent of the total emoluments for the strike period but maintain the rest of the award.

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Syndicate Bank v. K. Umesh Nayak

(1994) 5 SCC 572

P.B. SAWANT, J. - These appeals have been referred to the Constitution Bench in view of the apparent conflict of opinions expressed in three decisions of this Court - a three-Judge Bench decision in *Churakulam Tea Estate (P) Ltd. v. Workmen* [AIR 1969 SC 998] and a two-Judge Bench decision in *Crompton Greaves Ltd. v. Workmen* [(1978) 3 SCC 155] on the one hand, and a two-Judge Bench decision in *Bank of India v. T.S. Kelawala* [(1990) 4 SCC 744] on the other. The question is whether workmen who proceed on strike, whether legal or illegal, are entitled to wages for the period of strike? In the first two cases, viz., *Churakulam Tea Estate* and *Crompton Greaves*, the view taken is that the strike must be both legal and justified to entitle the workmen to the wages for the period of strike whereas the latter decision in *T.S. Kelawala* has taken the view that whether the strike is legal or illegal, the employees are not entitled to wages for the period of strike. To keep the record straight, it must be mentioned at the very outset that in the latter case, viz., *T.S. Kelawala* the question whether the strike was justified or not, was not raised and, therefore, the further question whether the employees were entitled to wages if the strike is justified, was neither discussed nor answered. Secondly, the first two decisions, viz., *Churakulam Tea Estate* and *Crompton Greaves* were not cited at the Bar while deciding the said case and hence there was no occasion to consider the said decisions there. The decisions were not cited probably because the question of the justifiability or otherwise of the strike did not fall for consideration. It is, however, apparent from the earlier two decisions, viz., *Churakulam Tea Estate* and *Crompton Greaves* that the view taken there is not that the employees are entitled to wages for the strike period merely because the strike is legal. The view is that for such entitlement the strike has both to be legal and justified. In other words, if the strike is illegal but justified or if the strike is legal but unjustified, the employees would not be entitled to the wages for the strike period. Since the question whether the employees are entitled to wages, if the strike is justified, did not fall for consideration in the latter case, viz., in *T.S. Kelawala*, there is, as stated in the beginning, only an apparent conflict in the decisions.

CA No. 2710 of 1991:

3. On 10-4-1989 a memorandum of settlement was signed by the Indian Banks' Association and the All Indian Bank Employees' Unions including the National Confederation of Bank Employees as the fifth bipartite settlement. The appellant-Bank and the respondent-State Bank Staff Union through their respective federations were bound by the said settlement. In terms of clauses 8(d) and 25 of the memorandum of the said settlement, the appellant-Bank and the respondent-Staff Union had to discuss and settle certain service conditions. Pursuant to these discussions, three settlements were entered into between the parties on 9-6-1989. These settlements were under Section 2(p) read with Section 18(1) of the Industrial Disputes Act, 1947 (the 'Act'). Under these settlements, the employees of the appellant-Bank were entitled to certain advantages over and above those provided under the All India Bipartite Settlement of 10-4-1989. The said benefits were to be given to the employees retrospectively with effect from 1-11-1989. It appears that the appellant-Bank did not immediately implement the said settlement. Hence, the employees' Federation sent telex

message to the appellant-Bank on 22-6-1989 calling upon it to implement the same without further loss of time. The message also stated that the employees would be compelled to launch agitation for implementation of the settlement as a consequence of which the working of the Bank and the service to the customers would be affected. In response to this, the Bank in its reply dated 27-6-1989 stated that it was required to obtain the Government's approval for granting the said extra benefits and that it was making efforts to obtain the Government's approval as soon as possible. Hence the employees' Federation should, in the meanwhile, bear it with. On 24-7-1989 the Employees' Federation again requested the Bank by telex of even date to implement the said settlement forthwith, this time, warning the Bank that in case of its failure to do so, the employees would observe a day's token strike after 8-8-1989. The Bank's response to this message was the same as on the earlier occasion. On 18-8-1989, the employees' Federation wrote to the Bank that the settlements signed were without any precondition that they were to be cleared by the Government and hence the Bank should implement the settlement without awaiting the Government's permission. The Federation also, on the same day, wrote to the Bank calling its attention to the provisions of Rule 58.4 of the Industrial Disputes (Central) Rules, 1957 (the 'Rules') and requesting it to forthwith forward copies of the settlements to the functionaries mentioned in the said rule. By its reply of 23-8-1989 the Bank once again repeated its earlier stand that the Bank is required to obtain Government's approval for granting the said extra benefits and it was vigorously pursuing the matter with the Government for the purpose. It also informed the Federation that the Government was actively considering the proposal and an amicable solution would soon be reached and made a request to the employees' Federation to exercise restraint and bear with it so that their efforts with the Government may not be adversely affected. By another letter of the same date, the Bank informed the Federation that they would forward copies of the agreements in question to the authorities concerned as soon as the Government's approval regarding implementation of the agreement was received. The Federation by the letter of 1-9-1989 complained to the Bank that the Bank had been indifferent in complying with the requirements of the said Rule 58.4 and hence the Federation itself had sent copies of the settlements to the authorities concerned, as required by the said rule.

4. On the same day, i.e., 1-9-1989 the Federation issued a notice of strike demanding immediate implementation of all agreements/ understandings reached between the parties on 10-4-1989 and 9-6-1989 and the payment of arrears of pay and allowances pursuant to them. As per the notice, the strike was proposed to be held on three different days beginning from 18-9-1989. At this stage, the Deputy Chief Labour Commissioner and Conciliation Officer (Central), Bombay wrote both to the Bank and the Federation stating that he had received information that the workmen in the Bank through the employees' Federation had given a strike call for 18-9-1989. No formal strike notice in terms of Section 22 of the Act had, however, been received by him. He further informed that he would be holding conciliation proceedings under Section 12 of the Act in the office of the Regional Labour Commissioner, Bombay on 14-9-1989 and requested both to make it convenient to attend the same along with a statement of the case in terms of Rule 41(a) of the Rules.

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

The question was only of implementation of the agreements/understandings reached between the parties on 10-4-1989 and 9-6-1989. However, the Federation agreed to desist from direct action if the Bank would give in writing that within a fixed time they will implement the agreements/understandings and pay the arrears of wages etc. under them. The Bank's representatives stated that the Bank had to obtain prior approval of the Government for implementation of the settlements and as they were the matters with the Government for obtaining its concurrence, the employees should not resort to strike in the larger interests of the community. He also pleaded for some more time to examine the feasibility of resolving the matter satisfactorily. The conciliation proceedings were thereafter adjourned to 26-9-1989. On this date, the Bank's representatives informed that the Government's approval had not till then been obtained, and prayed for time till 15-10-1989. The next meeting was held on 27-9-1989. The Conciliation Officer found that there was no meeting ground and no settlement could be arrived at. However, he kept the conciliation proceedings alive by stating that in order to explore the possibility of bringing about an understanding in the matter, he would further hold discussions on 6-10-1989.

6. On 1-10-1989, the Employees' Federation gave another notice of strike stating that the employees would strike work on 16-10-1989 to protest against the inaction of the Bank in implementing the said agreements/settlements validly arrived at between the parties. In the meeting held on 6-10-1989, the Conciliation Officer discussed the notice of strike. It appears that in the meanwhile on 3-10-1989 the employees' Federation had filed Writ Petition No. 13764 of 1989 in the High Court for a writ of mandamus to the Bank to implement the three settlements dated 9-6-1989. In that petition, the Federation had obtained an order of interim injunction on 6-10-1989 restraining the Bank from giving effect to the earlier settlement dated 10-4-1989 and directing it first to implement the settlements dated 9-6-1989. It appears further that the employees had in the meanwhile, disrupted normal work in the Bank and had resorted to gherao. The Bank brought these facts, viz., filing of the writ petition and the interim order passed therein as well as the disruption of the normal work and resort to gheraos by the employees, to the notice of the Conciliation Officer. The meeting before the Conciliation Officer which was fixed on 13-10-1989 was adjourned to 17-10-1989 on which date, it was found that there was no progress in the situation. It was on this date that the employees' Federation gave a letter to the Conciliation Officer requesting him to treat the conciliation proceedings as closed. However, even thereafter, the Conciliation Officer decided to keep the conciliation proceedings open to explore the possibility of resolving the matter amicably.

7. On 12-10-1989 the Bank issued a circular stating therein that if the employees went ahead with the strike on 16-10-1989, the Management of the Bank would take necessary steps to safeguard the interests of the Bank and would deduct the salary for the days the employees would be on strike, on the principle of "no work, no pay". In spite of the circular, the employees went on strike on 16-10-1989 and filed a writ petition on 7-11-1989 to quash the circular of 12-10-1989 and to direct the Bank not to make any deduction of salary for the day of the strike.

8. The said writ petition was admitted on 8-11-1989 and an interim injunction was given by the High Court restraining the Bank from deducting the salary of the employees for 16-10-1989.

9. Before the High Court, it was not disputed that the Bank was a public utility service and as such Section 22 of the Act applied. It was the contention of the Bank that since under the provisions of sub-section (1)(d) of the said Section 22, the employees were prohibited from resorting to strike during the pendency of the conciliation proceedings and for seven days after the conclusion of such proceedings, and since admittedly the conciliation proceedings were pending to resolve an industrial dispute between the parties, the strike in question was illegal. The industrial dispute had arisen because while the Bank was required to take the approval of the Central Government for the settlements in question, the contention of the employees was that no such approval was necessary and there was no such condition incorporated in the settlements. This being an industrial dispute within the meaning of the Act, the conciliation proceedings were validly pending on the date of the strike. As against this, the contention on behalf of the employees was that there could be no valid conciliation proceedings as there was no industrial dispute. The settlements were already arrived at between the parties solemnly and there could be no further industrial dispute with regard to their implementation. Hence, the conciliation proceedings were *non est*. The provisions of Section 22(1)(d) did not, therefore, come into play.

10. The learned Single Judge upheld the contention of the Bank and held that the strike was illegal, and relying upon the decision of this Court in *T.S. Kelawala* case dismissed the writ petition of the employees upholding the circular under which the deduction of wages for the day of the strike was ordered. Against the said decision, the employees' Federation preferred Letters Patent Appeal before the Division Bench of the High Court and the Division Bench by its impugned judgment reversed the decision of the learned Single Judge by accepting the contention of the employees and negating that of the Bank. The Division Bench, in substance, held that the approval of the Central Government as a condition precedent to their implementation was not incorporated in the settlements nor was such approval necessary. Hence, there was no valid industrial dispute for which the conciliation proceedings could be held. Since the conciliation proceedings were invalid, the provisions of Section 22(1)(d) did not apply. The strike was, therefore, not illegal. The Court also held that the strike was, in the circumstances, justified since it was the Bank Management's unjustified attitude in not implementing the settlements, which was responsible for the strike. The Bench then relied upon two decisions of this Court in *Churakulam Tea Estate* and *Crompton Greaves* cases and held that since the strike was legal and justified, no deduction of wages for the strike day could be made from the salaries of the employees. The Bench thus allowed the appeal and quashed the circular of the 12-10-1989.

11. Since the matter has been referred to the larger bench on account of the seeming difference of opinion expressed in *T.S. Kelawala* and the earlier decisions in *Churakulam Tea Estate* and *Crompton Greaves*, we will first discuss the facts and the view taken in the earlier two decisions.

12. In *Churakulam Tea Estate* which is a decision of three learned Judges, the facts were that the appellant-Tea Estate which was a member of the Planter's Association of Kerala

(South India), from time to time since 1946, used to enter into agreements with the representatives of the workmen, for payment of bonus. In respect of the years 1957, 1958 and 1959, there was a settlement dated 25-1-1960 between the Managements of the various plantations and their workers relating to payment of bonus. The agreement provided that it would not apply to the appellant-Tea Estate since it had not earned any profit during the said years. On the ground that it was not a party to the agreement in question, the appellant declined to pay any bonus for the said three years. The workmen started agitation claiming bonus. The conciliation proceedings in that regard failed. All 27 workers in the appellant's factory struck work on the afternoon of 30-11-1961. The Management declined to pay wages for the day of the strike to the said factory workers. The Management also laid off without compensation all the workers of the estate from 1-12-1961 to 8-12-1961. By its order dated 24-5-1962, the State Government referred to the Industrial Tribunal three questions for adjudication one of which was whether the factory workmen were entitled to wages for the day of the strike.

13. The Tribunal took the view that the strike was both legal and justified and hence directed the appellant to pay wages. This Court noted that at the relevant time, conciliation proceedings relating to the claim for bonus had failed and the question of referring the dispute for adjudication to the Tribunal was under consideration of the Government. The Labour Minister had called for a conference of the representatives of the Management and workmen and the conference had been fixed on 23-11-1961. The representatives of the workmen attended the conference, while the Management boycotted the same. It was the case of the workmen that it was to protest against the recalcitrant attitude of the Management in not attending the conference that the workers had gone on strike from 1 p.m. on the day in question. On behalf of the Management, the provisions of Section 23(a) of the Act were pressed into service to contend that the strike resorted to by the factory workers was illegal. The said provisions read as follows:

23. No workman who is employed in any industrial establishment shall go on strike in breach of contract and no employer of any such workman shall declare a lockout -

(a) during the pendency of conciliation proceedings before a Board and seven days after the conclusion of such proceedings;

This Court noted that there were no conciliation proceedings pending on 30-11-1961 when the factory workers resorted to strike and hence the strike was not hit by the aforesaid provision. The Court further observed that if the strike was hit by Section 23(a), it would be illegal under Section 24(1)(i) of the Act. Since, however, it was not so hit, it followed that the strike in this case could not be considered to be illegal. We may quote the exact observations of the Court which are as follows:

Admittedly there were no conciliation proceedings pending before such a Board on 30-11-1961, the day on which the factory workers went on strike and hence the strike does not come under Section 23(a). No doubt if the strike, in this case, is hit by Section 23(a), it will be illegal under Section 24(1)(i) of the Act; but we have already held that it does not come under Section 23(a) of the Act. It follows that the strike, in this case, cannot be considered to be illegal.

Alternatively, it was contended on behalf of the Management that in any event, the strike in question was thoroughly unjustified. It was the Management's case that it had participated in the conciliation proceedings and when those proceedings failed, the question of referring the dispute was pending before the Government. The workmen could have made a request to the Government to refer the dispute for adjudication and, therefore, the strike could not be justified. Support for this was also sought by the Management from the observations made by this Court in *Chandramalai Estate, Ernakulam v. Workmen* [AIR 1960 SC 902]. In that case, this Court had deprecated the conduct of workmen going on strike without waiting for a reasonable time to know the result of the report of the Conciliation Officer. This Court held that the said decision did not support the Management since the strike was not directly in connection with the demand for bonus but was as a protest against the unreasonable attitude of the Management in boycotting the conference held on 23-11-1961 by the Labour Minister of the State. Hence, this Court held that the strike was not unjustified. In view of the fact that there was no breach of Section 23(a) and in view also of the fact that in the aforesaid circumstances, the strike was not unjustified, the Court held that the factory workers were entitled for wages for that day and the Tribunal's award in that behalf was justified.

14. In *Crompton Greaves Ltd.* the facts were that on 27-12-1967, the appellant-Management intimated the workers' Union its decision to reduce the strength of the workmen in its branch at Calcutta on the ground of severe recession in business. Apprehending mass retrenchment of the workmen, the Union sought the intervention of the Minister in charge of Labour and the Labour Commissioner, in the matter. Thereupon, the Assistant Labour Commissioner arranged a joint conference of the representatives of the Union and of the Company in his office, with a view to explore the avenues for an amicable settlement. Two conferences were accordingly held on 5-1-1968 and 9-1-1968 in which both the parties participated. As a result of these conferences, the Company agreed to hold talks with the representatives of the Union at its Calcutta office on the morning of 10-1-1968. The talk did take place but no agreement could be arrived at. The Assistant Labour Commissioner continued to use his good offices to bring about an amicable settlement through another joint conference which was scheduled for 12-1-1968. On the afternoon of 10-1-1968, the Company without informing the Labour Commissioner that it was proceeding to implement its proposed scheme of retrenchment, put up a notice of retrenching 93 of the workmen in its Calcutta Office. Treating this step as a serious one demanding urgent attention and immediate action, the workmen resorted to strike w.e.f. 11-1-1968 after giving notice to the appellant and the Labour Directorate and continued the same up to 26-6-1968. In the meantime, the industrial dispute in relation to the retrenchment of the workmen was referred by the State Government to the Industrial Tribunal on 1-3-1968. By a subsequent order dated 13-12-1968, the State Government also referred the issue of the workmen's entitlement to wages for the strike period, for adjudication to the Industrial Tribunal. The Industrial Tribunal accepted the workmen's demand for wages for the period from 11-1-1968 to the end of February 1968 but rejected their demand for the remaining period of the strike observing that "the redress for retrenchment having been sought by the Union itself through the Tribunal, there remained no justification for the workmen to continue the strike".

15. In the appeal filed by the Management against the award of the Tribunal in this Court, the only question that fell for determination was whether the award of the Tribunal granting the striking workmen wages for the period from 11-1-1968 to 29-2-1968 was valid. In paragraph 4 of the judgment, this Court observed as follows:

4. It is well settled that in order to entitle the workmen to wages for the period of strike, the strike should be legal as well as justified. A strike is legal if it does not violate any provision of the statute. Again, a strike cannot be said to be unjustified unless the reasons for it are entirely perverse or unreasonable. Whether a particular strike was justified or not is a question of fact which has to be judged in the light of the facts and circumstances of each case. It is also well settled that the use of force or violence or acts of sabotage resorted to by the workmen during a strike disentitles them to wages for the strike period.

After observing thus, the Court formulated the following two questions, viz., (1) whether the strike in question was illegal or unjustified? and (2) whether the workmen resorted to force or violence during the said period, that is, 11-1-1968 to 29-2-1968. While answering the first question, the Court pointed out that no specific provision of law has been brought to its notice which rendered the strike illegal during the period under consideration. The strike could also not be said to be unjustified as before the conclusion of the talks for conciliation which were going on through the instrumentality of the Assistant Labour Commissioner, the Company had retrenched as many as 93 of its workmen without even intimating the Labour Commissioner that it was carrying out its proposed plan of effecting retrenchment of the workmen. Hence, the Court answered the first question in the negative. In other words, the Court held that the strike was neither illegal nor unjustified. On the second question also, the Court held that there was no cogent and disinterested evidence to substantiate the charge that the striking workmen had resorted to force or violence. That was also the finding of the Tribunal and hence the Court held that the wages for the strike period could not be denied to the workmen on that ground as well.

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

18. In *Kairbetta Estate, Kotagiri v. Rajamanickam* [AIR 1960 SC 893], this Court observed as follows:

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

strikes and lockouts clearly brings out the antithesis between the two weapons and the limitations subject to which both of them must be exercised.

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

20. This Court while dealing with the said question held that it was clear that on 30-11-1955, the Union knew that the conciliation attempts had failed and the next step would be the report by the Conciliation Officer to the Government. It would, therefore, have been proper and reasonable for the workers' Union to address the Government and request that a reference be made to the Industrial Tribunal. The Union did not choose to wait and after giving notice to the Management on 1-12-1955 that it had decided to strike work from 9-12-1955, actually started the strike from that date. The Court also held that there was nothing in the nature of the demands made by the Union to justify the hasty action. The Court then observed as under:

The main demands of the Union were about the cumbly allowance and the price of rice. As regards the cumbly allowance they had said nothing since 1949 when it was first stopped till the Union raised it on 9-8-1955. The grievance for collection of excess price of rice was more recent but even so it was not of such an urgent nature that the interests of labour would have suffered irreparably if the procedure prescribed by law for settlement of such disputes through Industrial Tribunals was resorted to. After all it is not the employer only who suffers if production is stopped by strikes. While on the one hand it has to be remembered that strike is a legitimate and sometimes unavoidable weapon in the hands of labour it is equally important to remember that indiscriminate and hasty use of this weapon should not be encouraged. It will not be right for labour to think that for any kind of demand a strike can be commenced with impunity without exhausting reasonable avenues for peaceful achievement of their objects. There may be cases where the demand is of such an

urgent and serious nature that it would not be reasonable to expect labour to wait till after asking the Government to make a reference. In such cases, strike even before such a request has been made may well be justified. The present is not however one of such cases. In our opinion the workmen might well have waited for some time after conciliation efforts failed before starting a strike and in the meantime to have asked the Government to make a reference.

They did not wait at all. The conciliation efforts failed on 30-11-1955, and on the very next day the Union made its decision on strike and sent the notice of the intended strike from the 9-12-1955, and on the 9-12-1955, the workmen actually struck work. The Government appear to have acted quickly and referred the dispute on 3-1-1956. It was after this that the strike was called off. We are unable to see how the strike in such circumstances could be held to be justified.

21. In *India General Navigation and Railway Co. Ltd. v. Workmen* [AIR 1960 SC 219], this Court while dealing with the issues raised there, observed as follows:

In the first place, it is a little difficult to understand how a strike in respect of a public utility service, which is clearly, illegal, could at the same time be characterised as 'perfectly justified'. These two conclusions cannot in law coexist. The law has made a distinction between a strike which is illegal and one which is not, but it has not made any distinction between an illegal strike which may be said to be justifiable and one which is not justifiable. This distinction is not warranted by the Act, and is wholly misconceived, specially in the case of employees in a public utility service. Every one participating in an illegal strike, is liable to be dealt with departmentally, of course, subject to the action of the Department being questioned before an Industrial Tribunal, but it is not permissible to characterise an illegal strike as justifiable. The only question of practical importance which may arise in the case of an illegal strike, would be the kind or quantum of punishment, and that, of course, has to be modulated in accordance with the facts and circumstances of each case. Therefore, the tendency to condone what has been declared to be illegal by statute, must be deprecated, and it must be clearly understood by those who take part in an illegal strike that thereby they make themselves liable to be dealt with by their employers. There may be reasons for distinguishing the case of those who may have acted as mere dumb driven cattle from those who have taken an active part in fomenting the trouble and instigating workmen to join such a strike, or have taken recourse to violence.

22. We may now refer to the decision of this Court in the *T.S. Kelawala* case where allegedly a different view has been taken from the one taken in the aforesaid earlier decisions and in particular in *Churakulam Tea Estate* and *Crompton Greaves* cases.

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

The employees' Union gave a call for a four-hour strike on 29-12-1977. Hence, the Bank on 27-12-1977 issued a circular warning the employees that they would be committing a breach of their contract of service if they participated in the strike and that they would not be entitled to draw the salary for the full day if they do so and consequently they need not report for work for the rest of the working hours of that day. Notwithstanding it, the employees went on four-hour strike from the beginning of the working hours on 29-12-1977. There was no dispute that banking hours for the public covered the said four hours. The employees, however, resumed work on that day after the strike hours and the Bank did not prevent them from doing so. On 16-1-1978, the Bank issued a circular directing its managers and agents to deduct the full day's salary of those of the employees who had participated in the strike. The employees' union filed a writ petition in the High Court for quashing the circular. The petition was allowed. The Bank's Letters Patent Appeal in the High Court also came to be dismissed. The Bank preferred an appeal against the said decision of the High Court. On these facts, the only questions relevant for our present purpose which were raised in the case before the High Court as well as in this Court were whether the Bank was entitled to deduct wages of workmen for the period of strike and further whether the Bank was entitled to deduct wages for the whole day or *pro rata* only for the hours for which the employees had struck work. The incidental questions were whether the contract of employment was divisible and whether when the service rules and the regulations did not provide for deduction of wages, the Bank could do so by an administrative circular. We are not concerned with the incidental questions in this case. What is necessary to remember is the question whether the strike was legal or illegal and whether it was justified or unjustified was not raised either before the High Court or in this Court. The only question debated was whether, even assuming that the strike was legal, the Bank was entitled to deduct wages as it purported to do under the circular in question. It is while answering this question that this Court held that the legality or illegality of the strike had nothing to do with the liability for the deduction of the wages. Even if the strike is legal, it does not save the workers from losing the salary for the period of the strike. It only saves them from disciplinary action, since the Act impliedly recognises the right to strike as a legitimate weapon in the hands of the workmen. However, this weapon is circumscribed by the provisions of the Act and the striking of work in contravention of the said provisions makes it illegal. The illegal strike is a misconduct which invites disciplinary action while the legal strike does not do so. However, both legal as well as illegal strike invite deduction of wages on the principle that whoever voluntarily refrains from doing work when it is offered to him, is not entitled for payment for work he has not done. In other words, the Court upheld the dictum "no work no pay". Since it was not the case of the employees that the strike was justified, neither arguments were advanced on that basis nor were the aforesaid earlier decisions cited before the Court.

24. There is, therefore, nothing in the decisions of this Court in *Churakulam Tea Estate* and *Crompton Greaves* cases or the other earlier decisions cited above which is contrary to the view taken in *T.S. Kelawala*. What is held in the said decisions is that to entitle the workmen to the wages for the strike period, the strike has both to be legal and justified. In other words, if the strike is only legal but not justified or if the strike is illegal though justified, the workers are not entitled to the wages for the strike period. In fact, in *India General Navigation* case the Court has taken the view that a strike which is illegal cannot at

the same time be justifiable. According to that view, in all cases of illegal strike, the employer is entitled to deduct wages for the period of strike and also to take disciplinary action. This is particularly so in public utility services.

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

26. In the present case the High Court, relying on *Churakulam Tea Estate* and *Crompton Greaves* cases has held that the strike was both legal and justified. It was legal according to the High Court because the reference to the conciliation proceedings was itself illegal and, therefore, in the eye of the law, no conciliation proceedings were pending when the employees struck work. The strike was, further justified according to the High Court because the Bank had taken a recalcitrant attitude and had insisted upon obtaining the approval of the Central Government for the implementation of the agreements in question, when no such approval was either stipulated in the agreements or required by law. We are afraid that the High Court has exceeded its jurisdiction in recording the said findings. It is the industrial adjudicator who had the primary jurisdiction to give its findings on both the said issues. Whether the strike was legal or illegal and justified or unjustified, were issues which fell for decision within the exclusive domain of the industrial adjudicator under the Act and it was not primarily for the High Court to give its findings on the said issues. The said issues had to be decided by taking the necessary evidence on the subject. We find nothing in the decision of the High Court to enlighten us as to whether notwithstanding the fact that the agreements in question had not stipulated that their implementation was dependent upon the approval of the Central Government; in fact, the Bank was not duty-bound in law to take such approval. If it was obligatory for the Bank to do so, then it mattered very little whether the agreements in question incorporated such a stipulation or not. If the approval was necessary, then there did exist a valid industrial dispute between the parties and the conciliation proceedings could not be said to be illegal. It must be noted in this connection that the said agreements provided for benefits over and above the benefits which were available to the employees of the other Banks. Admittedly, the employees struck work when the conciliation proceedings were still pending. Further, the question whether the implementation of the said agreements was of such an urgent nature as could not have waited the outcome of the conciliation proceedings and if necessary, of the adjudication proceedings under the Act, was also a matter which had to be decided by the industrial adjudicator to determine the justifiability or unjustifiability of the strike.

27. It has to be remembered in this connection that a strike may be illegal if it contravenes the provisions of Sections 22, 23 or 24 of the Act or of any other law or of the terms of employment depending upon the facts of each case. Similarly, a strike may be justified or unjustified depending upon several factors such as the service conditions of the workmen, the nature of demands of the workmen, the cause which led to the strike, the urgency of the cause or the demands of the workmen, the reason for not resorting to the dispute resolving

machinery provided by the Act or the contract of employment or the service rules and regulations etc. An enquiry into these issues is essentially an enquiry into the facts which in some cases may require taking of oral and documentary evidence. Hence such an enquiry has to be conducted by the machinery which is primarily invested with the jurisdiction and duty to investigate and resolve the dispute. The machinery has to come to its findings on the said issue by examining all the pros and cons of the dispute as any other dispute between the employer and the employee.

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

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

30. The question whether a strike or lockout is legal or illegal does not present much difficulty for resolution since all that is required to be examined to answer the question is whether there has been a breach of the relevant provisions. However, whether the action is justified or unjustified has to be examined by taking into consideration various factors some of which are indicated earlier. In almost all such cases, the prominent question that arises is whether the dispute was of such a nature that its solution could not brook delay and await resolution by the mechanism provided under the law or the contract or the service rules. The strike or lockout is not to be resorted to because the party concerned has a superior bargaining power or the requisite economic muscle to compel the other party to accept its demand. Such

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

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

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

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

CA No. 2689 of 1989 and CA Nos. 2690-92 of 1989 :

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

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Essorpe Mills Ltd. v. Presiding Officer, Labour Court

(2008) 7 SCC 594

DR. ARIJIT PASAYAT, J. - Challenge in this appeal is to the order passed by a Division Bench of the Madras High Court dismissing the writ appeals filed by the appellant. Background facts as projected by the appellant are as follows:

Respondents 2 to 23 went on illegal strike from 8-11-1990. Respondent 15 and one S.L. Sundaram who had died in the meantime were the first to strike work in the blow room resulting in the stoppage of entire operation of the appellant's textile mills. Other workmen followed. All the fifty-five workers who resorted to strike were suspended. Even after their suspension, Respondents 2 to 17 remained in the premises causing obstruction. All the fifty-five workers were charged for misconduct. Out of them thirty-four apologised and they were taken back into service. But subsequently, three more also apologised and they too were allowed to join duty. Respondents 2 to 23, however, did not relent.

3. On 14-3-1991 the General Secretary of the Tamil Nadu Panchalai Workers' Union served a strike notice on the management purportedly under Section 22(1) of the Industrial Disputes Act, 1947 ("the Act") stating that "strike would commence on or after 24-3-1991" and on 8th and 24th April and 13-5-1991. Respondents 2 to 23 were dismissed from service after holding a disciplinary enquiry. The petitions were filed under Section 2-A of the Act for reinstatement with back wages and continuity of service. The Labour Court by its award dated 24-1-1994 held that the strike was illegal. However, in purported exercise of powers under Section 11-A of the Act the Labour Court substituted the punishment of dismissal by order of discharge and awarded compensation of Rs 50,000 to each workman.

4. The award was challenged by the appellant as well as the workmen before the High Court. On 5-8-2000 a learned Single Judge of the High Court allowed Writ Petition No. 8389 of 1995 filed by Respondents 2 to 23 on the ground of non-compliance with Section 33(2)(b) of the Act and directed reinstatement of the workmen with full back wages and continuity of service. He took the view that a copy of the strike notice dated 14-3-1991 was sent to the Conciliation Officer and, therefore, conciliation proceedings were pending on the date of dismissal and since the dismissal was without the approval of the Conciliation Officer in terms of Section 33 of the Act the same was illegal. Reliance was placed on a decision of this Court in *Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v. Ram Gopal Sharma* [(2002) 2 SCC 244].

5. The appellant's Writ Petition No. 10239 of 1999 against the alteration of punishment was dismissed. On 30-12-2003 by the impugned judgment a Division Bench of the High Court dismissed the writ appeals holding that the judgment of this Court did not make any distinction between the proceeding pending before the Conciliation Officer and those pending before an Industrial Tribunal.

6. On 21-2-2004 the special leave petitions were filed and when the matter came up for hearing on 20-3-2006 after notice, a Bench of this Court suggested certain terms for amicable settlement as set out in the order of the said date. The appellant agreed to the terms proposed, but Respondents 2 to 23 did not agree.

7. The basic stand of the appellant is as follows:

The High Court failed to appreciate that in the absence of a valid notice of strike in terms of Section 22(1) there can be no commencement of conciliation proceedings in terms of Section 20(1) of the Act. Section 22(1) prohibits a strike in a public utility service, in breach of contract, without giving to the employer advance notice of six weeks. It prohibits strike (a) within the notice period of six weeks, (b) within fourteen days of giving such notice, (c) before the expiry of the date of strike specified in such a notice, (d) during the pendency of any conciliation proceedings before a Conciliation Officer and seven days after the conclusion of such proceedings. The strike notice issued on 14-3-1991 stating that the strike will commence on or after 24-3-1991 i.e. (just ten days' notice) does not satisfy the requirement of advance notice stipulated under Section 22(1). Therefore, it is not a valid notice. Consequently, in the eye of the law there was no commencement of conciliation proceedings as a result of the said notice.

8. On the dates of dismissal of workmen no conciliation proceeding was pending in the eye of the law. Unless a conciliation proceeding was pending at the time of dismissal of workmen, Section 33 will not be attracted and there is no question of seeking permission of the Conciliation Officer in such a case.

9. The High Court failed to appreciate that in terms of Section 33-A for not obtaining permission of the Conciliation Officer under Section 33, the only legal consequence provided is that the Conciliation Officer shall take the complaint of contravention of the provisions of Section 33 into account in mediating in and promoting the settlement of such industrial dispute. Therefore, the order of dismissal in any event was not illegal. There was no complaint made to the Conciliation Officer in this case.

10. The Conciliation Officer, unlike the Labour Court or an Industrial Tribunal, has no power of adjudication. Therefore, he cannot set aside the order of dismissal. The dismissal remains valid.

11. The stand of Respondents 2 to 23 on the other hand is that the appellant did not raise the plea that there was no conciliation proceeding pending at the time of dismissal of the workmen. It is stated that there was deemed conciliation. Before the learned Single Judge the primary issue revolved around the question as to whether any notice of conciliation had been issued by the Conciliation Officer and, therefore, there was pendency of conciliation proceeding. The learned Single Judge held against the appellant relying on a decision of this Court in *Lokmat Newspapers (P) Ltd. v. Shankarprasad* [(1999) 6 SCC 275] holding that once strike notice is issued under Section 22 of the Act, conciliation proceeding is deemed to have been commenced and no further notice from the Conciliation Officer is necessary.

12. The stand that the notice of strike does not meet the requirements of Section 22 of the Act is also not tenable. Section 22(1)(d) of the Act provides that no person employed in a public utility service shall go on strike in breach of contract during the pendency of any conciliation proceedings before the Conciliation Officer and seven days after the conclusion of the proceedings. The Conciliation Officer shall hold the conciliation proceedings when notice under Section 22 of the Act has been given.

13. Under Section 12(3) if a settlement is arrived at during conciliation proceedings, a report is to be sent by the Conciliation Officer to the Government together with the settlement. If no settlement is arrived at the Conciliation Officer has to send the failure report under Section 12(4) of the Act and the Government has to refer the dispute under Section 12(5). Unlike in the case of non-public utility service, the concept of deemed conciliation has been statutorily provided in the case of public utility service so that workmen did not go on strike during pendency of the conciliation proceedings. When a strike notice under Section 22 of the Act has been given the Conciliation Officer is mandatorily required to hold the conciliation proceedings under Section 20(1) of the Act.

14. The purpose of providing for deemed conciliation is to prevent dislocation of public utility service. The object of enacting clauses (a) and (b) of Section 22(1) is for the purpose of ensuring that workers do not rush into strike and give a chance to the Conciliation Officer to resolve the dispute.

15. It is therefore clear that there was a deemed conciliation proceeding when the notice under Section 22 in Form 'O' of the Tamil Nadu Industrial Disputes Rules, 1958 (in short "the Rules") has been issued. Several alternatives are provided in Section 22(1) and clauses (a) to (d) are the alternatives which is clear from the use of the expression "or". As such the time-limit set out in either one of clause (a) or (b) would therefore have to be read disjunctively which is clear from clause (c) which provides that strike shall not be undertaken "before the expiry of the date of strike specified in any such notice as aforesaid". It is further submitted that decision in *Jaipur Zila* case has full application.

16. A few facts which have relevance need to be noted. The notice was given about the proposed strike after the strike. Undisputedly, the workers resorted to strike on 8-11-1990. The notice was given on 14-3-1991. Different stages enumerated by Section 22(1) are as follows:

- (i) advance notice of six weeks;
- (ii) fourteen days given to the employer to consider the notice;
- (iii) the workmen giving the notice cannot go on strike before the indicated date of strike;
- (iv) pendency of any conciliation proceedings.

17. In this case no conciliation proceedings were pending under sub-section (4). Sub-section (4) of Section 22 states that the notice of strike referred to in sub-section (1) has to be given in such manner as may be prescribed. The Central Rule 71 prescribes the manner in which the notice has to be given and the notice is in Form 'L'. The notice as mandated under Section 22 has to be given to the employer.

18. Learned counsel for the respondent relied on Section 20 which deals with commencement and conclusion of proceedings. According to the High Court the conciliation proceeding is deemed to have been commenced on the date on which the notice of strike under Section 22 is received by the Conciliation Officer.

19. The High Court seems to have lost sight of the crucial words "notice of strike or lockout under Section 22". Section 22 presupposes a notice before the workmen resorted to strike. The notice has to be given to the employer. Sub-section (6) of Section 22 also has

relevance because within a particular time period after receipt of the notice under sub-section (1) he shall report to the appropriate Government or to such authority as the Government may prescribe.

20. The stand of the respondents is that simultaneously notice is required to be given to the Conciliation Officer in Form 'L' and, therefore, Section 20 has full application. This plea is clearly untenable because Form 'L' refers to Rule 71 and not Section 22. There is nothing in Section 22 which requires giving of intimation or copy of the notice under Section 22 to the Conciliation Officer. At the stage of notice under Section 22 there is no dispute.

21. The date of notice is 14-3-1991 and the proposed strike was on 24-3-1991. Therefore, on the face of it, it cannot be treated to be a notice as contemplated under Section 22(1)(a). The notice in question reads as follows:

“By Registered Post

The strike notice issued by the employees under Rule 59(1)

From:

The General Secretary,
Tamil Nadu Panchalal Workers' Union,
39, 11th Cross Road,
Tatabath,
Coimbatore 12

To:

The Management,
Essorpe Mills,
Saravanampatti (Post),
Coimbatore 35.

Sir,

We have decided to strike work at Essorpe Mills, Saravanampatti Post, Coimbatore. Therefore, we are giving advance notice of strike under the provisions of Section 22(1) of the Industrial Disputes Act, 1947 (Central Act 14 of 1947). We would inform you as per Section 22(1)(c) that the strike will commence on or after 24-3-1991.

We have enclosed our demands under Rule 29 of the Chennai Industrial Disputes Rules, 1958.

Always in service to the nation

sd/-

K. Palanichamy
The General Secretary,
Tamil Nadu Panchalal Workers' Union

Copy to:

1. Commissioner of Labour, Chennai
2. Addl. Commissioner of Labour, Coimbatore
3. Deputy Commissioner of Labour, Coimbatore

4. Asstt. Commissioner of Labour (Conciliation-2), Coimbatore

22. In the notice it is stated that the strike will commence on or after 24-3-1991. Obviously, six weeks' time before the date of strike was not given. In this case the date of notice is 14-3-1991 and the proposed strike was on or after 24-3-1991. The inevitable conclusion is that the notice cannot be treated to be one under Section 22. *Jaipur Zila case* has no application if the notice given is not in accordance with law. If no notice is given to the employer, the effect of it is that he is not aware of the proceedings. Obviously, the conciliation proceedings must be one meeting the requirements of law. Here, no notice in terms of Section 22 of the Act was there.

23. Somewhat unacceptable plea has been taken by Respondents 2 to 23 that in terms of Section 22(1)(b) after fourteen days of giving the notice, the workmen can go on strike. If this plea is accepted six weeks' time stipulated in Section 22(1)(a) becomes redundant. The expression "giving such notice" as appearing in Section 22(1)(b) refers to the notice under Section 22(1)(a). Obviously, therefore, the workmen cannot go on strike within six weeks' notice in terms of Section 22(1)(a) and fourteen days thereafter in terms of Section 22(1)(b).

24. The expression "such notice" refers to six weeks' advance notice. Earlier illegal strike is not remedied by a subsequent strike as provided in Section 22. If such stand is accepted it will go against the requirement of Section 22 which aims at stalling action for illegal strike.

25. Above being the position, the judgments of the learned Single Judge as well as that of the Division Bench cannot be sustained and deserve to be set aside which we direct. Notwithstanding the same the fair approach indicated by the appellant by accepting the decision of this Court by order dated 20-3-2006 can be given effect to. It is open to Respondents 2 to 23 or any of them to comply with the terms indicated.

26. The appeal is allowed to the extent indicated above.

* * * * *

T.K. Rangarajan v. Government Of Tamil Nadu & Others

(2003) 6 SCC 581

M. B. SHAH, J. – Leave granted.

1. Unprecedented action of the Tamil Nadu Government terminating the services of all employees who have resorted to strike for their demands was challenged before the High Court of Madras by filing writ petitions under Articles 226/227 of the Constitution. Learned Single Judge by interim order inter alia directed the State Government that suspension and dismissal of employees without conducting any enquiry be kept in abeyance until further orders and such employees be directed to resume duty. That interim order was challenged by the State Government by filing writ appeals. On behalf of Government employees, writ petitions were filed challenging the validity of the Tamil Nadu Essential Services Maintenance Act, 2002 and also the Tamil Nadu Ordinance No.3 of 2003. The Division Bench of the High Court set aside the interim order and arrived at the conclusion that without exhausting the alternative remedy of approaching the Administrative Tribunal, writ petitions were not maintainable. It was pointed out to the Court that the total detentions were 2211, out of which 74 were ladies and only 165 male and 7 female personnel have so far been enlarged on bail, which reveals pathetic condition of the arrestees. The arrestees were mainly clerks and subordinate staff. The Court, therefore, directed that those who were arrested and lodged in jails be released on bail. That order is challenged by filing these appeals. For the same reliefs, writ petitions under Article 32 are also filed. At the outset, it is to be reiterated that under Article 226 of the Constitution, the High Court is empowered to exercise its extra-ordinary jurisdiction to meet unprecedented extra-ordinary situation having no parallel. It is equally true that extra-ordinary powers are required to be sparingly used. The facts of the present case reveal that this was most extra-ordinary case, which called for interference by the High Court, as the State Government had dismissed about two lacs employees for going on strike.

2. It is true that in *L. Chandra Kumar v. Union of India and others* [(1997) 3 SCC 261], this Court has held that it will not be open to the employees to directly approach the High Court even where the question of vires of the statutory legislation is challenged. However, this ratio is required to be appreciated in context of the question which was decided by this Court wherein it was sought to be contended that once the Tribunals are established under Article 323-A or Article 323B, jurisdiction of the High Court would be excluded. Negating the said contention, this Court made it clear that jurisdiction conferred upon the High Court under Article 226 of the Constitution is a part of inviolable basic structure of the Constitution and it cannot be said that such Tribunals are effective substitute of the High Courts in discharging powers of judicial review. It is also established principle that where there is an alternative, effective, efficacious remedy available under the law, the High Court would not exercise its extra- ordinary jurisdiction under Article 226 and that has been reiterated by holding that the litigants must first approach the Tribunals which act like courts of first

instance in respect of the areas of law for which they have been constituted and therefore, it will not be open to the litigants to directly approach the High Court even where the question of vires of the statutory legislation is challenged. In L. Chandra Kumar's case, the Court *inter alia* referred to and relied upon the case in *Bidi Supply Co. v. Union of India* [1956 SCR 267], wherein Bose, J. made the following observations:— "The heart and core of a democracy lies in the judicial process, and that means independent and fearless Judges free from executive control brought up in judicial traditions and trained to judicial ways of working and thinking. The main bulwarks of liberty and freedom lie there and it is clear to me that uncontrolled powers of discrimination in matters that seriously affect the lives and properties of people cannot be left to executive or quasi-executive bodies even if they exercise quasi-judicial functions because they are then invested with an authority that even Parliament does not possess. Under the Constitution, Acts of Parliament are subject to judicial review particularly when they are said to infringe fundamental rights, therefore, if under the Constitution Parliament itself has not uncontrolled freedom of action, it is evident that it cannot invest lesser authorities with that power."

3. The Court further referred to the following observations from the decision in *Kesavananda Bharati v. State of Kerala* [(1973) 4 SCC 225] as under:— "77. From their conclusions, many of which have been extracted by us *in toto*, it appears that this Court has always considered the power of judicial review vested in the High Courts and in this Court under Articles 226 and 32 respectively, enabling legislative action to be subjected to the scrutiny of superior courts, to be integral to our constitutional scheme."

The Court further held:

"78. We, therefore, hold that the power of judicial review over legislative action vested in the High Courts under Article 226 and in this Court under Article 32 of the Constitution is an integral and essential feature of the Constitution, constituting part of its basic structure. Ordinarily, therefore, the power of High Courts and the Supreme Court to test the constitutional validity of legislations can never be ousted or excluded.

81. If the power under Article 32 of the Constitution, which has been described as the "heart" and "soul" of the Constitution, can be additionally conferred upon "any other court", there is no reason why the same situation cannot subsist in respect of the jurisdiction conferred upon the High Courts under Article 226 of the Constitution. So long as the jurisdiction of the High Courts under Articles 226/227 and that of this Court under Article 32 is retained, there is no reason why the power to test the validity of legislations against the provisions of the Constitution cannot be conferred upon Administrative Tribunals created under the Act or upon Tribunals created under Article 323-B of the Constitution..."

Thereafter, the Court to emphasise that Administrative Tribunals are not functioning properly, quoted the observations with regard to the functioning of the Administrative Tribunals from the Malimath Committee's Report (1989-90), which are reproduced hereunder:—

"Functioning of Tribunals 8.63 Several tribunals are functioning in the country. Not all of them, however, have inspired confidence in the public mind. The reasons are not far to seek. The foremost is the lack of competence, objectivity and judicial approach. The next is their constitution, the power and method of appointment of personnel thereto, the inferior status and the casual method of working. The last is their actual composition; men of calibre are not willing to be appointed as presiding officers in view of the uncertainty of tenure, unsatisfactory conditions of service, executive subordination in matters of administration and political interference in judicial functioning. For these and other reasons, the quality of justice is stated to have suffered and the cause of expedition is not found to have been served by the establishment of such tribunals.

8.64 Even the experiment of setting up of the Administrative Tribunals under the Administrative Tribunals Act, 1985, has not been widely welcomed. Its members have been selected from all kinds of services including the Indian Police Service. The decision of the State Administrative Tribunals are not appealable except under Article 136 of the Constitution. On account of the heavy cost and remoteness of the forum, there is virtual negation of the right of appeal. This has led to denial of justice in many cases and consequential dissatisfaction. There appears to be a move in some of the States where they have been established for their abolition." [It is to be stated that in Tamil Nadu, at present, the Administrative Tribunal is manned by only one man.] Finally the Court held thus:— "99. In view of the reasoning adopted by us, we hold that clause 2(d) of Article 323-A and clause 3(d) of Article 323-B, to the extent they exclude the jurisdiction of the High Courts and the Supreme court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the "exclusion of jurisdiction" clauses in all other legislations enacted under the aegis of Articles 323-A and 323-B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is a part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323-A and Article 323-B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls. The Tribunals will, nevertheless, continue to act like courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated."

There cannot be any doubt that the aforesaid judgment of larger Bench is binding on this Court and we respectfully agree with the same. However, in a case like this, if thousands of employees are directed to approach the Administrative Tribunal, the Tribunal would not be in

a position to render justice to the cause. Hence, as stated earlier because of very very exceptional circumstance that arose in the present case, there was no justifiable reason for the High Court not to entertain the petitions on the ground of alternative remedy provided under the statute.

Now coming to the question of right to strike — whether Fundamental, Statutory or Equitable/Moral Right — in our view, no such right exists with the government employees. (A) There is no fundamental right to go on strike:-- Law on this subject is well settled and it has been repeatedly held by this Court that the employees have no fundamental right to resort to strike. In *Kameshwar Prasad and others v. State of Bihar and another* [(1962) Suppl. 3 SCR 369] this Court (C.B.) held that the rule in so far as it prohibited strikes was valid since there is no fundamental right to resort to strike.

In *Radhey Shyam Sharma v. The Post Master General Central Circle, Nagpur* [(1964) 7 SCR 403], the employees of Post and Telegraph Department of the Government went on strike from the midnight of July 11, 1960 throughout India and petitioner was on duty on that day. As he went on strike, in the departmental enquiry, penalty was imposed upon him. That was challenged before this Court. In that context, it was contended that Sections 3, 4 and 5 of the Essential Services Maintenance Ordinance No.1 of 1960 were violative of fundamental rights guaranteed by clauses (a) and (b) of Article 19(1) of the Constitution. The Court (C.B.) considered the Ordinance and held that Sections 3, 4 and 5 of the said Ordinance did not violate the fundamental rights enshrined in Article 19(1)(a) and

(b) of the Constitution. The Court further held that a perusal of Article 19(1)(a) shows that there is no fundamental right to strike and all that the Ordinance provided was with respect to any illegal strike. For this purpose, the Court relied upon the earlier decision in *All India Bank Employees' Association v. National Industrial Tribunal & others* [(1962) 3 SCR 269] wherein the Court (C.B.) specifically held that even very liberal interpretation of sub-clause (C) of clause (1) of Article 19 cannot lead to the conclusion that trade unions have a guaranteed right to an effective collective bargaining or to strike, either as part of collective bargaining or otherwise. In *Ex-Capt. Harish Uppal v. Union of India and Another* [(2003) 2 SCC 45], the Court (C.B.) held that lawyers have no right to go on strike or give a call for boycott and even they cannot go on a token strike. The Court has specifically observed that for just or unjust cause, strike cannot be justified in the present-day situation. Take strike in any field, it can be easily realised that the weapon does more harm than any justice. Sufferer is the society — public at large. In *Communist Party of India (M) v. Bharat Kumar and others* [(1998) 1 SCC 201], a three-Judge Bench of this Court approved the Full Bench decision of the Kerala High Court by holding thus:— "...There cannot be any doubt that the fundamental rights of the people as a whole cannot be subservient to the claim of fundamental right of an individual or only a section of the people. It is on the basis of this distinction that the High Court has rightly concluded that there cannot be any right to call or enforce a "Bandh" which interferes with the exercise of the fundamental freedoms of other citizens, in addition to causing national loss in many ways. We may also add that the reasoning given by

the High Court particularly those in paragraphs 12, 13 and 17 for the ultimate conclusion and directions in paragraph 18 is correct with which we are in agreement."

The relevant paragraph 17 of Kerala High Court judgment reads as under:— "17. No political party or organisation can claim that it is entitled to paralyse the industry and commerce in the entire State or nation and is entitled to prevent the citizens not in sympathy with its viewpoints, from exercising their fundamental rights or from performing their duties for their own benefit or for the benefit of the State or the nation. Such a claim would be unreasonable and could not be accepted as a legitimate exercise of a fundamental right by a political party or those comprising it."

(B) There is no legal / statutory right to go on strike. There is no statutory provision empowering the employees to go on strike.

Further, there is prohibition to go on strike under the Tamil Nadu Government Servants Conduct Rules, 1973 (hereinafter referred to as "the Conduct Rules"). Rule 22 provides that "no Government servant shall engage himself in strike or in incitements thereto or in similar activities." Explanation to the said provision explains the term 'similar activities'. It states that "for the purpose of this rule the expression 'similar activities' shall be deemed to include the absence from work or neglect of duties without permission and with the object of compelling something to be done by his superior officers or the Government or any demonstrative fast usually called "hunger strike" for similar purposes. Rule 22-A provides that "no Government servant shall conduct any procession or hold or address any meeting in any part of any open ground adjoining any Government Office or inside any Office premises — (a) during office hours on any working day; and (b) outside office hours or on holidays, save with the prior permission of the head of the Department or head of office, as the case may be.

(C) There is no moral or equitable justification to go on strike. Apart from statutory rights, Government employees cannot claim that they can take the society at ransom by going on strike. Even if there is injustice to some extent, as presumed by such employees, in a democratic welfare State, they have to resort to the machinery provided under different statutory provisions for redressal of their grievances. Strike as a weapon is mostly misused which results in chaos and total maladministration. Strike affects the society as a whole and particularly when two lakh employees go on strike enmasse, the entire administration comes to a grinding halt. In the case of strike by a teacher, entire educational system suffers; many students are prevented from appearing in their exams which ultimately affect their whole career. In case of strike by Doctors, innocent patients suffer; in case of strike by employees of transport services, entire movement of the society comes to a stand still; business is adversely affected and number of persons find it difficult to attend to their work, to move from one place to another or one city to another. On occasions, public properties are destroyed or damaged and finally this creates bitterness among public against those who are on strike. Further, Mr. K.K. Venugopal, learned senior counsel appearing for the State of Tamil Nadu also submitted that there are about 12 lacs Government employees in the State. Out of the

total income from direct tax, approximately 90% of the amount is spent on the salary of the employees. Therefore, he rightly submits that in a Society where there is a large scale unemployment and number of qualified persons are eagerly waiting for employment in Government Departments or in public sector undertakings, strikes cannot be justified on any equitable ground.

We agree with the said submission. In the prevailing situation, apart from being conscious of rights, we have to be fully aware of our duties, responsibilities and effective methods for discharging the same. For redressing their grievances, instead of going on strike, if employees do some more work honestly, diligently and efficiently, such gesture would not only be appreciated by the authority but also by people at large. The reason being, in a democracy even though they are Government employees, they are part and parcel of governing body and owe duty to the Society.

We also agree that misconduct by the government employees is required to be dealt with in accordance with law. However, considering the gravity of the situation and the fact that on occasion, even if the employees are not prepared to agree with what is contended by some leaders who encourage the strikes, they are forced to go on strikes for reasons beyond their control. Therefore, even though the provisions of the Act and the Rules are to be enforced, they are to be enforced after taking into consideration the situation and the capacity of the employees to resist. On occasion, there is tendency or compulsion to blindly follow the others. In this view of the matter, we had suggested to the learned senior counsel Mr. Venugopal that employees who went on strike may be reinstated in service and that suggestion was accepted by Mr. Venugopal after obtaining instructions from the State Government. Hence, on 24.7.2003, we had passed the following order:— "Heard the learned counsel for the parties.

Mr. K.K. Venugopal, the learned senior counsel appearing for the State of Tamil Nadu after obtaining necessary instructions states that:

1. The State Government will re-instate all the government employees who are dismissed because they had gone on strike, except (i) 2,200 employees who had been arrested and (ii) employees against whom FIR had been lodged.

2. This reinstatement in service would be subject to unconditional apology as well as undertaking to the effect that employees would abide by Rule 22 of the Tamil Nadu Government Servants Conduct Rules 1973 which provides as under: -

"22. Strikes: No Government servant shall engage himself in strike or in incitements thereto or in similar activities."

Explanation — For the purpose of this rule the expression 'similar activities' shall be deemed to include the absence from work or neglect of duties without permission and with the object

of compelling something to be done by his superior officers or the Government or any demonstrative fast usually called "hunger strike" for similar purposes."

It is also stated that Government will proceed under the Disciplinary Rules only against those employees who had indulged in violence and who had incited the other employees to go on strike.

From 25th July such employees would be reinstated in service subject to their giving unconditional apology for resorting to strike and also an undertaking to the effect that in future he would abide by Rule 22. He also states that for the employees who would be reinstated in service with regard to the period for which they remained absent, appropriate order would be passed by the State Government for regularizing their absent. However, this would not be treated as a break in service.

Ordered accordingly.

For further orders and directions list the matter on 31.7.2003."

On 31st, number of affidavits were filed contending that large number of employees are not reinstated in service despite the assurance given by the State Government. Matter was adjourned at the request of learned counsel for the respondent for verification of the said contention. After verification, additional affidavit has been filed by Secretary to Government, Personnel and Administrative Reforms Department, Secretariat, Chennai, revealing the exact figures with regard to dismissed and reinstated employees. In paragraph 6, it has been stated as under:— "6. The following details are submitted for reference of this Hon'ble Court:—

1. Total number of Government servants 1,70,241 dismissed as per Section 7 of TESMA and teachers of Aided Colleges suspended.
2. Total number reinstated so far, as per the 1,56,106 statement made before this Hon'ble Court.
3. Number of employees and teachers not 14,135 reinstated.

CATEGORIES OF EMPLOYEES AND GOVERNMENT TEACHERS WHO CANNOT CLAIM A RIGHT TO BE REINSTATED.

(a)	Government servants arrested.	2,211
(b)	Secretariat staff for the reasons mentioned earlier.	2,215

(c)	Officers holding higher position.	534
(d)	Government servants (other than the Secretariat staff) involved in offences Under Section 5 or Section 5 read with Section 4 of TESMA.	1,112
	Total number of persons who cannot Claim a right to be reinstated.	6,072
	REMAINING NUMBER OF EMPLOYEES	8,063

WHOM THE STATE GOVERNMENT IS WILLING TO REINSTATE."

For the categories (b) and (c) i.e. Secretarial staff of 2215 and 534 officers holding higher positions, it is agreed and made clear that they would be treated as suspended instead of dismissed. Remaining 8063 employees, as stated above, will be reinstated in service (w.e.f. 25th July, 2003) on their tendering unconditional apology for resorting to strike and also an undertaking to abide by Rule 22 of Conduct Rules in future. He further makes a statement that with regard to the representations which are made or are to be made by the employees who are in category (a), (b), (c) and (d), the same would be considered by three retired High Court Judges to be named by the Chief Justice of the High Court of Madras. Each Judge would decide approximately representations of 2000 employees within a period of one month or thereabout from the date of allocation of representations. For this purpose, a convenient place for their office work and the secretarial staff would be made available to all the three Judges by the State Government within a period of seven days from today without fail. The concerned Judges would decide the representation of the employees without taking into consideration Section 7 of the Ordinance and as far as possible in accordance with the Conduct Rules and equity. Retired Judges to be paid honorarium at the rate of Rs.50000/- per month. All the three Judges are requested to evolve a common procedure for disposing of the representations. The decision of the Judge on the representation would be binding to the State Government and the State Government would act in accordance with the same. However, if any of the employees is aggrieved, it would be open to such employee to challenge the same before an appropriate forum.

Finally, it is made clear that employees who are re-instated in service would take care in future in maintaining discipline as there is no question of having any fundamental, legal or equitable right to go on strike. The employees have to adopt other alternative methods for redressal of their grievances. For those employees who are not re- instated in service on the ground that FIRs are lodged against them or after holding any departmental enquiry penalty is imposed, it would be open to them to challenge the same before the Administrative Tribunal and the Tribunal would pass appropriate order including interim order within a period of two weeks from the date of filing of such application before it. It is unfortunate that the concerned authorities are not making the Administrative Tribunals under the Administrative Tribunal Act, 1985, functional and effective by appointing men of caliber. It is for the High Court to

see that if the Administrative Tribunals are not functioning, justice should not be denied to the affected persons. In case, if the Administrative Tribunal is not functioning, it would be open to the employees to approach the High Court.

Lastly, we make it clear that we have not at all dealt with and considered the constitutional validity of Tamil Nadu Essential Services Maintenance Act, 2002 and the Tamil Nadu Ordinance No.3 of 2003 or interpretation of any of the provisions thereof, as the State Government has gracefully agreed to re-instate most of the employees who had gone on strike. For this, we appreciate the efforts made and the reasonable stand taken by the learned Counsel for the parties. Further, we have not dealt with the grievances of the employees against various orders issued by the State Government affecting their service benefits. We hope that Government would try to consider the same appropriately.

The Appeals and Writ Petitions are disposed of accordingly. There shall be no order as to costs.

* * * * *

Topic-08: 'Lay Off', 'Retrenchment' & 'Closure'***Punjab Land Development and Reclamation Corporation Ltd. v.
Presiding Officer, Labour Court
(1990) 3 SCC 682***

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

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

15. Mr. N.B. Shetye, Mr. K.K. Venugopal, and the learned counsel adopting their arguments refer to the introduction of the provision of "retrenchment" in the Act. Retrenchment was not defined either in the repealed Trade Disputes Act, 1929, or in the Industrial Disputes Act, 1947, as originally enacted. Owing to a crisis in the textile industry in Bombay, apprehending large scale termination of services of workmen, the Government of India issued an Ordinance which later became the Industrial Disputes (Amendment) Act, 1953 which was deemed to have come into force on October 24, 1953. Besides introducing the definitions of "lay off" [clause 2(kkk)] and "Retrenchment" [clause 2(oo)] this Amendment Act of 1953 also inserted Chapter V-A in the Act which dealt with "lay off" and "Retrenchment". That chapter contained Sections 25-A to 25-J. Section 25-A provided that Sections 25-C to 25-E inclusive shall not apply to certain categories of industrial establishments. Section 25-C dealt with right of workmen laid off for compensation. Section 25-D provided for maintenance of muster rolls of workmen by employers and Section 25-E stated the cases in which the workmen were not entitled to lay off compensation. Section 25-F dealt with conditions precedent to retrenchment of workmen. Section 25-G dealt with procedure for retrenchment and Section 25-H dealt with reemployment of retrenched workmen; and Section 25-J dealing with the effect of laws inconsistent with this chapter said that the provisions of this chapter shall have effect notwithstanding anything inconsistent therewith contained in any other law (including standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946); provided that nothing contained in this Act shall have effect to derogate from any right which a workman has under any award for the time being in operation or any contract with the employer.

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

19. In *Pipraich Sugar Mills Ltd. v. Pipraich Sugar Mills Mazdoor Union* [AIR 1957 SC 95], the appellant company could not work its mills to full capacity owing to short supply of sugarcane and got the permission of the government to sell its machinery but continued crushing cane under a lease from the purchaser. The workmen's union in order to frustrate the transaction resolved to go on strike and serving a strike notice did not cooperate with the management with the result that it lost heavily. On the expiry of the lease and closure of the industry, the services of the workmen were duly terminated by the company. The workmen claimed the share of profits on the basis of the offer earlier made by the company and accepted by the workers. The company having declined to pay and the dispute having been referred, the Industrial Tribunal held that the company was bound to pay and accordingly awarded a sum of Rs. 45,000 representing their share of the profits and the award was affirmed by the Labour Appellate Tribunal. Question before this Court in appeal was whether the termination of the workmen on the closure of the industry amounted to retrenchment. It was held that the award was not one for compensation for termination of the services of workmen on closure of the industry, as such discharge was different from the discharge on retrenchment, which implied the continuance of the industry and discharge only of the surplusage, and the workmen were not entitled either under the Law as it stood on the day of their discharge or even on merits to any compensation.

20. The contention of the workmen was that even before the enactment of Industrial Disputes (Amendment) Act, 1953, the tribunal had acted on the view that the retrenchment included discharge on closure of business and had awarded compensation on that footing and that the award of the tribunal in *Pipraich* case could be supported in that view and should not be disturbed. This was based on the decision in *Employees v. India Reconstruction Corporation Ltd.* [1953 LAC 563] and *Bennett Coleman and Company Ltd. v. Employees* [(1954) 1 LLJ 341 (LAT)]. But their Lordships did not agree. Venkatarama Ayyar, J. speaking for the four-Judge bench said:

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

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

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

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

23. Under an agreement dated August 1, 1895 between the Secretary of State for India in Council and the Railway Company, the Secretary of State could purchase and take over the undertaking after giving Railway Company a notice. On December 19, 1952 a notice was given to the Railway Company for and on behalf of the President of India that the undertaking of the Railway Company would be purchased and taken over as from January 1, 1954. On November 11, 1953, the Railway Company served a notice on its workmen intimating that as a result of the taking over, the services of all the workmen of the Railway Company would be terminated with effect from December 31, 1953. As a result of the closure, the services of all 450 workmen and 20 clerks were terminated and the appellant company claimed that the closure was bona fide being due to heavy losses sustained by the company. The principal respondent claimed retrenchment compensation for the workmen of the appellant under clause (b) of Section 25-F of the Act.

25. In both the appeals the question before the Constitution Bench was whether the claim of the erstwhile workmen both of the Railway Company and of Sri Dinesh Mills Ltd., to the compensation under clause (b) of Section 25-F of the Act was a valid claim in law. Observing that the Act had a 'plexus of amendments', and some of the recent amendments had been quite extensive in nature and that Section 25-F occurred in Chapter V-A of the Act which dealt with 'lay off and retrenchment' in the Amending Act, and analyzing Section 25-F as it then stood, S.K. Das, J. speaking for the Constitution Bench observed that in the first part of the section both the words 'retrenched' and 'retrenchment' were used and obviously they had the same meaning except that one was verb and the other was a noun and that to appreciate the true scope and effect of Section 25-F one must first understand what was meant by the expression 'retrenched' or 'retrenchment'.

26. Analysing the definition of 'retrenchment' in Section 2(o) the court found in it the following four essential requirements: (a) termination of the service of a workman; (b) by the employer; (c) for any reason whatsoever; and (d) otherwise than as a punishment inflicted by way of disciplinary action. The court then said:

It must be conceded that the definition is in very wide terms. The question, however, before us is - does this definition merely give effect to the ordinary, accepted notion

of retrenchment in an existing or running industry by embodying the notion in apt and readily intelligible words or does it go so far beyond the accepted notion of retrenchment as to include the termination of services of all workmen in an industry when the industry itself ceases to exist on a bona fide closure or discontinuance of his business by the employer?

The court further said:

There is no doubt that when the Act itself provides a dictionary for the words used, we must look into that dictionary first for an interpretation of the words used in the statute. We are not concerned with any presumed intention of the legislature; our task is to get at the intention as expressed in the statute. Therefore, we propose first to examine the language of the definition and see if the ordinary, accepted notion of retrenchment fits in, squarely and fairly, with the language used.

The court reiterated the following observations in *Pipraich*: (SCR 886 quoted at SCR 131)

But retrenchment connotes in its ordinary acceptation that the business itself is being continued but that a portion of the staff of the labour force is discharged as surplusage and the termination of services of all the workmen as a result of the closure of the business cannot therefore be properly described as retrenchment.

This was the ordinary accepted notion of 'retrenchment' in an industry before addition of Section 2(oo) to the Act, as retrenchment in that case took place in 1951. Replying to the argument that by excluding the bona fide closure of business as one of the reasons for termination of the service of workmen by the employer, one would be cutting down the amplitude of the expression 'for any reason whatsoever' and reading into the definition the words which did not occur there, the court agreed that the adoption of the ordinary meaning would give to the expression 'for any reason whatsoever' a somewhat narrower scope; one might say that it would get a colour in the context in which expression occurred; but the court did not agree that it amounted to importing new words in the definition and said that the legislature in using that expression said in effect: "It does not matter why you are discharging the surplus; if the other requirements of the definition are fulfilled, then it is retrenchment". In the absence of any compelling words to indicate that the intention was to include bona fide closure of the whole business, it would be divorcing the expression altogether from its context to give it such a wide meaning as was contended. About the nature of the definition it was said:

It is true that an artificial definition may include a meaning different from or in excess of the ordinary acceptation of the word which is the subject of definition; but there must then be compelling words to show that such a meaning different from or in excess of the ordinary meaning is intended. Where, within the framework of the ordinary acceptation of the word, every single requirement of the definition clause is fulfilled, it would be wrong to take the definition as destroying the essential meaning of the word defined.

27. The court in *Hariprasad* dealt with two other contentions; one was that before the Amending Act of 1953 the retrenchment had acquired a special meaning which included the

payment of compensation on a closure of business and the legislature gave effect to that meaning in the definition clause and by inserting Section 25-F. The second was that Section 25-FF inserted in 1956 by Act 41 of 1956 was 'Parliamentary exposition' of the meaning of the definition clause and of Section 25-F. Rejecting the contentions the court held that retrenchment meant the discharge of surplus workmen in an existing or continuing business; it had acquired no special meaning so as to include discharge of workmen on bona fide closure of business, though a number of Labour Appellate Tribunals awarded compensation to workmen on closure of business as an equitable relief for variety of reasons. The court accordingly held:

(T)hat retrenchment as defined in Section 2(oo) and as used in Section 25 has no wider meaning than the ordinary, accepted connotation of the word: it means the *discharge of surplus labour or staff* by the employer for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, and it has no application where the services of all workmen have been terminated by the employer on real and bona fide closure of business as in the case of Sri Dinesh Mills Ltd. Or where the services of all workmen have been terminated by the employer on the business or undertaking being taken over by another employer in circumstances like those of the Railway Company.(emphasis in original)

28. It is interesting to note that the Amending Act 41 of 1956 inserted original Section 25-FF on September 4, 1956. The Objects and Reasons were stated thus:

Doubt has been raised whether retrenchment compensation under the Industrial Disputes Act, 1947 becomes payable by reason merely of the fact that there has been a change of employers, even if the service of the workman is continued without interruption and the terms and conditions of his service remain unaltered. This has created difficulty in the transfer, reconstitution and amalgamation of companies and it is proposed to make the intention clearly by amending Section 25-F of the Act.

Hariprasad case was decided on November 27, 1956. The Industrial Disputes (Amendment) Ordinance, 1957 (4 of 1957) was promulgated immediately thereafter with effect from December 1, 1956 and that Ordinance was replaced by the Industrial Disputes (Amendment) Act, 1957 (18 of 1957). The following was the Statement of Objects and Reasons:

In a judgment delivered on November 27, 1956, the Supreme Court held that no retrenchment compensation was payable under Section 25-F of the Industrial Disputes Act, 1947, to workmen whose services were terminated by an employer on a real and bona fide closure of business, or when termination occurred as a result of transfer of ownership from one employer to another (see AIR 1957 SC 1210). This has led and is likely to lead to a large number of workmen being rendered unemployed without any compensation. In order to meet this situation which was causing hardship to workmen, it was considered necessary to take immediate action and the Industrial Disputes (Amendment) Ordinance, 1957 (4 of 1957), was promulgated with retrospective effect from December 1, 1956.

This Ordinance was replaced by an Act of Parliament enacting the provisions contained in Section 25-FF and 25-FFF. These sections provide that ‘compensation would be payable to workmen whose services are terminated on account of the transfer or closure of undertakings’. In the case of transfer of undertakings, however, if the workman is re-employed on terms and conditions which are not less favourable to him, he will not be entitled to any compensation. This was the position which existed prior to the decision of the Supreme Court. In the case of closure of business on account of the circumstances beyond the control of the employer, the maximum compensation payable to workmen has been limited to his average pay for three months. If the undertaking is engaged in any construction work and it is closed down within two years on account of the completion of its work, no compensation would be payable to workmen employed therein.

Hariprasad having accepted the ordinary contextual meaning of retrenchment, namely, termination of surplus labour as the major premise it was surely open to the Parliament to have amended the definition of retrenchment in Section 2(oo) of the Act. Instead of doing that the Parliament added Sections 25-FF and 25-FFF.

Thus, by this Amendment Act the Parliament clearly provided that though such termination may not have been retrenchment technically so-called, as decided by this Court, nevertheless the employees in question whose services were terminated by the transfer or closure of the undertaking would be entitled to compensation, as if the said termination was retrenchment. As it has been observed, the words “as if” brought out the legal distinction between retrenchment defined by Section 2(oo) as it was interpreted by this Court and termination of services consequent upon transfer of the undertaking. In other words, the provision was that though termination of services on transfer or closure of the undertaking may not be retrenchment, the workmen concerned were entitled to compensation as if the said termination was retrenchment.

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

30. In *Anakapalle Co-operative Agricultural and Industrial Society Ltd. v. Workmen* [AIR 1963 SC 1489], a company running a sugar mill was suffering losses every year due to insufficient supply of sugarcane and wanted to shift the mill. The cane growers formed a co-operative society and purchased the mill. As agreed between the company and the society, the company terminated the services of the employees and paid retrenchment compensation to them under Section 25-FF of the Act. The society employed some of the old employees and refused to absorb some of them who raised an industrial dispute. The Industrial Tribunal having directed the purchaser-society by its award to re-employ them, the society contended that it was not a successor-in-interest of the company and hence the claim of re-employment was not sustainable and the services of the employees having been terminated upon payment of compensation by the company under Section 25-FF no claim could be made against the transferee society. This Court held that the society was the successor-in-interest of the company as it carried on the same or similar business as was carried by the vendor-company at the same place and without substantial break in continuity. It was further held that the employees were not entitled to both compensation for termination of service and immediate

re-employment at the hands of the transferee and Section 25-H was not applicable to the case as the termination of service upon transfer or closure was not retrenchment properly so called and that termination of service dealt with in Section 25-FF could not be equated with retrenchment covered by Section 25-F. It was observed that the words 'as if' in Section 25-FF clearly distinguished retrenchment under Section 2(o) and termination under Section 25-FF.

32. In *Delhi Cloth and General Mills Ltd. v. Shambhu Nath Mukherjee* [(1977) 4 SCC 415], where the post of motion setter was abolished and the respondent was given a job of a trainee on probation for the post of Assistant Line Fixer and the management found him unsuitable for the job even after extending his probation period up to nine months and offered him the post of fitter on the same pay and the respondent instead of accepting the offer wanted to be given another chance to show his efficiency in his job and the management struck off his name from the rolls without complying with the provisions of Section 25-F(a) and (b) of the Act and the Labour Court having given award in the respondent's favour and the appellant's writ petition was rejected by the High Court, Goswami, J. speaking for three Judges bench said: (SCC p. 420, para 14)

Striking off the name of the workman from the rolls by the management is termination of his service. Such termination of service is retrenchment within the meaning of Section 2(o) of the Act. There is nothing to show that the provisions of Section 25-F(a) and (b) were complied with by the management in this case. The provisions of Section 25-F(a), the proviso apart, and (b) are mandatory and any order of retrenchment, in violation of these two peremptory conditions precedent, is invalid.

The appeal was accordingly dismissed. The earlier decisions were not referred to.

33. Next comes the decision in *State Bank of India v. N. Sundara Money* [(1976) 1 SCC 822] (Y.V. Chandrachud, V.R. Krishna Iyer and A.C. Gupta, JJ.). In an application under Article 226, the respondent on automatic extinguishment of his service consequent to the preemptive provision as to the temporariness of the period of his employment in his appointment letter claiming to have been deemed to have had continuous service for one year within the meaning of Section 25(B)(2) of the Act, the Single Judge of the High Court having allowed his writ petition and the writ appeal of the appellant having also failed, this Court in appeal found as fact that the appointment was purely temporary one for a period of 9 days but might be terminated earlier, without assigning any reason therefore at the petitioner's discretion; and the employment unless terminated earlier, would automatically cease at the expiry of the period i.e. November 18, 1972. This 9 days' employment added on to what had gone before ripened to a continuous service for a year "on the antecedent arithmetic of 240 days of broken bits of service" and considering the meaning of 'retrenchment' it was held that the expression for any reason whatsoever was very wide and almost admitting of no exception. The contention of the employer was that when the order of appointment carried an automatic cessation of service, the period of employment worked itself out by efflux of time, not by act of employer and such cases were outside the concept of retrenchment. This Court observed that to retrench is to cut down and one could not retrench without trenching or cutting, but "dictionaries are not dictators of statutory construction where the benignant mood of a law and, more emphatically, the definition clause furnish a different denotation".

34. Accepting the literal meaning, Krishna Iyer, J. observed:

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

36. The precedents including *Hariprasad* do not appear to have been brought to the notice of their Lordships in this case. It may be noted that since *Delhi Cloth and General Mills* a change in interpretation of retrenchment in Section 2(oo) of the Act is clearly discernible.

37. Mr. Venugopal would submit that the judgment in *Sundara Money* case and for that matter the subsequent decisions in the line are *per incuriam* for two reasons: (i) that they failed to apply the law laid down by the Constitution Bench of this Hon’ble Court in *Hariprasad Shukla* case and (ii) for the reason that they have ignored the impact of two of the provisions introduced by the Amendment Act of 1953 along with the definition of “retrenchment” in Section 2(oo) and Section 25-F namely, Sections 25-G and 25-H. We agree with the learned counsel that the question of the subsequent decisions being *per incuriam* could arise only if the ratio of *Sundara Money* case and the subsequent judgments in the line was in conflict with the ratio in the *Hariprasad Shukla* case and *Anakapalle* case. The issue, it is urged, was, whether it was necessary for the court to interpret Section 2(oo) as being restricted to termination of services of workmen rendered surplus for arriving at a decision in the case and if it was unnecessary to so interpret Section 2(oo) for the purpose of arriving at a decision in that case, the interpretation of Section 2(oo) would necessarily be rendered obiter. According to counsel, the long discussion on interpretation of Section 2(oo) could not be brushed aside as either obiter or mere casual observations of the Constitution Bench.

40. We now deal with the question of *per incuriam* by reason of allegedly not following the Constitution Bench decisions. The Latin expression *per incuriam* means through inadvertence. A decision can be said generally to be given *per incuriam* when this Court has acted in ignorance of a previous decision of its own or when a High Court has acted in ignorance of a decision of this Court. It cannot be doubted that Article 141 embodies, as a rule of law, the doctrine of precedents on which our judicial system is based. In ***Bengal Immunity Company Ltd. v. State of Bihar*** [AIR 1955 SC 66], it was held that the words of Article 141, “binding on all courts within the territory of India”, though wide enough to include the Supreme Court, do not include the Supreme Court itself, and it is not bound by its own judgments but is free to reconsider them in appropriate cases. This is necessary for proper development of law and justice.

43. As regards the judgments of the Supreme Court allegedly rendered in ignorance of a relevant constitutional provision or other statutory provisions on the subjects covered by them, it is true that the Supreme Court may not be said to “declare the law” on those subjects if the relevant provisions were not really present to its mind. But in these cases Sections 25-G and 25-H were not directly attracted and even if they could be said to have been attracted in laying down the major premise, they were to be interpreted consistently with the subject or context. The problem of judgment *per incuriam* when actually arises, should present no difficulty as this Court can lay down the law afresh, if two or more of its earlier judgments cannot stand together. The question however is whether in this case there is in fact a judgment *per incuriam*. This raises the question of *ratio decidendi* in ***Hariprasad*** and ***Anakapalle*** cases on the one hand and the subsequent decisions taking the contrary view on the other.

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

49. In ***Santosh Gupta v. State Bank of Patiala*** [(1980) 3 SCC 340], O. Chinnappa Reddy, J. sitting with Krishna Iyer, J. deduced the *ratio decidendi* of ***Hariprasad*** thus:

In ***Hariprasad Shivshankar Shukla v. A.D. Divikar***, the Supreme Court took the view that the word ‘retrenchment’ as defined in Section 2(oo) did not include termination of services of all workmen on a bona fide closure of an industry or on change of ownership or management of the industry. In order to provide for the situations which the Supreme Court held were not covered by the definition of the expression ‘retrenchment’, the Parliament added Section 25-FF and Section 25-FFF providing for the payment of compensation to the workmen in case of transfer of undertakings and in case of closure of undertakings respectively.

50. In ***Hariprasad*** the learned Judges themselves formulated the question before them as follows: (SCR p. 130)

The question, however, before us is - does this definition merely give effect to the ordinary, accepted notion of retrenchment in an existing or running industry by

embodying the notion in apt and readily intelligible words or does it go so far beyond the accepted notion of retrenchment as to include the termination of services of all workmen in an industry when the industry itself ceases to exist on a bona fide closure or discontinuance of his business by the employer?

51. The question was answered by the learned Judges in the following words:

In the absence of any compelling words to indicate that the intention was even to include a bona fide closure of the whole business, it would, we think, be divorcing the expression altogether from the context to give it such a wide meaning as it contended for by learned counsel for the respondents... it would be against the entire scheme of the Act to give the definition clause relating to retrenchment such a meaning as would include within the definition termination of service of all workmen by the employer when the business itself ceases to exist.

Rejecting the submission of Dr. Anand Prakash that “termination of service for any reason whatsoever” meant no more and no less than discharge of a labour force which was a surplusage, it was observed in *Santosh Gupta* that the misunderstanding of the observations and the resulting confusion stem from not appreciating the lead question which was posed and answered by the learned Judges and that the reference to ‘discharge on account of surplusage’ was illustrative and not exhaustive on account of transfer or closure of business.

52. Mr. V.A. Bobde submits, and we think rightly, that the sole reason for the decision in *Hariprasad* was that the Act postulated the existence and continuance of an industry and where the industry i.e. the undertaking, itself was closed down or transferred, the very substratum disappeared and the Act could not regulate industrial employment in the absence of an industry. The true position in that case was that Section 2(oo) and Section 25-F could not be invoked since the undertaking itself ceased to exist. The ratio of *Hariprasad*, according to the learned counsel, is discernible from the discussion at pp. 131-32 of the report about the ordinary accepted notion of retrenchment ‘in an industry’ and *Pipraich* case was referred to for the proposition that continuance of the business was essential; the emphasis was not on the discharge of surplus labour but on the fact that “retrenchment connotes in its ordinary acceptation that the business itself is being continued... the termination of services of all the workmen as a result of the closure of the business cannot therefore be properly described as retrenchment”. At page 134 in the last four lines also it was said: “But the fundamental question at issue is, does the definition clause cover cases of closure of business, when the closure is real and bona fide?” The reasons for arriving at the conclusion are given as (SCR p. 134) “it would be against the entire scheme of the Act to give the definition clause relating to retrenchment such a meaning as would include within the definition termination of service of all workmen by the employer when the business itself ceases to exist” and that the industrial dispute to which the provisions of the Act applies is only one which arises out of an existing industry. Thus, the court was neither called upon to decide nor did it decide whether in a continuing business, retrenchment was confined only to discharge of surplus staff and reference to discharge of surplusage was for the purpose of contrasting the situation in that case, i.e. workmen were being retrenched because of cessation of business and those observations did not constitute reasons for the decision. What was decided was that if there was no continuing industry the provision could not apply. In fact the question whether

retrenchment did or did not include other terminations was never required to be decided in *Hariprasad* and could not, therefore have been, or be taken to have been decided by this Court.

We agree with Mr. Bobde when he submits that *Hariprasad* case is not an authority for the proposition that Section 2(oo) only covers cases of discharge of surplus labour and staff. The judgments in *Sundara Money* and the subsequent decisions in the line could not be held to be *per incuriam* inasmuch as in *Hindustan Steel* and *Santosh Gupta* cases, the Division Benches of this Court had referred to *Hariprasad* case and rightly held that its ratio did not extend beyond a case of termination on the ground of closure and as such it would not be correct to say that the subsequent decisions ignored a binding precedent.

54. In *Hindustan Steel Ltd. v. Presiding Officer, Labour Court*, [(1976) 4 SCC 222], the question was whether termination of service by efflux of time was termination of service within the definition of retrenchment in Section 2(oo) of the Act. Both the earlier decisions of the Court in *Hariprasad* and *Sundara Money* were considered and it was held that there was nothing in *Hariprasad* which was inconsistent with the decision in *Sundara Money* case. It was observed that the decision in *Hariprasad* was only that the words “for any reason whatsoever” used in the definition of retrenchment would not include a bona fide closure of the whole business because it would affect the entire scheme of the Act. The decisions in which contrary view was taken, were over-ruled in *Santosh Gupta* holding that the discharge of the workman on the ground that she did not pass the test which would have enabled her to be confirmed was ‘retrenchment’ within the meaning of Section 2(oo) and therefore, the requirement of Section 25-F had to be complied with. The workman was employed in the State Bank of Patiala from July 13, 1973 till August 1974 when her services were terminated. According to the workman she had worked for 240 days in the year preceding August 21, 1974 and the termination of her services was retrenchment as it did not fall within any of the three accepted cases. The management’s contention was that termination was not due to discharge of surplus labour but due to failure of the workman to pass the test which could have enabled her to be confirmed in the service and as such it was not retrenchment. This contention was repelled.

55. Both Mr. Shetye and Mr. Venugopal submit that judicial discipline required the smaller benches to follow the decisions in the larger benches. This reminds us of the words of Lord Hailsham of Marylebone, the Lord Chancellor, “in the hierarchical system of courts which exists in this country, it is necessary for each lower tier... to accept loyally the decisions of the higher tiers”. However, in view of the *ratio decidendi* of *Hariprasad*, as we have seen, there is no room for such a criticism.

56. In *Karnataka SRTC v. M. Boraiah* [(1984) 1 SCC 244], a Division Bench of A.N. Sen and Ranganath Misra, JJ. held that in the above series of cases that have come later, the Constitution Bench decision in *Hariprasad* has been examined and the ratio indicated therein has been confined to its own facts and the view indicated by the court in that case did not meet with the approval of Parliament and, therefore, the law had been subsequently amended.

57. Speaking for the court, R.N. Misra, J. significantly said:

We are inclined to hold that the stage has come when the view indicated in *Money* case has been ‘absorbed into the consensus’ and there is no scope for putting the clock back or for an anti-clockwise operation.

58. More than a month thereafter in *Gammon India Ltd. v. Niranjana Das*, a three Judges bench (D.A. Desai, R.B. Misra and Ranganath Misra, JJ.) construing the one month’s notice of termination in that case due to reduction of volume of business of the company said:

On a true construction of the notice, it would appear that the respondent had become surplus on account of reduction in volume of work and that constitutes retrenchment even in the traditional sense of the term as interpreted in *Pipraich Sugar Mills Ltd. v. Pipraich Sugar Mills Mazdoor Union*, though that view does not hold the field in view of the recent decisions of this Court in *State Bank of India v. N. Sundara Money; Hindustan Steel Ltd. v. Presiding Officer, Labour Court, Oriss; Santosh Gupta v. State Bank of Patiala; Delhi Cloth and General Mills Ltd. v. Shambhu Nath Mukherjee; Mohan Lal v. Bharat Electronics Ltd. and L. Robert D’Souza v. Executive Engineer, Southern Railway*. The recitals and averments in the notice leave no room for doubt that the service of the respondent was terminated for the reason that on account of recession and reduction in the volume of work of the company, respondent has become surplus. Even apart from this, the termination of service for the reasons mentioned in the notice is not covered by any of the clauses (a), (b) and (c) of Section 2(o) which defines retrenchment and it is by now well settled that where the termination of service does not fall within any of the excluded categories, the termination would be *ipso facto* retrenchment. It was not even attempted to be urged that the case of the respondent would fall in any of the excluded categories. It is therefore indisputably a case of retrenchment.

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

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

62. This is literal interpretation as distinguished from contextual interpretation said Tindal, C.J. in *Sussex Peerage* case:

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

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

71. Analysing the definition of retrenchment in Section 2(oo) we find that termination by the employer of the service of a workman would not otherwise have covered the cases excluded in (a) and (b), namely, voluntary retirement and retirement on reaching the stipulated age of retirement. There would be no volitional element of the employer. Their express exclusion implies that those would otherwise have been included. Again if those cases were to be included, termination on abandonment of service, or on efflux of time, and on failure to qualify, although only consequential or resultant, would be included as those have not been excluded. Thus, there appears to be a gap between the first part and the exclusion part. Mr. Venugopal, on this basis, points out that cases of voluntary retirement, superannuation and tenure appointment are not cases of termination 'by the employer' and would, therefore, in any event, be outside the scope of the main provisions and are not really provisions.

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

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

74. It is also pointed out that Section 25-G deals with the principle of 'last come, first go', a principle which existed prior to the Amendment Act of 1953 only in relation to termination of workmen rendered surplus for any reasons whatsoever. Besides, it is submitted, by its very nature the wide definition of retrenchment would be wholly inapplicable to termination simpliciter. The question of picking out a junior in the same category for being sent out in place of a person whose services are being terminated *simpliciter* or otherwise on the ground that the management does not want to continue his contract of employment would not arise. Similarly, it is pointed out that starting from *Sundara Money* where termination *simpliciter* of a workman for not having passed a test, or for not having satisfactorily completed his

probation would not attract Section 25-G, as the very question of picking out a junior in the same capacity for being sent out instead of the person who failed to pass a test or failed to satisfactorily complete his probation could never arise. If, however, Section 25-G were to be followed in such cases, the section would itself be rendered unconstitutional and violative of fundamental rights of the workmen under Articles 14, 19(1)(g) and 21 of the Constitution. It would be no defence to this argument to say that the management could record reasons as to why it is not sending out the juniormost in such cases since in no single case of termination *simpliciter* would Section 25-G be applicable and in every such case of termination *simpliciter*, without exception, reasons would have to be recorded. Similarly, it is submitted, Section 25-H which deals with re-employment of retrenched workmen, can also have no application whatsoever, to a case of termination *simpliciter* because of the fact that the employee whose services have been terminated, would have been holding a post which '*eo instanti*' would become vacant as a result of the termination of his services and under Section 25-H he would have a right to be reinstated against the very post from which his services have been terminated, rendering the provision itself an absurdity. It is urged that Section 25-F is only procedural in character along with Sections 25-G and 25-H and do not prohibit the substantive right of termination but on the other hand requires that in effecting termination of employment, notice would be given and payment of money would be made and the later procedure under Sections 25-G and 25-H would follow.

75. Mr. Bobde refutes the above argument saying that Sections 25-F, 25-G and 25-H relate to retrenchment but their contents are different. Whereas Section 25-F provides for the conditions precedent for effecting a valid retrenchment, Section 25-G only provides the procedure for doing so. Section 25-H operates after a valid retrenchment and provides for re-employment in the circumstances stated therein. According to counsel, the argument is misconceived firstly for the reasons that Section 2 itself says that retrenchment will be understood as defined in Section 2(oo) unless there is anything repugnant in the subject or context; secondly Section 25-F clearly applies to retrenchment as plainly defined by Section 2(oo); thirdly Section 25-G does not incorporate in absolute terms – the principle of 'last come, first go' and provides that ordinarily last employee is to be retrenched, and fourthly Section 25-H upon its true construction should be held to be applicable when the retrenchment has occurred on the ground of the workman becoming surplus to the establishment and he has been retrenched under Sections 25-F and 25-G on the principle 'last come, first go'. Only then should he be given an opportunity to offer himself for re-employment. In substance it is submitted that there is no conflict between the definition of Section 2(oo) and the provisions of Sections 25F, 25G and 25H. We find that though there are apparent incongruities in the provisions, there is room for harmonious construction.

76. For the purpose of harmonious construction, it can be seen that the definitions contained in Section 2 are subject to there being anything repugnant in the subject or context. In view of this, it is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of Section 2 is also subject to the context and the subject matter. Section 25-F prescribes the condition precedent to a valid retrenchment of workers as discussed earlier. Very briefly, the conditions prescribed are that giving of one month's notice indicating the reasons for retrenchment and payment of wages for the period of the notice. Section 25-FF

provides for compensation to workmen in case of transfer of undertakings. Very briefly, it provides that every workman who has been in continuous service for not less than one year in an undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of Section 25-F, *as if the workman had been retrenched*". Section 25-H provides for re-employment of retrenched workmen. In brief, it provides that where any workmen are retrenched, and the employer proposes to take into his employment any person, he shall give an opportunity to the retrenched workmen to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to workman "deemed to be retrenched" a right to claim re-employment as provided in Section 25-H. In such cases, as specifically provided in the relevant sections the workmen concerned would only be entitled to notice and compensation in accordance with Section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workmen is "as if the workmen had been retrenched" and this benefit is restricted to notice and compensation in accordance with the provisions of Section 25-F.

77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by introduction of Sections 2(oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the affected workmen, perhaps for immediate tiding over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *Stat pro ratione voluntas populi*; the will of the people stands in place of a reason.

80. The definitions in Section 2 of the Act are to be taken 'unless there is anything repugnant in the subject or context'. The contextual interpretation has not been ruled out. In ***R.B.I. v. Peerless General Finance and Investment Co. Ltd.***:

Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each

phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. It is by looking at the definition as a whole in the setting of the entire Act and by reference to what preceded the enactment and the reasons for it that the court construed the expression 'Prize Chit' in *Srinivasa [Srinivasa Enterprises v. Union of India]* (1980) 4 SCC 507] and we find no reason to depart from the court's construction.

81. As we have mentioned, industrial and labour legislation involves social and labour policy. Often they are passed in conformity with the resolutions of the International Labour Organisation. In *Duport Steels v. Sirs* [(1980) 1 All ER 529], the House of Lords observed that there was a difference between applying the law and making it, and that judges ought to avoid becoming involved in controversial social issues, since this might affect their reputation in impartiality. Lord Diplock said:

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

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

* * * * *

The Workmen v. Firestone Tyre & Rubber Co.

(1976) 3 SCC 819

UNTWALIA, J.- 2. The respondent company in this appeal has its head office at Bombay. It manufactures tyres at its Bombay factory and sells the tyres and other accessories in the markets throughout the country. The company has a distribution office at Nicholson Road, Delhi. There was a strike in the Bombay factory from March 3, 1967 to May 16, 1967 and again from October 4, 1967. As a result of the strike, there was a short supply of tyres etc. to the distribution office. In the Delhi office, there were 30 employees at the relevant time. 17 workmen out of 30 were laid off by the management as per their notice dated February 3, 1968, which was to the following effect:

Management is unable to give employment to the following workmen due to much reduced production in the company's factory resulting from strike in one of the factory departments.

These workmen are, therefore, laid off in accordance with law with effect from February 5, 1968.

3. The lay-off of the 17 workmen whose names were mentioned in the notice was recalled by the management on April 22, 1968. The workmen were not given their wages or compensation for the period of lay-off. An industrial dispute was raised and referred by the Delhi Administration on April 17, 1968 even when the lay-off was in operation. The reference was in the following terms:

Whether the action of the management to 'lay off 17 workmen with effect from February 5, 1968 is illegal and/or unjustified, and if so, to what relief are these workmen entitled?

4. The Presiding Officer of the Additional Industrial Tribunal, Delhi has held that the workmen are not entitled to any lay-off compensation. Hence this is an appeal by their union.

6. The question which falls for our determination is whether the management had a right to lay off their workmen and whether the workmen are entitled to claim wages or compensation.

7. The simple dictionary meaning according to the *Concise Oxford Dictionary* of the term 'lay-off' is "period during which a workman is temporarily discharged". The term 'lay-off' has been well-known in the industrial arena. Disputes were often raised in relation to the 'lay-off' of the workmen in various industries. Sometimes compensation was awarded for the period of lay-off but many a time when the lay-off was found to be justified workmen were not found entitled to any wages or compensation. In *Gaya Cotton & Jute Mills Ltd. v. Goya Cotton & Jute Mills Labour Union* [(1952) 2 LLJ 37] the standing orders of the company provided that the company could under certain circumstances stop any machine or machines or department or departments, wholly or partially for any period or periods without notice or without compensation in lieu of notice. In such a situation for the closure of the factory for a certain period, no claim for compensation was allowed by the Labour Appellate Tribunal of India. We are aware of the distinction between a lay-off and a closure. But just to point out the history of the law we have referred to this case.

8. Then, came an amendment in the Industrial Disputes Act, 1947 - hereinafter referred to as the Act - by Act 43 of 1953. By the same Amending Act, Chapter VA was introduced in the Act to provide for lay-off and retrenchment compensation. Section 25A excluded the industrial establishments in which less than 50 workmen on an average per working day had been employed in the preceding calendar month from the application of Sections 25C to 25E. Section 25C provides for the right of laid-off workmen for compensation and broadly speaking compensation allowable is 50 per cent of the total of the basic wages and dearness allowance that would have been payable to the workman had he not been laid off. It would be noticed that the sections dealing with the matters of lay-off in Chapter VA are not applicable to certain types of industrial establishments. The respondent is one such establishment because it employed only 30 workmen at its Delhi office at the relevant time. In such a situation the question beset with difficulty of solution is whether the laid-off workmen were entitled to any compensation, if so, what?

10. The effect of the provisions aforesaid is that for the period of lay-off in an industrial establishment to which the said provisions apply, compensation will have to be paid in accordance with Section 25C. But if a workman is entitled to benefits which are more favourable to him than those provided in the Act, he shall continue to be entitled to the more favourable benefits. The rights and liabilities of employers and workmen in so far as it relate to lay-off and retrenchment, except as provided in Section 25J, have got to be determined in accordance with the provisions of Chapter VA.

11. The ticklish question which does not admit of an easy answer is as to the source of the power of management to lay off a workman. The employer has a right to terminate the services of a workman. Therefore, his power to retrench presents no difficulty as, retrenchment means the termination by the employer of the service of a workman for any reason whatsoever as mentioned in clause (oo) of Section 2 of the Act. But lay-off means the failure, refusal or inability of employer on account of contingencies mentioned in clause (kkk) to give employment to a workman whose name is borne on the muster rolls of his industrial establishment. It has been called a temporary discharge of the workman or a temporary suspension of his contract of service. Strictly speaking, it is not so. It is merely a fact of temporary unemployment of the workman in the work of the industrial establishment. Mr S. N. Andley submitted with reference to the explanation and the provisos appended to clause (kkk) that the power to lay off a workman is inherent in the definition. We do not find any words in the definition clause to indicate the conferment of any power on the employer to lay off a workman. His failure or inability to give employment by itself militates against the theory of conferment of power. The power to lay off for the failure or inability to give employment has to be searched somewhere else. No section in the Act confers this power.

12. There are two small matters which present some difficulty in the solution of the problem. In clause (i) of the explanation appended to sub-section (2) of Section 25B the words used are "he has been laid off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946, or under this Act or under any other law applicable to the industrial establishment" indicating that a workman can be laid off under the Industrial Disputes Act also. But it is strange to find that no section in Chapter VA in express language or by necessary implication confers any power, even on the

management of the industrial establishment to which the relevant provisions are applicable, to lay off a workman. This indicates that there is neither a temporary discharge of the workman nor a temporary suspension of his contract of service. Under the general law of master and servant, an employer may discharge an employee either temporarily or permanently but that cannot be without adequate notice. Mere refusal or inability to give employment to the workman when he reports for duty on one or more grounds mentioned in clause (kkk) of Section 2 is not a temporary discharge of the workman. Such a power, therefore, must be found out from the terms of contract of service or the standing orders governing the establishment. In the instant case the number of workmen being only 30, there were no standing orders certified under the Industrial Employment (Standing Orders) Act, 1946. Nor was there any term of contract of service conferring any such right of lay-off. In such a situation the conclusion seems to be inescapable that the workmen were laid off without any authority of law or the power in the management under the contract of service. In industrial establishments where there is a power in the management to lay off a workman and to which the provisions of Chapter VA apply, the question of payment of compensation will be governed and determined by the said provisions. Otherwise Chapter VA is not a complete Code as was argued on behalf of the respondent company in the matter of payment of layoff compensation. This case, therefore, goes out of Chapter VA. Ordinarily and generally the workmen would be entitled to their full wages but in a reference made under Section 10(1) of the Act, it is open to the tribunal or the court to award a lesser sum finding the justifiability of the lay-off.

13. In **Management of Hotel Imperial, New Delhi v. Hotel Workers' Union** [AIR 1959 SC 1342] in a case of suspension of a workman it was said by Wanchoo, J. as he then was, delivering the judgment on behalf of the Court at page 482:

Ordinarily, therefore, the absence of such power either as an express term in the contract or in the rules framed under some statute would mean that the master would have no power to suspend a workman and even if he does so in the sense that he forbids the employee to work, he will have to pay wages during the so-called period of suspension. Where, however, there is power to suspend either in the contract of employment or in the statute or the rules framed thereunder, the suspension has the effect of temporarily suspending the relation of master and servant with the consequence that the servant is not bound to render service and the master is not bound to pay.

14. We have referred to the suspension cases because in our opinion the principles governing the case of lay-off are very akin to those applicable to a suspension case.

15. In **Veiyra (M. A.) v. Fernanda** [AIR 1957 Bom. 100], a Bench of the Bombay High Court opined that under the general law the employer was free to dispense with the services of a workman, but under the Industrial Disputes Act he was under an obligation to lay him off; that being so, the action of lay-off by the employer could not be questioned as being ultra vires. We do not think that the view expressed by the Bombay High Court is correct.

16. There is an important decision of this Court in **Workmen of Dewan Tea Estate v. Management** [AIR 1964 SC 1458] on which reliance was placed heavily by Mr M. K.

Ramamurthi appearing for the appellant and also by Mr Andley for the respondent. One of the questions for consideration was whether Section 25C of the Act recognises the common law right of the management to declare a lay-off for reasons other than those specified in the relevant clause of the standing order. While considering this question, Gajendragadkar, J. as he then was, said at page 554:

The question which we are concerned with at this stage is whether it can be said that Section 25C recognises a common law right of the industrial employer to lay off his workmen. This question must, in our opinion, be answered in the negative. When the laying off of the workmen is referred to in Section 25C, it is the laying off as defined by Section 2(kkk) and so workmen who can claim the benefit of Section 25C must be workmen who are laid off and laid off for reasons contemplated by Section 2(kkk); that is all that Section 25C means.

Then follows a sentence which was pressed into service by the respondent. It says:

If any case is not covered by the standing orders, it will necessarily be governed by the provisions of the Act, and lay-off would be permissible only where one or the other of the factors mentioned by Section 2(kkk) is present, and for such lay-off compensation would be awarded under Section 25C.

In our opinion, in the context, the sentence aforesaid means that if the power of lay-off is there in the standing orders but the grounds of lay-off are not covered by them, rather, are governed by the provisions of the Act, then lay-off would be permissible only on one or the other of the factors mentioned in clause (kkk). Subsequent discussions at pages 558 and 559 lend ample support to the appellant's argument that there is no provision in the Act specifically providing that an employer would be entitled to lay off his workmen for the reasons prescribed by Section 2(kkk).

17. Mr Andley placed strong reliance upon the decision of this Court in *Sanghi Jeevaraj Ghewar Chand v. Secretary, Madras Chillies, Grains Kirana Merchants Workers' Union* [(1969) 1 SCC 366]. The statute under consideration in this case was the Payment of Bonus Act, 1965 and it was held that the Act was intended to be a comprehensive and exhaustive law dealing with the entire subject of bonus of the persons to whom it should apply. The Bonus Act was not to apply to certain establishments. Argument before the Court was that bonus was payable de hors the Act in such establishments also. This argument was repelled and in that connection it was observed at page 381:

It will be noticed that though the Industrial Disputes Act confers substantive rights on workmen with regard to lay-off, retrenchment compensation, etc., it does not create or confer any such statutory right as to payment of bonus. Bonus was so far the creature of industrial adjudication and was made payable by the employers under the machinery provided under that Act and other corresponding Acts enacted for investigation and settlement of disputes raised thereunder. There was, therefore, no question of Parliament having to delete or modify item 5 in the Third Schedule to Industrial Disputes Act or any such provision in any corresponding Act or its having to exclude any right to bonus thereunder by any categorical exclusion in the present case.

And finally it was held at page 385:

Considering the history of the legislation, the background and the circumstances in which the Act was enacted, the object of the Act and its scheme, it is not possible to accept the construction suggested on behalf of the respondents that the Act is not an exhaustive Act dealing comprehensively with the subject-matter of bonus in all its aspects or that Parliament still left it open to those to whom the Act does not apply by reason of its provisions either as to exclusion or exemption to raise a dispute with regard to bonus through industrial adjudication under the Industrial Disputes Act or other corresponding law.

In a case of compensation for lay-off the position, is quite distinct and different. If the term of contract of service or the statutory terms engrafted in the standing orders do not give the power of lay-off to the employer, the employer will be bound to pay compensation for the period of lay-off which ordinarily and generally would be equal to the full wages of the concerned workmen. If, however, the terms of employment confer a right of lay-off on the management, then, in the case of an industrial establishment which is governed by Chapter VA, compensation will be payable in accordance with the provisions contained therein. But compensation or no compensation will be payable in the case of an industrial establishment” to which the provisions of Chapter VA do not apply, and it will be so as per the terms of the employment.

19. In the case of the Delhi office of the respondent the tribunal has held that the lay-off was justified. It was open to the tribunal to award a lesser amount of compensation than the full wages. Instead of sending back the case to the tribunal, we direct that 75 per cent of the basic wages and dearness allowance would be paid to the workmen concerned for the period of lay-off. As we have said above, this will not cover the case of those workmen who have settled or compromised their disputes with the management.

* * * * *

U.P.State Brassware Corpn. Ltd. v. Uday Narain Pandey

(2006) 1 SCC 479

S.B. SINHA, J. - Whether direction to pay back wages consequent upon a declaration that a workman has been retrenched in violation of the provisions of Section 6-N of the U.P. Industrial Disputes Act, 1947 (equivalent to Section 25F of the Industrial Disputes Act, 1947) as a rule is in question in this appeal which arises out of a judgment and order dated 6.2.2004 passed by a Division Bench of the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 23890 of 1992 dismissing the appeal preferred by the Appellant herein arising out of a judgment and order dated 8th July, 1992.

The Appellant is an undertaking of the State of Uttar Pradesh. The Respondent herein was appointed on 23rd July, 1984 in a project known as Project Peetal Basti by the Appellant for looking after the construction of building, cement loading and unloading. He worked in the said project from 23.7.1984 till 8.1.1987. He was thereafter appointed in Non-Ferrous Rolling Mill. By an order dated 12/13.2.1987, the competent authority of the Non-Ferrous Mill of the Appellant passed the following order:

"Following two persons are hereby accorded approval for appointment in Non-Ferrous Rolling Mill on minimum daily wages for the period w.e.f. date indicated against their name till 31-3-1987.

Sl No.	Name	Date
1.	Sh. Hori Lal	7-1-1987
2.	Sh. Uday Narain Pandey	8-1-1987"

The services of the Respondent were terminated on the expiry of his tenure. An industrial dispute having been raised, the appropriate government by an order dated 14.9.1998 referred the following dispute for adjudication by the Presiding Officer, Labour Court, Uttar Pradesh:

Whether the employer's decision to terminate the Workman Sh. Uday Narain son of Pateshwari Pandey w.e.f. 1-4-87 was illegal and improper? If yes whether the concerned workman is entitled to the benefit of retrenchment and other benefit?

The Project Officer of the Appellant-Corporation appears to have granted a certificate showing the number of days on which the Respondent performed his duties.

The Labour Court in its award dated 31.10.1991 came to the finding that the Respondent worked for more than 240 days in each year of 1985-1986. It was directed:

Therefore, I reached to the decision that the employer should reinstate the concerned workman Uday Narain Pandey son of Sh. Pateshwari Pandey w.e.f. the date of retrenchment i.e. 1-4-87 and he should be paid entire backwage with any other allowances w.e.f. same date within 30 days from the date of this order together with Rs. 50/- towards cost of litigation to Sh. Uday Narain Pandey. I decide accordingly in this Industrial Dispute.

The Appellant herein filed a writ petition before the Allahabad High Court in May, 1992 which was marked as Civil Misc. Writ Petition No. 23890 of 1992 inter alia contending that as the Respondent had not rendered service continuously for a period of 240 days during the period of 12 calendar months immediately before his retrenchment uninterruptedly, he was not a workman within the meaning of Section 2(z) of the U.P. Industrial Disputes Act. It was further contended that the appointment of the Respondent was on contractual basis for a fixed tenure which came to an end automatically as stipulated in the aforementioned order dated 12/13.2.1987.

An application was filed by the Respondent herein under the Payment of Wages Act wherein an award was passed. The said order was also questioned by the Appellant by filing a writ application before the High Court and by an order dated 12.8.1993, the High Court directed it to pay a sum of rupees ten thousand to the Respondent. Pursuant to or in furtherance of the said order, the Respondent is said to have been paid wages upto February, 1996. By reason of the impugned order dated 6.2.2004, the writ petition was dismissed holding:

Having heard the learned counsel for the Petitioners and having perused the record, I am of the opinion that the aforesaid findings recorded by the Labour Court cannot be said to be perverse. The learned senior counsel then contended that the Petitioner No. 1 i.e. U.P. State Brassware Corporation Ltd. has been closed down. Be that as it may, the position of the Respondent workman would be the same as that all the similar employees and this cannot be a ground to set aside the award of the Labour Court.

Ms. Rachana Srivastava, learned counsel appearing on behalf of the Appellant would bring to our notice that the Appellant's industries have been lying closed since 26.3.1993 and in that view of the matter, the Labour Court as also the High Court committed a serious error in passing the impugned judgment. The appointment of the Respondent, the learned counsel would contend, being a contractual one for a fixed period, Section 6-N of the U.P. Industrial Disputes Act would have no application.

Relying on or on the basis of the principle of 'no work no pay', it was urged that for the period the Respondent did not work, he was not entitled to any wages and as such the grant of back wages by the Labour Court as also by the High Court is wholly illegal, particularly, in view of the fact that no statement was made in his written statement filed before the Labour Court that he was not employed with any other concern. In any event, the Respondent was also not interested in a job. In support of the aforementioned contention, reliance has been placed on *Kendriya Vidyalaya Sangathan v. S.C. Sharma* [(2005) 2 SCC 363] and *Allahabad Jal Sansthan v. Daya Shankar Rai* [(2005) 5 SCC 124].

Mr. Bharat Sangal, learned counsel appearing on behalf of the Respondent, on the other hand, would submit that Section 2 (oo)(bb) of the Industrial Disputes Act, 1947 applies to the workmen working in the State of Uttar Pradesh as there does not exist any such provision in the U.P. Industrial Disputes Act. It was conceded that in view of the fact that establishment of the Appellant was sold out on 26.3.1993, the Respondent may not be entitled to an order of reinstatement with full back wages but having regard to the fact that his services were

wrongly terminated with effect from 1.4.1987, he would be entitled to back wages for the entire period from 1.4.1987 till 26.3.1993 besides the amount of compensation as envisaged under the U.P. Industrial Disputes Act.

Payment of back wages, Mr. Sangal would urge, is automatic consequent upon a declaration that the order of termination is unsustainable for any reason whatsoever and in particular when it is found to be in violation of the provisions of Section 6-N of the U.P. Industrial Disputes Act.

It is not in dispute that the Respondent was appointed on daily wages. He on his own showing was appointed in a project work to look after the construction of building.

The construction of the building, the learned Labour Court noticed, came to an end in the year 1988. The reference by the appropriate government pursuant to an industrial dispute raised by the Respondent was made in the year 1990.

A decision had been taken to close down the establishment of the Appellant as far back on 17.11.1990 wherefor a Government Order, GO No. 395/18 Niryat-3151/90 dated 17.11.1990 was issued. In its rejoinder affidavit filed before the High Court, it was contended that the said GO was implemented substantially and all the employees including the regular employees save and except some skeleton staff for winding up were retrenched. The Non Ferrous Mill of the Appellant was sold on 26.3.1993.

The Labour Court in its impugned award has not arrived at any finding that the order of appointment dated 8.1.1987 whereby the Respondent was appointed afresh in the Non Ferrous Rolling Mill was by way of unfair labour practice. It is, however, true that the Appellant relying on or on the basis of the aforementioned order dated 12/13.2.1987 in terms whereof the Respondent's services were approved for appointment in the said mill on minimum daily wages for the period 8.1.1987 till 31.3.1987 terminated his services without giving any notice or paying salary of one month in lieu thereof. No compensation in terms of Section 6-N of the U.P. Industrial Disputes Act was also paid.

Before advertent to the decisions relied upon by the learned counsel for the parties, we may observe that although direction to pay full back wages on a declaration that the order of termination was invalid used to be the usual result but now, with the passage of time, a pragmatic view of the matter is being taken by the court realizing that an industry may not be compelled to pay to the workman for the period during which he apparently contributed little or nothing at all to it and/ or for a period that was spent unproductively as a result whereof the employer would be compelled to go back to a situation which prevailed many years ago, namely, when the workman was retrenched.

It is not disputed that the Respondent did not plead that he after his purported retrenchment was wholly unemployed.

Section 6-N of the U.P. Industrial Disputes Act provides for service of one month notice as also payment of compensation to be computed in the manner laid down therein. Proviso to clause (a) of the said provision, however, excludes the requirement of giving such notice in the event the appointment was for a fixed tenure.

Section 25B(2)(a) of the Industrial Disputes Act raises a legal fiction that if a workman has actually worked under the employer continuously for a period of more than 240 days during a period of twelve calendar months preceding the date with reference to which calculation is to be made, although he is not in continuous service, he shall be deemed to be in continuous service under an employer for a period of one year.

The Labour Court although passed its award relying on or on the basis of the certificate issued by the Appellant, it did not hold that during the preceding 12 months, namely, for the period 1st April, 1986 to 31st March, 1987 the workman had completed 240 days of service. Unfortunately, neither the Labour Court nor the High Court considered this aspect of the matter in right perspective.

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

Section 2(oo)(bb) of the Central Act as inserted by Industrial Disputes Amendment Act, 1984 is as under:

"2. Definitions- In this Act, unless there is anything repugnant in the subject or context,

(oo) 'retrenchment' means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein;"

However, a similar provision has not been enacted in the U.P. Industrial Disputes Act.

The contention of the Appellant, as noticed hereinbefore, was that the Respondent having been appointed for a fixed period was not entitled to any compensation under the provisions of Section 6-N of the U.P. Industrial Disputes Act. But, in this connection our attention has been drawn to a 2-Judge Bench decision of this Court in *Uttar Pradesh State Sugar Corporation Ltd. v. Om Prakash Upadhyay* [2002 (1) LLJ 241: (2002) 10 SCC 89] wherein it was held that in view of Section 31(1) of Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956, the provisions of Section 2(oo)(bb) of the Central Industrial Disputes Act would not be applicable. In that view of the matter, although no notice was required to be service in view of the proviso to Clause (a) of Section 6-N of the U.P. Industrial Disputes Act, compensation therefor as provided for in Clause (b) was payable. But, it is not necessary for us to go into the correctness or otherwise of the said decision as it is not disputed that before the provisions of Section 6-N of the U.P. Industrial Disputes Act can be invoked, the concerned workman must work at least for 240 days during

a period of twelve calendar months preceding the date with reference to which calculation is to be made.

However, as the question as regard termination of service of the Respondent by the Appellant is not in issue, we would proceed on the basis that the services of the Respondent were terminated in violation of Section 6-N of the U.P. Industrial Disputes Act. The primary question, as noticed by us herein before, is as to whether even in such a situation the Respondent would be entitled to the entire back wages.

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

In *Hindustan Tin Works Pvt. Ltd. v. Employees of Hindustan Tin Works Pvt. Ltd.* [(1979) 1 SCR 563], this court merely held that the relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It, therefore, does not lay down a law in absolute terms to the effect that right to claim back wages must necessarily follow an order declaring that the termination of service is invalid in law.

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

Laws proverbial delay, it was urged therein, is a matter which should be kept in view having regard to the fact situation obtaining in each case and the conduct of the parties. Such a contention was raised on the ground that the company was suffering losses. The court analysed factual matrix obtaining therein to the effect that a sum of Rs. 2,80,000/- was required to be paid by way of back wages and an offer was made by way of settlement to pay 50% of the back wages observing:

"Now, undoubtedly the appellant appears to have turned the corner. The industrial unit is looking up. It has started making profits. The workmen have already been reinstated and, therefore, they have started earning their wages. It may, however, be recalled that the appellant has still not cleared its accumulated loss. Keeping in view all the facts and circumstances of this case it would be appropriate to award 75% of the back wages to the workmen to be paid in two equal instalments."

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

In *Management of Panitole Tea Estate v. The Workmen* [(1971) 3 SCR 774], a two-judge bench of this Court while considering the question as regard grant of relief or reinstatement, observed:

The general rule of reinstatement in the absence of special circumstances was also recognised in the case of *Workmen of Assam Match Co. Ltd. v. Presiding*

Officer, Labour Court, Assam and has again been affirmed recently in *Tulsidas Paul v. Second Labour Court, W.B.* In *Tulsidas Paul* it has been emphasised that no hard and fast rule as to which circumstances would establish an exception to the general rule could be laid down and the Tribunal must in each case decide the question in a spirit of fairness and justice in keeping with the objectives of industrial adjudication.

In *Surendra Kumar Verma v. Central Government Industrial Tribunal-cum-Labour Court, New Delhi* [(1981) 1 SCR 789], this Court refused to go into the question as to whether termination of services of a workman in violation of the provisions of Section 25F is void ab initio or merely invalid or inoperative on the premise that semantic luxuries are misplaced in the interpretation of 'bread and butter' statutes. In that context, Chinnappa Reddy, J. observed:

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

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

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

The expression 'ordinarily' must be understood given its due meaning. A useful reference in this behalf may be made to a 4-Judge Bench decision of this Court in *Jasbhai Motibhai Desai v. Roshan Kumar, Haji Bashir Ahmed* [(1976) 1 SCC 671] wherein it has been held:

35. The expression “ordinarily” indicates that this is not a cast-iron rule. It is flexible enough to take in those cases where the applicant has been prejudicially affected by an act or omission of an authority, even though he has no proprietary or even a fiduciary interest in the subject-matter. That apart, in exceptional cases even a stranger or a person who was not a party to the proceedings before the authority, but has a substantial and genuine interest in the subject-matter of the proceedings will be covered by this rule. The principles enunciated in the English cases noticed above, are not inconsistent with it.

In *J.N. Srivastava v. Union of India* [(1998) 9 SCC 559] again no law has been laid down in the fact situation obtaining therein. The court held that the workmen had all along been ready and willing to work, the plea of 'no work no pay' as prayed for should not be applied.

We may notice that in *M.D., U.P. Warehousing Corpn. v. Vijay Narayan Vajpayee* [(1980) 3 SCC 459] and *Jitendra Singh Rathor v. Shri Baidyanath Ayurved Bhawan Ltd.* although an observation had been made to the effect that in a case where a breach of the provisions of Section 25-F has taken place, the workmen cannot be denied back wages to any extent, no law, which may be considered to be binding precedent has been laid down therein.

In *P.G.I. of Medical Education & Research, Chandigarh v. Raj Kumar* [(2001) 2 SCC 54], Banerjee, J., on the other hand, was of the opinion:

The learned counsel appearing for the respondents, however, placed strong reliance on a later decision of this Court in *PGI of M.E. & Research Chandigarh v. Vinod Krishan Sharma* wherein this Court directed payment of balance of 60% of the back wages to the respondent within a specified period of time. It may well be noted that the decision in Soma case has been noticed by this Court in *Vinod Sharma* case wherein this Court apropos the decision in Soma case observed: "A mere look at the said judgment shows that it was rendered in the peculiar facts and circumstances of the case. It is, therefore, obvious that the said decision which centred round its own facts cannot be a precedent in the present case which is based on its own facts." We also record our concurrence with the observations made therein. Payment of back wages having a discretionary element involved in it has to be dealt with, in the facts and circumstances of each case and no straight-jacket formula can be evolved, though, however, there is statutory sanction to direct payment of back wages in its entirety. As regards the decision of this Court in *Hindustan Tin Works (P) Ltd.* be it noted that though broad guidelines, as regards payment of back wages, have been laid down by this Court but having regard to the peculiar facts of the matter, this Court directed payment of 75% back wages only.

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

It is one thing to say that the court interprets a provision of a statute and lays down a law, but it is another thing to say that the courts although exercise plenary jurisdiction will have no discretionary power at all in the matter of moulding the relief or otherwise give any such reliefs, as the parties may be found to be entitled to in equity and justice. If that be so, the court's function as court of justice would be totally impaired. Discretionary jurisdiction in a court need not be conferred always by a statute.

Order VII, Rule 7 of the Code of Civil Procedure confers power upon the court to mould relief in a given situation. The provisions of the Code of Civil Procedure are applicable to the proceedings under the Industrial Disputes Act. Section 11-A of the Industrial Disputes Act empowers the Labour Court, Tribunal and National Tribunal to give appropriate relief in case of discharge or dismissal of workmen.

The meaning of the word 'discharge' is somewhat vague. In this case, we have noticed that one of the contentions of the Appellant was that the services of the Respondent had been terminated in terms of its order dated 12/13.2.1987 whereby and whereunder the services of the Respondent herein was approved till 31.3.1987.

The Industrial Disputes Act was principally established for the purpose of pre-empting industrial tensions, providing the mechanics of dispute-resolutions and setting up the necessary infrastructure so that the energies of partners in production may not be dissipated in counter-productive battles and assurance of industrial justice may create a climate of goodwill. [See *LIC v. D.J. Bahadur* (1981) 1 SCC 315]

Industrial Courts while adjudicating on disputes between the management and the workmen, therefore, must take such decisions which would be in consonance with the purpose the law seeks to achieve. When justice is the buzzword in the matter of adjudication under the Industrial Disputes Act, it would be wholly improper on the part of the superior courts to make them apply the cold letter of the statutes to act mechanically. Rendition of justice would bring within its purview giving a person what is due to him and not what can be given to him in law.

A person is not entitled to get something only because it would be lawful to do so. If that principle is applied, the functions of an industrial court shall lose much of its significance.

The changes brought about by the subsequent decisions of this Court probably having regard to the changes in the policy decisions of the government in the wake of prevailing market economy, globalization, privatization and outsourcing is evident.

In *Hindustan Motors Ltd. v. Tapan Kumar Bhattacharya* [(2002) 6 SCC 41], this Court noticed **Raj Kumar** and *Hindustan Tin Works* but held:

As already noted, there was no application of mind to the question of back wages by the Labour Court. There was no pleading or evidence whatsoever on the aspect whether the respondent was employed elsewhere during this long interregnum. Instead of remitting the matter to the Labour Court or the High Court for fresh consideration at this distance of time, we feel that the issue relating to payment of back wages should be settled finally. On consideration of the entire matter in the light of the observations referred to supra in the matter of awarding back wages, we are of

the view that in the context of the facts of this particular case including the vicissitudes of long-drawn litigation, it will serve the ends of justice if the respondent is paid 50% of the back wages till the date of reinstatement...

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

The said decisions were, however, distinguished in *Mohan Lal v. Management of M/s. Bharat Electronics Ltd.* [(1981) 3 SCC 225]. Desai, J. was of the opinion:

17. But there is a catena of decisions which rule that where the termination is illegal especially where there is an ineffective order of retrenchment, there is neither termination nor cessation of service and a declaration follows that the workman concerned continues to be in service with all consequential benefits. No case is made out for departure from this normally accepted approach of the courts in the field of social justice and we do not propose to depart in this case.

In *Allahabad Jal Sansthan v. Daya Shankar Rai* [(2005) 5 SCC 124], in which one of us was a party, this Court had taken into consideration most of the decisions relied upon by Mr. Sangal and observed:

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

It was further stated:

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

Yet again in *General Manager, Haryana Roadways v. Rudhan Singh* [JT 2005 (6) SC 137 : (2005) 5 SCC 591], a 3-Judge Bench of this Court in a case where the workman had worked for a short period which was less than a year and having regard to his educational qualification, etc. denied back wages although the termination of service was held to have been made in violation of Section 25F of the Industrial Disputes Act, 1947 stating:

A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment, namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors, which has to be taken into consideration, is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which requires to be taken into consideration is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily-wage employment though it may be for 240 days in a calendar year.

The only question is whether the Respondent would be entitled to back wages from the date of his termination of service till the aforementioned date. The decision to close down the establishment by the State of Uttar Pradesh like other public sector organizations had been taken as far back on 17.11.1990 where for a GO had been issued. It had further been averred, which has been noticed hereinbefore, that the said GO has substantially been implemented. In this view of the matter, we are of the opinion that interest of justice would be subserved if the back wages payable to the Respondent for the period 1.4.1987 to 26.3.1993 is confined to 25% of the total back wages payable during the said period.

The judgments and orders of the Labour Court and the High Court are set aside and it is directed that the Respondent herein shall be entitled to 25% back wages of the total back wages payable during the aforesaid period and compensation payable in terms of Section 6-N of the U.P. Industrial Disputes Act. If, however, any sum has been paid by the Appellant herein, the same shall be adjusted from the amount payable in terms of this judgment.

For the reasons aforementioned, the appeal is allowed in part and to the extent mentioned hereinbefore. However, there shall be no order as to costs.

* * * * *

Deepali Gundu Surwase v. Kranti Junior Adhyapak & Ors

(2013) 10 SCC 324

G.S. SINGHVI, J. - The question which arises for consideration in this appeal filed against order dated 28.9.2011 passed by the learned Single Judge of the Bombay High Court, Aurangabad Bench is whether the appellant is entitled to wages for the period during which she was forcibly kept out of service by the management of the school.

3. The appellant was appointed as a teacher in Nandanvan Vidya Mandir (Primary School) run by a trust established and controlled by Bagade family. The grant in aid given by the State Government, which included rent for the building was received by Bagade family because the premises belonged to one of its members, namely, Shri Dulichand. In 2005, the Municipal Corporation of Aurangabad raised a tax bill of Rs.79,974/- by treating the property as commercial. Thereupon, the Headmistress of the school, who was also President of the Trust, addressed a letter to all the employees including the appellant requiring them to contribute a sum of Rs.1500/- per month towards the tax liability. The appellant refused to comply with the dictate of the Headmistress. Annoyed by this, the management issued as many as 25 memos to the appellant and then placed her under suspension vide letter dated 14.11.2006. She submitted reply to each and every memorandum and denied the allegations. Education Officer (Primary) Zilla Parishad, Aurangabad did not approve the appellant's suspension. However, the letter of suspension was not revoked. She was not even paid subsistence allowance in terms of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short, 'the Rules') framed under Section 16 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short, 'the Act').

4. Writ Petition No.8404 of 2006 filed by the appellant questioning her suspension was disposed of by the Division Bench of the Bombay High Court vide order dated 21.3.2007 and it was declared that the appellant will be deemed to have rejoined her duties from 14.3.2007 and entitled to consequential benefits in terms of Rule 37(2)(f) of the Rules and that the payment of arrears shall be the liability of the management. Paragraphs 4 and 5 of that order read as under:

“4. Considering the order we intend passing it is not necessary for us to deal with the rival contentions of the parties. That will be for the Inquiry Committee to decide. In view of the apprehensions expressed regarding the inquiry being dragged on unnecessarily, it is necessary to safeguard the interests of the petitioner as well.

5. In the circumstances, Rule is made absolute in the following terms.

i) The Inquiry Committee shall conclude the proceedings and pass a final order on or before 31.5.2007.

ii) The petitioner shall be at liberty to have her case represented by Smt.Sulbha Panditrao Munde.

iii) The petitioner/her representative shall appear, in the first instance, before the Inquiry Committee at 11 a.m. on 26.3.2007 and, thereafter, as directed by the Inquiry Committee.

iv) The petitioner is entitled to the benefit of Rule 37 (2)

(f) of Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, as specified in paragraph 11 of the order and judgment of the Division Bench in the case of Hamid Khan Nayyar s/o Habib Khan v. Education Officer, Amravati and others (supra). The petitioner shall be deemed to have rejoined the duties from 14.3.2007 and entitled to consequential benefits that would flow out of Rule 37 (2)

(f). The payment of arrears shall be the liability of the management.”

5. In the meanwhile, the management issued notice dated 28.12.2006 for holding an inquiry against the appellant under Rules 36 and 37 of the Rules. The appellant nominated Smt. Sulbha Panditrao Munde to appear before the Inquiry Committee, but Smt. Munde was not allowed to participate in the inquiry proceedings. The Inquiry Committee conducted ex parte proceedings and the management terminated the appellant's service vide order dated 15.6.2007.

6. The appellant challenged the aforesaid order under Section 9 of the Act. In the appeal filed by her on 25.6.2007, the appellant pleaded that the action taken by the management was arbitrary and violative of the principles of natural justice. She further pleaded that the sole object of the inquiry was to teach her a lesson for refusing to comply with the illegal demand of the management.

7. The management contested the appeal and pleaded that the action taken by it was legal and justified because the appellant had been found guilty of misconduct. It was further pleaded that the inquiry was held in consonance with the relevant rules and the principles of natural justice.

8. By an order dated 20.6.2009, the Presiding Officer of the School Tribunal, Aurangabad Division (for short, 'the Tribunal') allowed the appeal and quashed the termination of the appellant's service. He also directed the management to pay full back wages to the appellant. The Tribunal considered the appellant's plea that she had not been given reasonable opportunity of hearing and observed:

“Now let us test for what purpose and for what subject inquiry was initiated in what manner inquiry was conducted, which witnesses have been examined and how injury was conclude. I have already demonstrate above that starting point against this appellant is calling upon staff members collection of fund for payment for tax dues page 54 of appeal memo. All the staff members have objected this joining hands together page 58 of appeal. Fact finding committee have submitted its report Exhibit

62. Report of Education Officer (Primary) in regard to the proposal of appointment of Administrator page 71. If we see issuance of memo by Head Mistress, I observe that language which is used to revengeful against this appellant. It seems that attitude towards this appellant

was of indecent and I also observed that behaviour of the appellant have also instigated Head Mistress for the same. Language is of law standard use in the letter by imputing defamed language and humiliation to the appellant.

If we see memos, we can find that some memos are of silly count i.e. late for 3 minutes page 95, query about the examination page 93 to which appellant have replied that when no examinations were held where is the question of getting inquiry by the parents page 96. In regard to the memo, in regard to the black dress on 15.08.2005 and 06.12.2005 and about issuance of show cause notice for issuing false affidavit page 143.

We can find attitude of this Head Master towards appellant. Three minute late is very silly ground query about examination which was not at all held, wearing of black dress during course of argument there was argument on photograph, however, no such photograph is submitted on record. In this regard during course of argument, it was brought to my notice that on 15.08.2005 this appellant have wore black colour blouse, however, she had wore white sari on her person. First thing is that there is no such rule about so called colour that it is bogus colour or this colour is being used for protesting or otherwise. How and why Head Mistress and Management have made issue of this black colour blouse I cannot understand. I have gone through the whole record but I do not find any circular issued by Head Mistress by which all the staff members have been called upon to come in dress for this function. So in the absence of such circular, how it can be an issue of inquiry.

Another aspect is that one of the staff Vijay Gedam have lodged appeal before this Tribunal in favour of him, this appellant and one another staff teacher have swear affidavit. I do not find how this issue can be a subject of inquiry that appellant have swear false affidavit. Is Head Mistress having authority to say that this appellant have swear false affidavit. Here I find 5 to 6 staff members have supported this appellant, at the same time some teachers have also come forward this Head Mistress. They were in dilemma to whom they may favour. So over all attitude of this Head Mistress against this appellant is revengeful with ulterior motive to drag this appellant in inquiry proceeding.

I gone through the statement recorded of the witnesses. I find that all the statements are general in nature and it is repetition of statement of first witness Surajkumar Khobragade. Nobody has made statement specifically with date and incident. The deposition is a general statement which is already in memos which have been issue by the Head Mistress to the appellant.

More important in this regard that no cross examination of witnesses by the appellant. In the statement of witnesses, I do not find any endorsement that appellant was absent or appellant is present, she declined to cross examine or otherwise. These statements have been concluded that witnesses have stated before inquiry committee, that is all. If we read first statement of first witnesses we can find carry forward of the statement for other witnesses by some minor change in the statement.

One crucial aspect in regard to the proceeding is that this Head Mistress who had issued more than 25 bulky memos against this appellant and on whose complaint or grievances this inquiry was initiate, have not been examined by the inquiry committee. I am surprised that why such a key witness is not examined. In reply this appellant have put her grievances against Head Mistress. By taking advantage of this Chief Executive Officer of the inquiry i.e.

Sonia Bagale called upon written explanation from Head Mistress to cover up complaint and grievances of the appellant.

It is on 21.05.2007, page 777, 778 and 781 by this explanation again one issues have been brought which were not subject matter of the chargesheet. So it is serious lacuna in this inquiry proceeding that witnesses Head Mistress have not been examined.” The Tribunal then adverted to the charges levelled against the appellant and held:

“It is also demonstrated in the course of argument that permission was not granted as per letter dated 22.11.2006 of Education Officer. So naturally suspension of this appellant was in question. It is another aspect that on persuasion appellant have been paid subsistence allowance. However, remaining subsistence allowance till today is not paid to the appellant. So it can be another ground for vitiating inquiry.

204(1)Mh. L.J. page 676 in case of Awdhesh Narayan K. Singh vs. Adarsh Vidya Mandir Trust and another, (a) Maharashtra Employees of Private Schools (Conditions of Service) Rules 1981, R.R. 35 and 33- Failure to obtain prior permission of Authority under Rule 33(1) before suspending an employee does not affect the action of suspension pending inquiry- If prior permission is obtained, Rule 35(3) is attracted and the suspended employee is entitled for subsistence allowance under the scheme of payment through Cooperative Banks for a period of four months after which period the payment is to be made by the Management. If an employee is suspended without obtaining prior approval of the Education Authority, payment of subsistence allowance for entire period has to be made by the Management. So if considered all these aspects, we can find that appeal deserves to be allowed by quashing inquiry held against appellant.” The Tribunal finally took cognizance of the fact that the appellant was kept under suspension from 14.11.2006 and she was not gainfully employed after the termination of her service and declared that she is entitled to full back wages. The operative portion of the order passed by the Tribunal reads as under:

- “1) Appeal is allowed.
- 2) The termination order dated 15.06.2007 issued by Respondent on the basis of inquiry report is hereby quashed and set aside.
- 3) The appellant is hereby reinstated on her original post and Respondents are directed to reinstate the appellant in her original post as Asst. Teacher Nandanvan Vidyamandir (Primary School), Aurangabad with full back wages from the date of termination till date of reinstatement.
- 4) The Respondent Nos.1 to 3 are hereby directed to deposit full back wages i.e. pay and allowances of the appellant from the date of her termination till the date of her reinstatement in the service, within 45 days in this Tribunal from the date of this order.

5) The appellant will be entitled to withdraw the above amounts from this Tribunal immediately after it is deposited.”

9. The management challenged the order of the Tribunal in Writ Petition No. 10032 of 2010. The learned Single Judge examined the issues raised by the management in detail and expressed his agreement with the Tribunal that the decision of the management to suspend the appellant and to terminate her service were vitiated due to violation of the statutory provisions and the principles of natural justice. While commenting upon the appellant’s suspension, the learned Single Judge observed:

“It has also come on record that the appellant was suspended by suspension letter dated 14.11.2006. The appellant made representation to the Education Officer. The Education Officer refused to approve suspension of the appellant as per his letter dated 22.11.2006. From careful perusal of the material brought on record, I do not find that, there arose extraordinary situation to suspend services of the appellant without taking prior approval of the Education Officer, as contemplated under Rules. No doubt, the Management can suspend services of an employee without prior approval of the Education Officer, but for that there should be extraordinary situation. However, in the facts of this case, nothing is brought on record to suggest that there was extraordinary situation existing so as to take emergent steps to suspend services of the appellant without taking prior approval of the Education Officer (Primary), Zilla Parishad, Aurangabad. It is also not in dispute that the Education Officer declined to approve suspension of the appellant as per his letter dated 22.11.2006.

Therefore, taking into consideration facts involved in the present case, conclusion is reached by the School Tribunal that the Management of the petitioner-school/Institution is dominated by the members of Bagade family.” The learned Single Judge then considered the finding recorded by the Tribunal that the Inquiry Committee was not validly constituted and observed:

“In the present case, admittedly petitioners herein did not file any application or made prayer for reconstituting the inquiry committee and to proceed further for inquiry by newly reconstituted committee. On the contrary, from reading the reply filed by the petitioners herein before the School Tribunal, it is abundantly clear that the petitioners went on justifying constitution of the Committee and stating in the reply that no fault can be attributed with the constitution of the Committee. Therefore, in absence of such prayer, the School Tribunal proceeded further and dealt with all the charges which were levelled against the appellant i.e. Respondent No.3 herein. Therefore, in my opinion, further adjudication by the Tribunal on merits of the matter cannot be said to be beyond jurisdiction or powers of the School Tribunal. In the facts of this case, as it is apparent from the findings recorded by the School Tribunal, that as the case in hand is a case of victimization and petitioner Management as well as the Inquiry Committee having joined hands against the delinquent right from the beginning, no premium can be put over the action of the petitioner-Management and Inquiry

Committee who threw the principles of natural justice in the air. It would be a travesty of justice, in these circumstances, to allow the petitioner-

Management to once again hold inquiry in such a extreme case.” However, the learned Single Judge set aside the direction given by the School Tribunal for payment of back wages by relying upon the judgments in *J.K. Synthetics Ltd. v. K. P. Agrawal and another* (2007) 2 SCC 433 and *Zilla Parishad, Gadchiroli and another v. Prakash s/o Nagorao Thete and another* 2009 (4) Mh. L. J. 628. The observations made by the learned Single Judge on this issue are extracted below:

“Bare perusal of above reproduced para 40 of the judgment of the School Tribunal would make it abundantly clear that, the advocate for the appellant, in the course of arguments, argued that the appellant was kept under suspension from 14.11.2006 till the appeal is finally heard. It was argued that the appellant was not gainfully employed anywhere during the period of suspension and termination and therefore, she is entitled to back wages from the date of her suspension. The Tribunal has observed that no rebuttal argument by other side. Therefore, it appears that, the School Tribunal has considered only oral submissions of the Counsel appearing for the appellant, in the absence of any specific pleadings, prayers and evidence for payment of back wages. There was no application or pleadings before the School Tribunal on oath by the appellant stating that she was not gainfully employed from the date of suspension till reinstatement. Therefore, in my considered opinion, finding recorded by the Tribunal in clauses 3 to 5 of the operative order, in respect of payment of back wages, cannot be sustained, in the light of law laid down by this Court and Honourable Supreme Court in respect of payment of back wages.”

10. Learned counsel for the appellant relied upon the judgments of this Court in *Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited* (1979) 2 SCC 80, *Surendra Kumar Verma v. Central Government Industrial Tribunal-cum-Labour Court, New Delhi* (1980) 4 SCC 443, *Mohan Lal v. Management of Bharat Electronics Limited* (1981) 3 SCC 225, *Workmen of Calcutta Dock Labour Board and another v. Employers in relation to Calcutta Dock Labour Board and others* (1974) 3 SCC 216 and argued that the impugned order is liable to be set aside because while the appellant had pleaded that she was not gainfully employed, no evidence was produced by the management to prove the contrary. Learned counsel submitted that the order passed by the Tribunal was in consonance with the provisions of the Act and the Rules and the High Court committed serious error by setting aside the direction given by the Tribunal to the management to pay back wages to the appellant on the specious ground that she had not led evidence to prove her non-employment during the period she was kept away from the job. He emphasized that in view of the embargo contained in Rule 33(3), the appellant had not taken up any other employment and argued that she could not have been deprived of full pay and allowances for the entire period during which she was forcibly kept out of job.

11. Learned counsel for the respondent supported the impugned order and argued that the High Court did not commit any error by setting aside the direction given by the Tribunal for payment of back wages to the appellant because she had neither pleaded nor any evidence was produced that during the period of suspension and thereafter she was not employed elsewhere. Learned counsel relied upon the judgments in *M.P. State Electricity Board v. Jarina Bee* (2003) 6 SCC 141, *Kendriya Vidyalaya Sangathan v. S.C. Sharma* (2005) 2 SCC 363, *U.P. State Brassware Corporation Ltd. v. Uday Narain Pandey* (2006) 1 SCC 479, *J. K. Synthetics Ltd. v. K.P. Agrawal and another* (supra), *The Depot Manager, A.P.S.R.T.C. v. P. Jayaram Reddy* (2009) 2 SCC 681, *Novartis India Ltd. v. State of West Bengal and others* (2009) 3 SCC 124, *Metropolitan Transport Corporation v. V. Venkatesan* (2009) 9 SCC 601 and *Jagbir Singh v. Haryana State Agriculture Marketing Board and another* (2009) 15 SCC 327 and argued that the rule of reinstatement with back wages propounded in 1960's and 70's has been considerably diluted and the Courts/Tribunal cannot ordain payment of back wages as a matter of course in each and every case of wrongful termination of service. Learned counsel submitted that even if the Court/Tribunal finds that the termination, dismissal or discharge of an employee is contrary to law or is vitiated due to violation of the principles of natural justice, an order for payment of back wages cannot be issued unless the employee concerned not only pleads, but also proves that he/she was not employed gainfully during the intervening period.

12. We have considered the respective arguments. The Act was enacted by the legislature to regulate the recruitment and conditions of service of employees in certain private schools in the State and to instill a sense of security among such employees so that they may fearlessly discharge their duties towards the pupil, the institution and the society. Another object of the Act is to ensure that the employees become accountable to the management and contribute their might for improving the standard of education. Section 2 of the Act contains definitions of various words and terms appearing in other sections. Section 8 provides for constitution of one or more Tribunals to be called "School Tribunal" and also defines the jurisdiction of each Tribunal. Section 9(1) contains a non obstante clause and provides for an appeal by any employee of a private school against his/her dismissal or removal from service or whose services are otherwise terminated or who is reduced in rank. The employee, who is superseded in the matter of promotion is also entitled to file an appeal. Section 10 enumerates general powers and procedure of the Tribunal and Section 11 empowers the Tribunal to give appropriate relief and direction. Section 12 also contains a non obstante clause and makes the decision of the Tribunal final and binding on the employee and the management. Of course, this is subject to the power of judicial review vested in the High Court and this Court. Section 16(1) empowers the State Government to make rules for carrying out the purposes of the Act. Section 16(2) specifies the particular matters on which the State Government can make rules. These include Code of Conduct and disciplinary matters and the manner of conducting inquiries.

13. Rule 35 of the Rules empower the management to suspend an employee with the prior approval of the competent authority. The exercise of this power is hedged with the condition that the period of suspension shall not exceed four months without prior permission of the

concerned authority. The suspended employee is entitled to subsistence allowance under the scheme of payment (Rule 34) through Co-operative Bank for a period of four months. If the period of suspension exceeds four months, then subsistence allowance has to be paid by the management. In case, the management suspends an employee without obtaining prior approval of the competent authority, then it has to pay the subsistence allowance till the completion of inquiry. A suspended employee can be denied subsistence allowance only in the contingencies enumerated in clauses (3) and (4) of Rule 33, i.e., when he takes up private employment or leaves headquarter without prior approval of the Chief Executive Officer.

14. For the sake of reference, Sections 2(7), 9, 10, 11 and 16 of the Act are reproduced below:

“2(7) “Employee,” means any member of the teaching and non teaching staff of a recognized school and includes Shikshan Sevak;

9. Right of appeal to Tribunal to employees of a private school. (1) Notwithstanding anything contained in any law or contract for the time being in force, any employee in a private school,-

(a) who is dismissed or removed or whose services are otherwise terminated or who is reduced in rank, by the order passed by the Management; or

(b) who is superseded by the Management while making an appointment to any post by promotion;

and who is aggrieved, shall have a right to appeal and may appeal against any such order or supersession to the Tribunal constituted under section 8.

Provided that, no such appeal shall lie to the Tribunal in any case where the matter has already been decided by a Court of competent jurisdiction or is pending before such Court, on the appointed date or where the order of dismissal, removal, otherwise termination of service or reduction in rank was passed by the Management at any time before the 1st July, 1976.

(2) to (4) xxxx xxxx xxxx

10. General Powers and procedure of Tribunal.

(1) For the purpose of admission, hearing and disposal of appeals, the Tribunal shall have the same powers as are vested in an Appellate Court under the Code of Civil Procedure, 1908, and shall have the power to stay the operation of any order against which an appeal is made on such conditions as it may think fit to impose and such other powers as are conferred on it by or under this Act.

(2) The Presiding Officer of the Tribunal shall decide the procedure to be followed by the Tribunal for the disposal of its business including the place or places at which and the hours during which it shall hold its sitting.

(3) xxxx xxxx xxxx

11. Powers of Tribunal to give appropriate relief and direction.

(1) On receipt of an appeal, where the Tribunal, after giving reasonable opportunity to both parties of being heard, is satisfied that the appeal does not pertain to any of the matters specified in section 9 or is not maintainable by it, or there is no sufficient ground for interfering with the order of the Management it may dismiss the appeal.

(2) Where the Tribunal, after giving reasonable opportunity to both parties of being heard, decides in any appeal that the order of dismissal, removal, otherwise termination of service or

reduction in rank was in contravention of any law (including any rules made under this Act), contract or conditions of service for the time being in force or was otherwise illegal or improper, the Tribunal may set aside the order of the Management, partially or wholly, and direct the Management,-

- (a) to reinstate the employee on the same post or on a lower post as it may specify;
- (b) to restore the employee to the rank which he held before reduction or to any lower rank as it may specify;
- (c) to give arrears of emoluments to the employee for such period as it may specify;
- (d) to award such lesser punishment as it may specify in lieu of dismissal, removal, otherwise termination of service or reduction in rank, as the case may be;
- (e) where it is decided not to reinstate the employee or in any other appropriate case, to give to the employee twelve months' salary (pay and allowances, if any) if he has been in the services of the school for ten years or more and six months salary (pay and allowances, if any) if he has been in service of the school for less than ten year, by way or compensation, regard being had to loss of employment and possibility of getting or not getting suitable employment thereunder, as it may specify; or
- (f) to give such other relief to the employee and to observe such other conditions as it may specify, having regard to the circumstances of the case.

(3) It shall be lawful for the Tribunal to recommend to State Government that any dues directed by it to be paid to the employee, or in case of an order to reinstate the employee an emoluments to be paid to the employee till he is reinstated, may be deducted from the grant due and payable, or that may become due and payable in future, to the Management and be paid to the employee directly.

(4) Any direction issued by the Tribunal under sub-section (2) shall be communicated to both parties in writing and shall be complied by the Management within the period specified in the direction, which shall not be less than thirty days from the date of its receipt by the Management.

16. Rules.

(1) The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

- (e) the duties of such employees and Code of Conduct and disciplinary matters;
- (f) the manner of conducting enquiries;

15. Rules 33 (1) to (4), 34(1), (2) and 35, which have bearing on the decision of this appeal read as under:

“33. Procedure for inflicting major penalties. (1) If an employee is alleged to be guilty of any of the grounds specified in sub-rule (5) of rule 28 and if there is reason to believe that in the event of the guilt being proved against him, he is likely to be reduced in rank or removed from service, the Management shall first decide whether to hold an inquiry and also to place the employees under suspension and if it decides to suspend the employee, it shall authorise the Chief Executive Officer to do so after obtaining the permission of the Education Officer or, in the case of the Junior College of Educational and Technical High Schools, of the Deputy Director. Suspension shall not be ordered unless there is a prima facie case for his removal or there is reason to believe that his continuance in active service is likely to cause embarrassment or to hamper the investigation of the case. If the Management decides to

suspend the employee, such employee shall, subject to the provisions of sub-rule (5) stand suspended with effect from the date of such orders.

(2) If the employee tenders resignation while under suspension and during the pendency of the inquiry such resignation shall not be accepted.

(3) An employee under suspension shall not accept any private employment.

(4) The employee under suspension shall not leave the headquarters during the period of suspension without the prior approval of the Chief Executive Officer. If such employee is the Head and also the Chief Executive Officer, he shall obtain the necessary prior approval of the President.

34. Payment of subsistence allowance.

(1) (a) A subsistence allowance at an amount equal to the leave salary which the employee would have drawn if he had been on leave on half pay and in addition, Dearness allowance based on such leave salary shall be payable to the employee under suspension.

(b) Where the period of suspension exceeds 4 months, the authority which made or is deemed to have made the order of suspension shall be competent to vary the amount of subsistence allowance for any period subsequent to the period of the first 4 months as follows, namely :-

(i) The amount of subsistence allowance may be increased by a suitable amount not exceeding 50 per cent of the subsistence allowance admissible during the period of first 4 months, if in the opinion of the said authority, the period of suspension has been prolonged for reasons, to be recorded in writing, not directly attributable to the employee.

(ii) The amount of subsistence allowance may be reduced by a suitable amount, not exceeding 50 per cent of the subsistence allowance admissible during the period of the first 4 months, if in the opinion of the said authority the period of suspension has been prolonged due to reasons, to be recorded in writing directly attributable to the employee.

(iii) The rate of Dearness allowance shall be based on the increased or on the Decreased amount of subsistence allowance, as the case may be, admissible under sub-clauses (i) and (ii).

(2) Other compensatory allowances, if any, of which the employee was in receipt on the date of suspension shall also be payable to the employee under suspension to such extent and subject to such conditions as the authority suspending the employee may direct:

Provided that the employee shall not be entitled to the compensatory allowances unless the said authority is satisfied that the employee continues to meet the expenditure for which such allowances are granted:

Provided further that, when an employee is convicted by a competent court and sentenced to imprisonment, the subsistence allowance shall be reduced to a nominal amount of rupee one per month with effect from the date of such conviction and he shall continue to draw the same till the date of his removal or reinstatement by the competent authority :

Provided also that, if an employee is acquitted by the appellate court and no further appeal or a revision application to a higher court is preferred and pending, he shall draw the subsistence allowance at the normal rate from the date of acquittal by the appellate court till the termination of the inquiry if any, initiated under these rules :

Provided also that, in cases falling under sub-rules (1) and (2) above, where the management refuses to pay or fails to start and continue payment of subsistence allowance and other compensatory allowances, if any, to an employee under suspension, payment of the same

shall be made by the Education Officer or Deputy Director, as the case may be, who shall deduct an equal amount from the non-salary grant that may be due and payable or may become due and payable to the school.

35. Conditions of suspension.

(1) In cases where the Management desires to suspend an employee, he shall be suspended only with the prior approval of the appropriate authority mentioned in rule 33.

(2) The period of suspension shall not exceed four months except with the prior permission of such appropriate authority.

(3) In case where the employee is suspended with prior approval he shall be paid subsistence allowance under the scheme of payment through Co-operative Banks for a period of four months only and thereafter, the payment shall be made by the Management concerned.

(4) In case where the employee is suspended by the Management without obtaining prior approval of the appropriate authority as aforesaid, the payment of subsistence allowance even during the first four months of suspension and for further period thereafter till the completion of inquiry shall be made by the Management itself.

(5) The subsistence allowance shall not be withheld except in cases of breach of provisions of sub-rules (3) or (4) of rule 33.”

16. The word “reinstatement” has not been defined in the Act and the Rules. As per Shorter Oxford English Dictionary, Vol.II, 3rd Edition, the word “reinstatement” means to reinstall or re-establish (a person or thing in a place, station, condition, etc.); to restore to its proper or original state; to reinstate afresh and the word “reinstatement” means the action of reinstating; re-establishment. As per Law Lexicon, 2nd Edition, the word “reinstatement” means to reinstall; to re-establish; to place again in a former state, condition or office; to restore to a state or position from which the object or person had been removed and the word “reinstatement” means establishing in former condition, position or authority (as) reinstatement of a deposed prince. As per Merriam Webster Dictionary, the word “reinstatement” means to place again (as in possession or in a former position), to restore to a previous effective state. As per Black’s Law Dictionary, 6th Edition, “reinstatement” means ‘to reinstall, to re-

establish, to place again in a former state, condition, or office? To restore to a state or position from which the object or person had been removed.’

17. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer employee relationship, the latter’s source of income gets dried up. Not only the concerned employee, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer.

The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi judicial body or Court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. Denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments.

18. A somewhat similar issue was considered by a three Judge Bench in *Hindustan Tin Works Pvt. Ltd. v. Employees of Hindustan Tin Works Pvt. Ltd.* (supra) in the context of termination of services of 56 employees by way of retrenchment due to alleged non-availability of the raw material necessary for utilization of full installed capacity by the petitioner. The dispute raised by the employees resulted in award of reinstatement with full back wages. This Court examined the issue at length and held:

“It is no more open to debate that in the field of industrial jurisprudence a declaration can be given that the termination of service is bad and the workman continues to be in service. The spectre of common law doctrine that contract of personal service cannot be specifically enforced or the doctrine of mitigation of damages does not haunt in this branch of law. The relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the employer is found to be in the wrong as a result of which the workman is directed to be reinstated, the employer could not shirk his responsibility of paying the wages which the workman has been deprived of by the illegal or invalid action of the employer. Speaking realistically, where termination of service is questioned as invalid or illegal and the workman has to go through the gamut of litigation, his capacity to sustain himself throughout the protracted litigation is itself such an awesome factor that he may not survive to see the day when relief is granted. More so in our system where the law’s proverbial delay has become stupefying. If after such a protracted time and energy consuming litigation during which period the workman just sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied the back wages which would be due to him, the workman would be subjected to a sort of penalty for no fault of his and it is wholly undeserved. Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be a premium on the unwarranted litigative activity of the employer. If the employer terminates the service illegally and the termination is motivated as in this case viz. to resist the workmen’s demand for revision of wages, the termination may well amount to unfair labour practice. In such circumstances reinstatement being the normal rule, it should be followed with full back wages. Articles 41 and 43 of the Constitution would assist us in reaching a just conclusion in

this respect. By a suitable legislation, to wit, the U.P. Industrial Disputes Act, 1947, the State has endeavoured to secure work to the workmen. In breach of the statutory obligation the services were terminated and the termination is found to be invalid; the workmen though willing to do the assigned work and earn their livelihood, were kept away therefrom. On top of it they were forced to litigation up to the Apex Court now they are being told that something less than full back wages should be awarded to them. If the services were not terminated the workmen ordinarily would have continued to work and would have earned their wages. When it was held that the termination of services was neither proper nor justified, it would not only show that the workmen were always willing to serve but if they rendered service they would legitimately be entitled to the wages for the same. If the workmen were always ready to work but they were kept away therefrom on account of an invalid act of the employer, there is no justification for not awarding them full back wages which were very legitimately due to them.

In the very nature of things there cannot be a strait-jacket formula for awarding relief of back wages. All relevant considerations will enter the verdict. More or less, it would be a motion addressed to the discretion of the Tribunal. Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure. At that stage the Tribunal will exercise its discretion keeping in view all the relevant circumstances. But the discretion must be exercised in a judicial and judicious manner. The reason for exercising discretion must be cogent and convincing and must appear on the face of the record. When it is said that something is to be done within the discretion of the authority, that something is to be done according to the Rules of reason and justice, according to law and not humour. It is not to be arbitrary, vague and fanciful but legal and regular.” (emphasis supplied) After enunciating the above-noted principles, this Court took cognizance of the appellant’s plea that the company is suffering loss and, therefore, the workmen should make some sacrifice and modified the award of full back wages by directing that the workmen shall be entitled to 75 % of the back wages.

19. Another three Judge Bench considered the same issue in *Surendra Kumar Verma v. Central Government Industrial Tribunal-cum-Labour Court, New Delhi* (supra) and observed:

“Plain common sense dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen. It is as if the order has never been, and so it must ordinarily lead to back wages too. But there may be exceptional circumstances which make it impossible or wholly inequitable vis-à-vis the employer and workmen to direct reinstatement with full back wages. For instance, the industry might have closed down or might be in severe financial doldrums; the workmen concerned might have secured better or other employment elsewhere and so on. In such situations, there is a vestige of discretion left in the court to make appropriate consequential orders. The court may deny the relief of reinstatement where reinstatement is impossible because the industry has closed down. The court may deny the relief of award of full back wages where that would place an impossible burden on the employer. In such and other exceptional cases the court may mould the relief, but, ordinarily the relief to be awarded must

be reinstatement with full back wages. That relief must be awarded where no special impediment in the way of awarding the relief is clearly shown. True, occasional hardship may be caused to an employer but we must remember that, more often than not, comparatively far greater hardship is certain to be caused to the workmen if the relief is denied than to the employer if the relief is granted.” (emphasis supplied)

20. The principle laid down in *Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited* (supra) was reiterated in *P.G.I. of Medical Education & Research, Chandigarh v. Raj Kumar* (2001) 2 SCC 54. That case makes an interesting reading. The respondent had worked as helper for 11 months and 18 days. The termination of his service was declared by Labour Court, Chandigarh as retrenchment and was invalidated on the ground of non-compliance of Section 25-F of the Industrial Disputes Act, 1947. As a corollary, the Labour Court held that the respondent was entitled to reinstatement with continuity of service. However, only 60% back wages were awarded. The learned Single Judge of the Punjab and Haryana High Court did not find any error apparent in the award of the Labour Court but ordered payment of full back wages. The two Judge Bench of this Court noted the guiding principle laid down in the case of *Hindustan Tin Works Private Limited* and observed:

“While it is true that in the event of failure in compliance with Section 25-F read with Section 25(b) of the Industrial Disputes Act, 1947 in the normal course of events the Tribunal is supposed to award the back wages in its entirety but the discretion is left with the Tribunal in the matter of grant of back wages and it is this discretion, which in *Hindustan Tin Works (P) Ltd.* case this Court has stated must be exercised in a judicial and judicious manner depending upon the facts and circumstances of each case. While, however, recording the guiding principle for the grant of relief of back wages this Court in *Hindustan* case, itself reduced the back wages to 75%, the reason being the contextual facts and circumstances of the case under consideration.

The Labour Court being the final court of facts came to a conclusion that payment of 60% wages would comply with the requirement of law. The finding of perversity or being erroneous or not in accordance with law shall have to be recorded with reasons in order to assail the finding of the Tribunal or the Labour Court. It is not for the High Court to go into the factual aspects of the matter and there is an existing limitation on the High Court to that effect. In the event, however the finding of fact is based on any misappreciation of evidence, that would be deemed to be an error of law which can be corrected by a writ of certiorari. The law is well settled to the effect that finding of the Labour Court cannot be challenged in a proceeding in a writ of certiorari on the ground that the relevant and material evidence adduced before the Labour Court was insufficient or inadequate though, however, perversity of the order would warrant intervention of the High Court. The observation, as above, stands well settled since the decision of this Court in *Syed Yakoob v. K.S. Radhakrishnan* AIR 1964 SC 477.

Payment of back wages having a discretionary element involved in it has to be dealt with, in the facts and circumstances of each case and no straight-jacket formula can be evolved, though, however, there is statutory sanction to direct payment of back wages in its entirety.

As regards the decision of this Court in Hindustan Tin Works (P) Ltd. be it noted that though broad guidelines, as regards payment of back wages, have been laid down by this Court but having regard to the peculiar facts of the matter, this Court directed payment of 75% back wages only.

The issue as raised in the matter of back wages has been dealt with by the Labour Court in the manner as above having regard to the facts and circumstances of the matter in the issue, upon exercise of its discretion and obviously in a manner which cannot but be judicious in nature. In the event, however, the High Court's interference is sought for, there exists an obligation on the part of the High Court to record in the judgment, the reasoning before however denouncing a judgment of an inferior Tribunal, in the absence of which, the judgment in our view cannot stand the scrutiny of otherwise being reasonable. There ought to be available in the judgment itself a finding about the perversity or the erroneous approach of the Labour Court and it is only upon recording therewith the High Court has the authority to interfere. Unfortunately, the High Court did not feel it expedient to record any reason far less any appreciable reason before denouncing the judgment."

21. The aforesaid judgment became a benchmark for almost all the subsequent judgments. In Hindustan Motors Ltd. v. Tapan Kumar Bhattacharya (2002) 6 SCC 41, the Fifth Industrial Tribunal, West Bengal had found that the finding of guilty recorded in the departmental inquiry was not based on any cogent and reliable evidence and passed an award for reinstatement of the workman with other benefits. The learned Single Judge allowed the writ petition filed by the employer and quashed the award of the Industrial Tribunal. The Division Bench of the High Court reversed the order of the learned Single Judge. This Court issued notice to the respondent limited to the question of back wages. After taking cognizance of the judgments in Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (supra) and P.G.I. of Medical Education & Research, Chandigarh v. Raj Kumar (supra), the Court observed:

"As already noted, there was no application of mind to the question of back wages by the Labour Court. There was no pleading or evidence whatsoever on the aspect whether the respondent was employed elsewhere during this long interregnum. Instead of remitting the matter to the Labour Court or the High Court for fresh consideration at this distance of time, we feel that the issue relating to payment of back wages should be settled finally. On consideration of the entire matter in the light of the observations referred to supra in the matter of awarding back wages, we are of the view that in the context of the facts of this particular case including the vicissitudes of long-drawn litigation, it will serve the ends of justice if the respondent is paid 50% of the back wages till the date of reinstatement. The amount already paid as wages or subsistence allowance during the pendency of the various proceedings shall be deducted from the back wages now directed to be paid. The appellant will calculate the amount of back wages as directed herein and pay the same to the respondent within three months, failing which the amount will carry interest at the rate of 9% per annum. The award of the Labour Court which has been confirmed by the Division Bench of the High Court stands modified to this extent. The appeal is disposed of on the above terms. There will be no order as to costs." (emphasis supplied)

22. In *Indian Railway Construction Co. Ltd. v. Ajay Kumar* (2003) 4 SCC 579, this Court was called upon to consider whether the services of the respondent could be terminated by dispensing with the requirement of inquiry enshrined in Indian Railway Construction Co. Ltd. (Conduct, Discipline and Appeal) Rules, 1981 read with Article 311(2) of the Constitution. The learned Single Judge of the Delhi High Court held that there was no legal justification to dispense with the inquiry and ordered reinstatement of the workman with back wages. The Division Bench upheld the order of the learned Single Judge. The two Judge Bench of this Court referred to the judgments in *Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited* (supra) and *P.G.I. of Medical Education & Research, Chandigarh v. Raj Kumar* (supra) and held that payment of Rs.15 lakhs in full and final settlement of all claims of the employee will serve the ends of justice.

23. In *M.P. State Electricity Board v. Jarina Bee (Smt.)* (supra), the two Judge Bench referred to *P.G.I. of Medical Education & Research, Chandigarh v. Raj Kumar* (supra) and held that it is always incumbent upon the Labour Court to decide the question relating to quantum of back wages by considering the evidence produced by the parties.

24. In *Kendriya Vidyalaya Sangathan v. S. C. Sharma* (supra), the Court found that the services of the respondent had been terminated under Rule 19(ii) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 on the charge that he was absconding from duty. The Central Administrative Tribunal held that no material was available with the disciplinary authority which could justify invoking of Rule 19(ii) and the order of dismissal could not have been passed without holding regular inquiry in accordance with the procedure prescribed under the Rules. The Division Bench of the Punjab and Haryana High Court did not accept the appellants' contention that invoking of Rule 19(ii) was justified merely because the respondent did not respond to the notices issued to him and did not offer any explanation for his willful absence from duty for more than two years. The High Court agreed with the Tribunal and dismissed the writ petition. The High Court further held that even though the respondent- employee had not pleaded or produced any evidence that after dismissal from service, he was not gainfully employed, back wages cannot be denied to him. This Court relied upon some of the earlier judgments and held that in view of the respondent's failure to discharge the initial burden to show that he was not gainfully employed, there was ample justification to deny him back wages, more so because he had absconded from duty for a long period of two years.

25. In *General Manager, Haryana Roadways v. Rudhan Singh* (2005) 5 SCC 591, the three Judge Bench considered the question whether back wages should be awarded to the workman in each and every case of illegal retrenchment. The factual matrix of that case was that after finding the termination of the respondent's service as illegal, the Industrial Tribunal- cum- Labour Court awarded 50% back wages. The writ petition filed by the appellant was dismissed by the Punjab and Haryana High Court. This Court set aside award of 50% back wages on the ground that the workman had raised the dispute after a gap of 2 years and 6 months and the Government had made reference after 8 months. The Court then proceeded to observe:

“There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment, namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors, which has to be taken into consideration, is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which requires to be taken into consideration is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily-wage employment though it may be for 240 days in a calendar year.”

26. In *U.P. State Brassware Corporation Ltd. v. Uday Narain Pandey* (supra), the two Judge Bench observed:

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

27. The Court also reiterated the rule that the workman is required to plead and prima facie prove that he was not gainfully employed during the intervening period.

28. In *Depot Manager, Andhra Pradesh State Road Transport Corporation v. P. Jayaram Reddy* (supra), this Court noted that the services of the respondent were terminated because while seeking fresh appointment, he had suppressed the facts relating to earlier termination on the charges of grave misconduct. The Labour Court did not find any fault with the procedure adopted by the employer but opined that dismissal was very harsh, disproportionate and unjustified and accordingly exercised power under Section 11-A of the Industrial Disputes Act, 1947 for ordering reinstatement with back wages. This Court referred to the judgments in *P.G.I. of Medical Education & Research, Chandigarh v. Raj Kumar* (supra) and *J.K. Synthetics Ltd. v. K. P. Agrawal* (supra) and held that the Labour Court was not justified in awarding back wages.

29. In *Novartis India Limited v. State of West Bengal* (supra), the services of the workman were terminated on the charge of not joining the place of transfer. The Labour Court quashed the termination of services on the ground of violation of the rules of natural justice and passed an award of reinstatement of the workman with back wages. The learned Single Judge of the High Court dismissed the writ petition filed by the appellant but the letters patent appeal was allowed by the Division Bench on the ground that the State of West Bengal was not the appropriate Government for making the reference. The special leave petition filed by the workman was allowed by this Court and the Division Bench of the High Court was asked to decide the letters patent appeal on merits. In the second round, the Division Bench dismissed the appeal. This Court referred to shift in the approach regarding payment of back wages and observed:

“There can, however, be no doubt whatsoever that there has been a shift in the approach of this Court in regard to payment of back wages. Back wages cannot be granted almost automatically upon setting aside an order of termination inter alia on the premise that the burden to show that the workman was gainfully employed during interregnum period was on the employer. This Court, in a number of decisions opined that grant of back wages is not automatic. The burden of proof that he remained unemployed would be on the workmen keeping in view the provisions contained in Section 106 of the Evidence Act, 1872. This Court in the matter of grant of back wages has laid down certain guidelines stating that therefor several factors are required to be considered including the nature of appointment; the mode of recruitment; the length of service; and whether the appointment was in consonance with Articles 14 and 16 of the Constitution of India in cases of public employment, etc. It is also trite that for the purpose of grant of back wages, conduct of the workman concerned also plays a vital role. Each decision, as regards grant of back wages or the quantum thereof, would, therefore, depend on the fact of each case. Back wages are ordinarily to be granted, keeping in view the principles of grant of damages in mind. It cannot be claimed as a matter of right.”

30. In *Metropolitan Transport Corporation v. V. Venkatesan* (supra), the Court noted that after termination of service from the post of conductor, the respondent had acquired Law degree and started practice as an advocate. The Industrial Tribunal declared the termination of the respondent's service by way of removal as void and inoperative on the ground that the Corporation had not applied for approval under Section 33(2)(b) of the Industrial Disputes Act. At one stage, the High Court stayed the order of the Industrial Tribunal but finally dismissed the writ petition. The workman filed application under Section 33-C(2) of the Industrial Disputes Act claiming full back wages. The Labour Court allowed the claim of the respondent to the extent of Rs.6,54,766/-. The writ petition filed against the order of the Labour Court was dismissed by the learned Single Judge and the appeal was dismissed by the Division Bench. This Court referred to the earlier precedents and observed:

“First, it may be noticed that in the seventies and eighties, the directions for reinstatement and the payment of full back wages on dismissal order having been found invalid would ordinarily follow as a matter of course. But there is change in the legal approach now.

We recently observed in *Jagbir Singh v. Haryana State Agriculture Mktg. Board* that in the recent past there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that the relief of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is held to be in contravention of the prescribed procedure.

Secondly, and more importantly, in view of the fact that the respondent was enrolled as an advocate on 12-12-2000 and continued to be so until the date of his reinstatement (15-6-2004), in our thoughtful consideration, he cannot be held to be entitled to full back wages. That the income received by the respondent while pursuing legal profession has to be treated as income from gainful employment does not admit of any doubt. In *North-East Karnataka RTC v. M. Nagangouda* this Court held that “gainful employment” would also include self-employment. We respectfully agree.

It is difficult to accept the submission of the learned Senior Counsel for the respondent that he had no professional earnings as an advocate and except conducting his own case, the respondent did not appear in any other case. The fact that he resigned from service after 2-3 years of reinstatement and re- engaged himself in legal profession leads us to assume that he had some practice in law after he took sanad on 12-12-2000 until 15-6-2004, otherwise he would not have resigned from the settled job and resumed profession of glorious uncertainties.”

31. In *Jagbir Singh v. Haryana State Agriculture Marketing Board* (supra), this Court noted that as on the date of retrenchment, respondent No.1 had worked for less than 11 months and held:

“It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee.

Therefore, the view of the High Court that the Labour Court erred in granting reinstatement and back wages in the facts and circumstances of the present case cannot be said to suffer from any legal flaw. However, in our view, the High Court erred in not awarding compensation to the appellant while upsetting the award of reinstatement and back wages.”

32. We may now deal with the judgment in *J.K. Synthetics Ltd. v. K.P. Agrawal* and another (supra) in detail. The facts of that case were that the respondent was dismissed from service on the basis of inquiry conducted by the competent authority. The Labour Court held that the inquiry was not fair and proper and permitted the parties to adduce evidence on the charges levelled against the respondent. After considering the evidence, the Labour Court gave benefit of doubt to the respondent and substituted the punishment of dismissal from service with that of stoppage of increments for two years. On an application filed by the respondent, the Labour Court held that the respondent was entitled to reinstatement with full

back wages for the period of unemployment. The learned Single Judge dismissed the writ petition and the Division Bench declined to interfere by observing that the employer had willfully violated the order of the Labour Court. On an application made by the respondent under Section 6(6) of the U.P. Industrial Disputes Act, 1947, the Labour Court amended the award. This Court upheld the power of the Labour Court to amend the award but did not approve the award of full back wages. After noticing several precedents to which reference has been made hereinabove, the two Judge Bench observed:

“There is also a misconception that whenever reinstatement is directed, “continuity of service” and “consequential benefits” should follow, as a matter of course. The disastrous effect of granting several promotions as a “consequential benefit” to a person who has not worked for 10 to 15 years and who does not have the benefit of necessary experience for discharging the higher duties and functions of promotional posts, is seldom visualised while granting consequential benefits automatically. Whenever courts or tribunals direct reinstatement, they should apply their judicial mind to the facts and circumstances to decide whether “continuity of service” and/or “consequential benefits” should also be directed.

Coming back to back wages, even if the court finds it necessary to award back wages, the question will be whether back wages should be awarded fully or only partially (and if so the percentage). That depends upon the facts and circumstances of each case. Any income received by the employee during the relevant period on account of alternative employment or business is a relevant factor to be taken note of while awarding back wages, in addition to the several factors mentioned in Rudhan Singh and Uday Narain Pandey. Therefore, it is necessary for the employee to plead that he was not gainfully employed from the date of his termination. While an employee cannot be asked to prove the negative, he has to at least assert on oath that he was neither employed nor engaged in any gainful business or venture and that he did not have any income. Then the burden will shift to the employer. But there is, however, no obligation on the terminated employee to search for or secure alternative employment. Be that as it may.

But the cases referred to above, where back wages were awarded, related to termination/retrenchment which were held to be illegal and invalid for non-compliance with statutory requirements or related to cases where the Court found that the termination was motivated or amounted to victimisation. The decisions relating to back wages payable on illegal retrenchment or termination may have no application to the case like the present one, where the termination (dismissal or removal or compulsory retirement) is by way of punishment for misconduct in a departmental inquiry, and the court confirms the finding regarding misconduct, but only interferes with the punishment being of the view that it is excessive, and awards a lesser punishment, resulting in the reinstatement of employee. Where the power under Article 226 or Section 11-A of the Industrial Disputes Act (or any other similar provision) is exercised by any court to interfere with the punishment on the ground that it is excessive and the employee deserves a lesser punishment, and a consequential direction is issued for reinstatement, the court is not holding that the employer was in the wrong or that the dismissal was illegal and invalid. The court is merely exercising its discretion to award a lesser punishment. Till such power is exercised, the dismissal is valid and in force. When the punishment is reduced by a court as being excessive, there can be

either a direction for reinstatement or a direction for a nominal lump sum compensation. And if reinstatement is directed, it can be effective either prospectively from the date of such substitution of punishment (in which event, there is no continuity of service) or retrospectively, from the date on which the penalty of termination was imposed (in which event, there can be a consequential direction relating to continuity of service). What requires to be noted in cases where finding of misconduct is affirmed and only the punishment is interfered with (as contrasted from cases where termination is held to be illegal or void) is that there is no automatic reinstatement; and if reinstatement is directed, it is not automatically with retrospective effect from the date of termination. Therefore, where reinstatement is a consequence of imposition of a lesser punishment, neither back wages nor continuity of service nor consequential benefits, follow as a natural or necessary consequence of such reinstatement. In cases where the misconduct is held to be proved, and reinstatement is itself a consequential benefit arising from imposition of a lesser punishment, award of back wages for the period when the employee has not worked, may amount to rewarding the delinquent employee and punishing the employer for taking action for the misconduct committed by the employee. That should be avoided. Similarly, in such cases, even where continuity of service is directed, it should only be for purposes of pensionary/retirement benefits, and not for other benefits like increments, promotions, etc. But there are two exceptions. The first is where the court sets aside the termination as a consequence of employee being exonerated or being found not guilty of the misconduct. Second is where the court reaches a conclusion that the inquiry was held in respect of a frivolous issue or petty misconduct, as a camouflage to get rid of the employee or victimise him, and the disproportionately excessive punishment is a result of such scheme or intention. In such cases, the principles relating to back wages, etc. will be the same as those applied in the cases of an illegal termination.

In this case, the Labour Court found that a charge against the employee in respect of a serious misconduct was proved. It, however, felt that the punishment of dismissal was not warranted and therefore, imposed a lesser punishment of withholding the two annual increments. In such circumstances, award of back wages was neither automatic nor consequential. In fact, back wages was not warranted at all.”

33. The propositions which can be culled out from the aforementioned judgments are:

- i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.
- ii) The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.
- iii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or

was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

iv) The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and / or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

v) The cases in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the concerned Court or Tribunal will be fully justified in directing payment of full back wages. In such cases, the superior Courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc., merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The Courts must always be kept in view that in the cases of wrongful / illegal termination of service, the wrongdoer is the employer and sufferer is the employee/workman and there is no justification to give premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

vi) In a number of cases, the superior Courts have interfered with the award of the primary adjudicatory authority on the premise that finalization of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The Courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer, i.e., the employee or workman, who can ill afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would

be prudent to adopt the course suggested in *Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited* (supra).

vii) The observation made in *J.K. Synthetics Ltd. v. K.P. Agrawal* (supra) that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three Judge Benches referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman.

34. Reverting to the case in hand, we find that the management's decision to terminate the appellant's service was preceded by her suspension albeit without any rhyme or reason and even though the Division Bench of the High Court declared that she will be deemed to have rejoined her duty on 14.3.2007 and entitled to consequential benefits, the management neither allowed her to join the duty nor paid wages. Rather, after making a show of holding inquiry, the management terminated her service vide order dated 15.6.2007. The Tribunal found that action of the management to be wholly arbitrary and vitiated due to violation of the rules of natural justice. The Tribunal further found that the allegations levelled against the appellant were frivolous. The Tribunal also took cognizance of the statement made on behalf of the appellant that she was not gainfully employed anywhere and the fact that the management had not controverted the same and ordered her reinstatement with full back wages.

35. The learned Single Judge agreed with the Tribunal that the action taken by the management to terminate the appellant's service was per se illegal but set aside the award of back wages by making a cryptic observation that she had not proved the factum of non-employment during the intervening period. While doing so, the learned Single Judge not only overlooked the order passed by the Division Bench in Writ Petition No.8404/2006, but also Rule 33 which prohibits an employee from taking employment elsewhere. Indeed, it was not even the pleaded case of the management that during the period of suspension, the appellant had left the Headquarter without prior approval of the Chief Executive Officer and thereby disentitling her from getting subsistence allowance or that during the intervening period she was gainfully employed elsewhere.

36. In view of the above discussion, we hold that the learned Single Judge of the High Court committed grave error by interfering with the order passed by the Tribunal for payment of back wages, ignoring that the charges levelled against the appellant were frivolous and the inquiry was held in gross violation of the rules of natural justice.

37. In the result, the appeal is allowed, the impugned order is set aside and the order passed by the Tribunal is restored. The management shall pay full back wages to the appellant within four months from the date of receipt of copy of this order failing which it shall have to pay interest at the rate of 9% per annum from the date of the appellant's suspension till the date of actual reinstatement.

***Management Of The Barara Cooperative Marketing cum Processing
Society Ltd. v. Workman Pratap Singh***

AIR 2019 SC 228

ABHAY MANOHAR SAPRE, J. - 1. Leave granted.

2. This appeal is directed against the final Signature Not Verified judgment and order dated 21.02.2014 passed by the Digitally signed by ANITA MALHOTRA Date: 2019.01.02 High Court of Punjab & Haryana at Chandigarh in 16:47:20 IST Reason:

L.P.A. No. 317 of 2010 whereby the Division Bench of the High Court dismissed the appeal filed by the appellant herein and affirmed the judgment dated 26.11.2009 passed by the Single Judge of the High Court in CWP No.15066 of 2006 by which the respondent herein was ordered to be reinstated into service with back wages.

3. Few relevant facts need mention hereinbelow to appreciate the short controversy involved in this appeal.

4. The appellant is the Cooperative Marketing Society. The respondent was working with the appellant as a Peon from 01.07.1973. The appellant terminated the services of the respondent on 01.07.1985. The respondent, therefore, got the reference made through the State to the Labour Court to decide the legality and correctness of his termination order.

5. By award dated 03.02.1988, the Labour Court held the respondent's termination as bad in law and accordingly awarded lump sum compensation of Rs.12,500/ to the respondent in lieu of reinstatement in service.

6. The appellant and respondent both were aggrieved by the award and filed writ petitions before the High Court to challenge the legality and correctness of the award passed by the Labour Court. The High Court, however, dismissed both the writ petitions. The respondent then accepted the compensation, which was awarded by the Labour Court.

7. In the year 1993, the respondent filed a representation to the appellant praying therein that since the appellant has recently regularized the services of two peons on 01.01.1992 vide their resolution dated 02.08.1993, therefore, he has become entitled to claim reemployment in the appellant's services in terms of Section 25 (H) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the ID Act"). The appellant, however, did not accept the prayer made by the respondent.

8. This led to making of an industrial reference to the Labour Court by the State at the instance of the respondent for deciding the question as to whether the respondent is entitled to claim reemployment in the appellant's services in terms of Section 25 (H) of the ID Act.

9. The Labour Court answered the reference against the respondent and in appellant's favour. In other words, the Labour Court held that the respondent was not entitled to claim any benefit of Section 25 (H) of the ID Act to claim reemployment in the appellant's services on the facts stated by the respondent in his statement of claim.

10. The respondent felt aggrieved and filed writ petition in the High Court. The Single Judge by order dated 26.11.2009 allowed the writ petition and set aside the award of the Labour Court. The High Court directed reemployment of the respondent on the post of Peon in the appellant's services. The appellant employer felt aggrieved and filed appeal before the Division Bench.

11. By impugned order, the Division Bench dismissed the appeal and upheld the order of the Single Judge, which has given rise to filing of the present appeal by way of special leave in this Court by the employer the appellant.

12. Heard Mr. Ajay Kumar, learned counsel for the appellant and Mr. Shish Pal Laler, learned counsel for the respondent.

13. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeal and while setting aside the orders of the High Court (Single Judge and the Division Bench) restore the award of the Labour Court.

14. In our considered opinion, there was no case made out by the respondent (workman) seeking re employment in the appellant's services on the basis of Section 25 (H) of the ID Act.

15. In the first place, the respondent having accepted the compensation awarded to him in lieu of his right of reinstatement in service, the said issue had finally come to an end; and Second, Section 25 (H) of the ID Act had no application to the case at hand.

16. Section 25(H) of the ID Act applies to the cases where employer has proposed to take into their employment any persons to fill up the vacancies. It is at that time, the employer is required to give an opportunity to the “retrenched workman” and offer him reemployment and if such retrenched workman offers himself for reemployment, he shall have preference over other persons, who have applied for employment against the vacancy advertised.

17. The object behind enacting Section 25(H) of the ID Act is to give preference to retrenched employee over other persons by offering them reemployment in the services when the employer takes a decision to fill up the new vacancies.

18. Section 25(H) of the ID Act is required to be implemented as per the procedure prescribed in Rule 78 of the Industrial Disputes (Central) Rules, 1957 (hereinafter referred to as “the ID Rules”) which, in clear terms, provides that Section 25(H) of the ID Act is applicable only

when the employer decides to fill up the vacancies in their set up by recruiting persons. It provides for issuance of notice to retrenched employee prescribed therein in that behalf.

19. So, in order to attract the provisions of Section 25(H) of the ID Act, it must be proved by the workman that firstly, he was the “retrenched employee” and secondly, his employer has decided to fill up the vacancies in their set up and, therefore, he is entitled to claim preference over those persons, who have applied against such vacancies for a job while seeking re-employment in the services.

20. The case at hand is a case where the respondent's termination was held illegal and, in consequence thereof, he was awarded lump sum compensation of Rs.12,500/ in full and final satisfaction. It is not in dispute that the respondent also accepted the compensation. This was, therefore, not a case of a retrenchment of the respondent from service as contemplated under Section 25(H) of the ID Act.

21. That apart and more importantly, the respondent was not entitled to invoke the provisions of Section 25 (H) of the ID Act and seek re employment by citing the case of another employee (Peon) who was already in employment and whose services were only regularized by the appellant on the basis of his service record in terms of the Rules.

22. In our view, the regularization of an employee already in service does not give any right to retrenched employee so as to enable him to invoke Section 25 (H) of the ID Act for claiming re employment in the services. The reason is that by such act the employer do not offer any fresh employment to any person to fill any vacancy in their set up but they simply regularize the services of an employee already in service. Such act does not amount to filling any vacancy.

23. In our view, there lies a distinction between the expression ‘employment’ and ‘regularization of the service’. The expression ‘employment’ signifies a fresh employment to fill the vacancies whereas the expression ‘regularization of the service’ signifies that the employee, who is already in service, his services are regularized as per service regulations.

24. In our view, the Labour Court was, therefore, justified in answering the reference in appellant's favour and against the respondent by rightly holding that Section 25(H) of the ID Act had no application to the facts of this case whereas the High Court (Single Judge and Division Bench) was not right in allowing the respondent's prayer by directing the appellant to give him reemployment on the post of Peon.

25. In view of the foregoing discussion, the appeal succeeds and is accordingly allowed. Impugned order is set aside and the award of the Labour Court is restored.
