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LABOUR CODE

Vol. I

The Bombay Industrial Relations Act

(Act No. XI of 1947)

with

The Industrial Disputes Act

(Act No. XIV of 1947—Central)

With Standing Orders, Rules, Notifications, Bombay Industrial Disputes Act etc.

BY

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&

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WITH A FOREWORD BY

HON'BLE MR. JUSTICE G. S. RAJADHYAKSHA, B. A.
Judge of the High Court of Judicature
at Bombay and Ex Member,
Industrial Court.

CHANDRAKANT CHIMANLAL VORA

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Dedication:

To those who dedicated
their lives
to the Cause of Labour.

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FOREWORD

At the request of Mr. C. C. Vora, Proprietor of Messrs. Vora and Company, Law Booksellers and Publishers, Ahmedabad, I am glad to have had this opportunity of writing a Foreword to the First Volume of the Labour Code which Mr. Vora proposes to publish. It is an ambitious scheme. The First Volume deals mainly with the Bombay Industrial Relations Act 1947. The first part of the Volume contains the Act with detailed notes under each section and the second part contains Standing Orders, Notifications and the text of the Industrial Disputes (Central) Act with short notes. In subsequent Volumes, it is the intention of Mr. Vora to publish the Industrial Disputes (Central) Act, the Factories Act, the Payment of Wages Act and the Workmen's Compensation Act with exhaustive commentary thereon. The last Volume will, I am informed, contain all other minor Acts dealing with labour matters. The only other similar publication I know of is "Labour and Factory Legislation in India" edited by Mr. H. M. Trivedi and published in one volume by N. M. Tripathi, Limited. But apart from a very useful introduction, that book contains only the text of Acts, Rules and Notifications. The present attempt of Mr. Vora to bring out a complete Labour Code with commentary is a commendable enterprise.

The present Volume concerns itself almost exclusively with the Bombay Industrial Relations Act, 1947. That Act has only recently been placed on the statute book and will shortly be brought into force. This Act stabilises, and in certain directions expands, the tentative experiment initiated in this Province by the enactment of the Bombay Industrial Disputes Act, 1938, which it replaces. This latter Act aimed at attaining settlement of industrial disputes and avoiding strikes and lock-outs, as far as possible, as a means of obtaining changes in industrial relations and of redressing grievances. It gave representative status to certain unions and made it compulsory for parties to go through a proeess of conciliation before resorting to the extreme step of a strike or a lock-out. The day-to-day relations between the employers and the employees were regulated by Standing

Orders settled by the Industrial Court. No one would wish to deny to Labour the ultimate right to obtain the redress of their grievances by resorting to a strike : but it is equally obvious that recourse to such methods is fraught with serious consequences to the employers and the employees and in many cases, with grave inconvenience and harm to the general public. It was therefore the object of the Bombay Industrial Disputes Act to bring about a settlement of differences between the parties by bringing them together, if necessary, in the presence of a conciliator and to make strikes and lock-outs illegal unless and until an earnest attempt was made to settle the differences in a friendly manner. In a very large number of cases, the machinery constituted by the Act provided a useful means of settling such disputes, as is obvious from the large number of agreements and settlements recorded in the pages of the Bombay Labour Gazette during the last 8 or 9 years that the Act has been in force. Arbitration was not made compulsory save when the Provincial Government so directed in certain exceptional cases. The Industrial Court was given power to declare whether any changes, strikes or lock-outs were illegal. Any declaration that they were illegal entailed the risk of a prosecution of the party at fault. Having been a Member of the Industrial Court from its very inception, it is perhaps permissible for me to say that the machinery provided by the Act has proved useful for settlement of disputes or at least has provided a common meeting ground for the parties before taking the extreme step of a strike or a lock-out As was only to be expected in a pioneer legislation of this kind, several anomalies and defects—both in the drafting and working of the Act—came to the notice of the Industrial Court and these have been pointed out from time to time in the judgments of the Court which have also served as authoritative expositions on the interpretations of the various provisions of the Act.

The experiment made in the enactment of the Bombay Industrial Disputes Act is now sought to be extended, and various defects in the drafting and working of the Act have been attempted to be set right. In an endeavour to foster the growth of the Trade Union Movement on responsible lines, a new category of "Approved Unions" has been created. Such unions will not only be entitled to special privileges but will also be fastened with certain responsibilities.

The provision for the setting up of Joint Committees of representatives of the employers and employees in various occupations and undertakings will serve to maintain a direct and continuous touch between the employers and employees and to secure speedy consideration and disposal of the difficulties which arise in the day-to-day working. The Industrial Court has been relieved of a large part of minor judicial work. Applications for alterations in the Standing Orders will now be made to the Commissioner of Labour. Similarly applications for a declaration that a change, strike or lock-out is illegal will be made to the Labour Courts. These Courts, will not only have power to grant such declarations but will also be clothed with authority to give directions to implement them. Breaches of the provisions of the Act will no longer be punishable by ordinary Criminal Courts ; but the Labour Courts will have the necessary jurisdiction to decide these matters. The Industrial Court will be the final Court of Appeal from the decisions of the Labour Courts and the Labour Commissioner and will have original jurisdiction principally in matters submitted to its arbitration or referred to it for opinion on points of law. Arbitration will still be voluntary, but every conciliator will have to ascertain before concluding his proceedings whether the parties are willing to submit their dispute to arbitration. Provincial Government will, however, have power to refer a dispute between employees *inter se* for the arbitration of the Labour Court or the Industrial Court , and in some special cases, a dispute between the employers and employees to the arbitration of the Industrial Court. Strikes and lock-outs with respect to matters mentioned in Schedule III or regulated by Standing Orders (Schedule I) will be illegal as such minor matters can be settled by the Labour Courts. Strikes or lock-outs will be legal only with respect to matters covered by Schedule II if the preliminary process of conciliation has proved infructuous. Those engaged in strikes and lock-outs declared to be illegal will incur no penalty if they call off the strike or lock-out within 48 hours of the declaration by the Labour Court or the Industrial Court as the case may be The Act also makes provision enabling the Provincial Government to set up a Court of Inquiry and to maintain a record of Industrial matters.

In view of these extensive changes, an edition of the Act explaining in detail the implications of these changes would obviously serve a very useful purpose. I have read the proof of this edition. The editors Mr. C. C. Bhat and Mr. G. P. Vyas have taken considerable trouble in bringing it out. The decisions of the Industrial Court—right upto April 1947—have been accurately summarised under the appropriate sections and their bearing on the new provisions has been carefully explained. I have much pleasure in commending the book to all those whose business it is to assist in the administration of the Act and I wish the publisher every success in his new venture.

Bombay,
23rd June 1947.

G. S. RAJADHYAKSH.

PREFACE

The Bombay Industrial Relations Act has been based upon the Bombay Industrial Disputes Act of 1938, which was initiated by the Congress Government. That Act had been a most controversial piece of legislation. A large number of people have denounced it as a most retrograde enactment, trenching upon Labour's inalienable right of strike, tending to preserve *status quo* and thereby destroying Labours' chances of improving their condition. It has been dubbed by them as a 'Black Act' ; while other equally important body of men have hailed it as an enactment most beneficial to Labour, conferring upon the employees valuable rights and ushering in an era of industrial peace and progress. The vehemence of denunciation and appreciation may be attributed to the two conflicting ideologies. The Act gave statutory recognition to the principles for which Gandhiji and the Congress Government stand, namely, avoidance of strikes and peaceful settlement of industrial disputes by conciliation, and if possible by arbitration. Those of this way of thinking, hail it as a splendid and beneficial enactment, while those who believed that it is impossible to obtain concessions from the employer by peaceful negotiations, that each one of the present privileges enjoyed by the Labour had been wrenched from an unwilling employer by hard struggle and therefore the curtailment of the right of strike is a great dis-service to the workers' cause. In short, those who believe in class-conflict look askance upon the Act. Thus this Act or its predecessor, the Bombay Industrial Disputes Act are beneficial or harmful according to one's own angle of vision. We do not want to, nor is it our business to delve deep into the merits or demerits of the Act. For it is quite possible to hold sincerely conflicting opinions about the beneficiality of these enactments. The present authors themselves holding different political opinions as they do, are themselves divided on the ultimate beneficiality of the Act to the workers at large. But whatever opinion one may hold, it must be admitted that this Act, most intimately affects the life of the worker in his relations with the employer and any one who is concerned with Labour or Industry cannot afford to have less than intimate knowledge of the Act. The Act, with its technical terms, artificial system of representation and novel principles, looks rather bewildering to a lawyer ; much more should it look so to other persons. But the principles which it embodies are in the last analysis simple. They are these: strikes and lock-outs as a means for enforcing demands are an evil. They cause untold hardships to the workers themselves. Therefore

they must be avoided as far as possible. This was sought to be accomplished *inter-alia* by the following provisions in the Bombay Industrial Disputes Act:—

1. Provision was made for framing of rules called Standing Orders regulating matters of day to day importance such as dismissal or discharge, leave, shift working etc. The employer was bound to act in accordance with these Standing Orders and penalty was provided for breach thereof. On the other hand strike was forbidden in respect of the matters regulated by the Standing Orders.

2. As all the industrial disputes arise from a desire of change in the existing state of things, either the employees may desire increase in wages, or decrease in hours of work, or certain amenities not provided for hitherto or the employer may want to decrease wages or increase the hours of work or that one man should do the work that two men are doing hitherto, in short a change in the existing state of things ; and if the other party does not agree to it an industrial dispute arises. The object of the Act was that the parties should not resort to a strike or a lockout all at once to enforce the desired change. Therefore it was made compulsory that the notice of the proposed change in respect of certain specified industrial matters must be given to the other party so that the other party may agree to it, if it does not deem it objectionable. If the parties cannot reach an agreement themselves, the matter must be brought before a Government Officer called the Conciliator who would try to bring about a settlement of the dispute. If the parties reach an agreement or settlement, so far so good. If the conciliation proceedings fail then the employer would be entitled to make a changes or declare a lockout and the employees would be at liberty to resort to a strike to enforce or resist, the proposed change as the case may be. Thus notice of change and conciliation proceedings were made compulsory under the Act. If the parties declare a strike or a lockout or make a change without going through the conciliation proceedings, it would be illegal and punishment was provided for it.

3. Provision was made for reference of the disputes to arbitration. Arbitration was voluntary and neither party was bound to refer the disputes to arbitration. But later on S. 49. A was added, which empowered the Provincial Government to refer an industrial dispute to arbitration under certain circumstances, such as likelihood of breach of peace or serious disorder etc., irrespective of the consent of parties. It provided for compulsory arbitration.

4. Industrial Court was established to deal with the matters arising under the Act.

5. Provision was made for representation of the employees in proceedings under the Act as employees being numerous a method of their representation was necessary.

The Bombay Industrial Disputes Act was applied to the Textile Industry and only in the year 1946 it was made applicable to the Banking Industry and passanger transport service by tram or omnibus in the City of Bombay. It was in force for nine years and it has been replaced now by the present Act. The present Act has been built on the same foundations and certain defects which were experienced in the actual working of the Act have been sought to be remedied. Amendments and innovations have been made to carry out the underlying object viz. avoidance of strikes and lock-outs and peaceful settlement of industrial disputes. The important changes, among others, are:-

(1) Establishment of Labour Courts. With the Industrial Court which is a court of appeal, reference and revision, they form a complete Labour Judiciary.

(2) Labour Courts have been invested with the power to decide as to the propriety of an order passed by the employer under the Standing Orders. Power is thus conferred upon the Labour Courts to practically sit in appeal over the orders passed by the employer. Employers' powers have thus been controlled by this provision.

(3) Labour Courts have been invested with power to hear and decide upon the matters such as amenities, equipment etc.- matters not involving very substantial issues-and the employer would be bound to act in accordance with the decision of the Labour Court. Strike or lock-out in respect of such matters is totally banned.

(4) By grant of certain privileges, unions whose rules provide that strike shall not be resorted to by it unless all methods provided by the Act for settlement of disputes have been exhausted and who offer to submit every such industrial dispute to arbitration, are offered special concessions. Such unions are to be called Approved Unions.

(5) Fundamental changes in the system of representation of employees.

(6) Enhancement of the power of the Government to make compulsory arbitration.

(7) Setting up of Joint Committees of the representatives of employers and employees to discuss jointly the proposals emanating from either side.

The very perusal of the above provisions makes it obvious that those who criticised the Bombay Industrial Disputes Act have greater reason to criticise and denounce the present Act while those who welcomed the former Act would hail the present Act as a great step forward in the right direction. In the conferment of privileges to Approved Unions and the system of representation, the critics do see a scheme or a device to oust the unions holding contrary ideologies, while in the power of the Government to make compulsory reference to arbitration they see a death blow to the trade union movement. Perhaps this provision for compulsory arbitration against which even the Royal Commission on Labour had expressed definite opinions has provoked the greatest criticism. We have given some of the arguments against and for this provision in our comments under S. 73.

Another provision which has provoked great criticism is the method of representation of the employees in the proceedings under the Act. It is evident that some method must be devised for their representation, for, there must be some one to act and to enter into collective bargaining on their behalf. It is provided under the Act that any union which has got a membership of 15 per cent. or more of the total number of employees in a local area, can be registered as a Representative Union, and such union shall be the representative of *ALL* employees in the local area whether they are its members or not, whether they desire or not, and even if they are quite opposed to it and its methods. The agreements, settlements or awards to which such a union is a party would be binding upon all the employees including non-members. Secondly there can be only one registered union for an industry in a local area and if there are two unions having the requisite percentage of membership the union having greater membership will be registered as a Representative union and will have the right to represent all the employees in the industry in such local areas. Thus if there are two unions, one with 20 per cent. membership and the other with 19 per cent. membership the former will be registered as a Representative Union, and will have the right to represent all the employees in the industry and would be eligible to enjoy the other privileges of a Representative Union while the other union will have no right whatever.

Even if in a particular mill or undertaking as it is called under the Act, all the employees belong to the other union and none belongs to the Representative Union it is the Representative Union which will be representative of these employees. In cases where there is a Representative Union, even the Labour Officer-charged with the duties of watching the interests of Labour and to promote harmonious relations between employers and employees-cannot investigate except at the requtes

of the Representative Union the grievances of the workers and represent the same to the employer the very duties imposed upon him under the Act. The result would be that the workers will be forced to resort to the Representative Union for investigation and redress of their grievances. It is feared by the critics of the Act that the object and effect of this artificial system of representation would be to drive out other unions from the field. For such non-representative union will have no scope for carrying on its activities. It also looks rather astounding to a lawyer that a union wich represents only 15 per cent. of employees would be a representative of other 85 per cent. of the employees who are not members thereof and may rather be opposed to it or its methods. The reply given to it is that the Labour is disorganised in India, the majority of the workers are indifferent and are not conscious of their interests nor of the necessity of organising themselves and therefore a union which has organised 15 per cent. of employees would be fit to represent all other employees. Also this right to represent the employees will encourage the organisation of Labour in that the workers will find that the Union has great power and therefore it would be best to interest themselves in it.

Whether one may be a critic or an admirer of this legislation, it must be recognised that it is a great experiment in the settlement of industrial disputes and regulation of employer-employee relations. It will have for good or bad far reaching influence on the industry and labour-movement. Only the future can tell us of the wisdon or otherwise of this legislation. The Act applies in the first instance to the industries to which the Bombay Industrial Disputes Act applied viz., the Textile Industry and the Banking Industry and passenger transport service by omnibus and tram and electric supply in the City of Bombay. The Government can by a notification apply this Act to any other industry. The definition of industry is very wide and includes even agriculture within its scope. Thus this Act will have increasing application and may in course of time cover all industries and govern and regulate the employer and employee relations in all walks of life.

Turning to the present book, we have digested all the important decisions of the Industrial Court, have given copious extracts from the judgments of the Court in order that the reason underlying the decision may become intelligible to the reader. For, we understand that the many who will have the occasion to use this book may not have at hand the Bombay Government Gazette or the Bombay Labour Gazette in which the decisions of the Industrial Court are published. We also know that the Central Government has very recently passed an Act-The Industrial Disputes Act-embodying the same principles. Also several other Provincial Governments have introduced bills embodying the the same principles, and therefore the decisions of the Bombay Industrial Court will

afford a useful guidance in interpretation of these statutes. We have borne in mind the requirements of the persons-lawyers, industrialists, trade unionists etc., in those provinces in compiling this book. In order that the decisions may be properly understood, we have given the text of the Bombay Industrial Act, 1938 in the Appendix. We have noted the changes effected in law under appropriate sections. We have also given the comparative table of the corresponding sections of both the Acts. The rules framed under the Act, forms and notifications have also been given. The Standing Orders settled under the Bombay Industrial Disputes Act are to remain in force unless there is an alteration under the provisions of this Act. Therefore we have given the Standing Orders in Appendix, with exhaustive digest of case law. In short we have attempted to do all that can be done to make the book exhaustive and useful to all the varieties of persons who will have occasion to use it.

We are greatly indebted to Hon'able Mr. Justice G. S. Rajadhyaksha, Judge, High Court of Judicature at Bombay and Ex-Member of the Industrial Court, Bombay for condescending to write a foreword to this humble attempt of us. His Lordship has been a Member of the Industrial Court from its inception and has contributed to an immense degree to clarify, define and develop the principles of the Industrial Jurisprudence by his learned and lucid judgements. We deem it a great privilege to have his foreword to this book.

Lastly we have to thank our friend Mr. Fulsinhji Dabhi M. L. A., for his kindness in supplying us with a copy of the Bill and helping us in diverse other ways. But for his help it would not have been possible for us to prepare this compilation so early. We are also grateful to Mr. Kanubhai K. Machhar B. A., LL. B., for undertaking and going through the arduous task of proof reading and other help rendered by him. We offer our thanks to various other friends who helped us with various useful suggestions. We cannot forget the very valuable assistance rendered to us by that excellant compilation the "Digest of the Industrial Court cases" by Mr. K. R. Wazkar, the able secretary of the Industrial Court. But for this book our task would have been increased hundredfold. Inspite of all the attempts, the Printer's Devil has had his own way and unfortunately some important mistakes in printing have crept in. We therefore, request the readers to see the errata before reading the book.

With all our attempts at perfection we are painfully aware of our own short comings and any suggestion from any reader will be gratefully received and considered.

Dated, 1ts, July 1947
Ahmedabad.

Champaklal C. Bhatt
Ganpatishankar P. Vyas

COMPARATIVE TABLE OF SECTIONS

Comparative table of the Sections of the Bombay Industrial Relation Act and the Bombay Industrial Disputes Act 1938 .

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STATEMENT OF OBJECTS AND REASONS.

The Bombay Industrial Disputes Act of 1938 has been in force for the last eight years. The provisions of the Act have been availed of extensively by the employers as well as the employees in the textile industry, to which alone the Act has so far been applied. It has to a very large degree served the purpose for which it was intended. With the passage of years and on the strength of the experience gained during this period it has, however, become necessary and possible to build further on the same foundations.

This Bill cuts new ground in several directions.

(1) Government seeks to achieve its declared object of facilitating the organisation of labour by creating a list of approved unions, introducing a category of primary unions, removing for the purpose of registration the condition relating to recognition by the employer, bringing down the minimum membership for a representative union from 25 to 15 per cent. and reducing the qualifying period from six to three months. An approved union is invested with substantial privileges but is also required to undertake a corresponding set of obligations in the interests of the stability of industry and the progress of sound trade unionism. Even a small beginning in this direction in the shape of a primary union having as members 15 per cent. of the employees in a single undertaking is given a place and a function in the new scheme. The range of activities of a registered union is enlarged by enabling it to act as a representative of employees on behalf of non-members who may choose such a union for the purpose of representing them in any proceedings.

(2) Provision is made for the maintenance of a list of approved unions, and all registered unions that satisfy among others certain conditions regarding the regularity of meetings of the executive committee, Government audit of their accounts, and the avoindace of resort to strikes so long as means of settlement and conciliation are available under the Act will be placed on the list. Approved unions will derive substantial advantages under the Act including the right of inspecting any place where their members work, collecting union dues on the employer's premises and legal aid at Government expense in important proceedings before the Labour Court and the Industrial Court.

(3) The provisions relating to Labour Courts are an innovation so far as this country is concerned. An analysis of strikes and lock-outs occurring over a series of years has revealed the fact that a large proportion of stoppages arises out of disputes involving no substantial issues. Delay in the redress of grievances of workers with regard to these matters and one-sided exercise of discretion in dealing with them, creates a large volume of bitterness and discontent which lead to frequent disturbances of the peace of the industry and cause serious loss of production and workers' earning.

The conciliation procedure in the Act of 1938 has not been found to be quite suitable for dealing with disputes of this character, both because of

the length of time which the proceedings take and the lack of finality at the end of the proceedings. A remedy for this will be found in the Labour Courts which will be instituted under the new Act, to ensure impartial and relatively quick decisions in references regarding illegal changes, illegal strikes and lock-outs and the complaints that either side may bring up.

The new clauses relating to the manner of modification of standing orders are designed to secure a similar purpose.

(4) The maximum duration of conciliation proceedings has been very much curtailed and substitutes for a notice of change have been recognised to avoid delay in initiating the actual work of conciliation.

(5) Provision is made for setting up joint committees of representatives of employers and employees in various occupations and undertakings in an industry. This is a device for establishing direct and continuous touch between the representatives of employers and workers and for securing speedy consideration and disposal of the difficulties which arise from day to day in employer and employee relations. This is a familiar arrangement in the United Kingdom and in several other countries and its adoption has been recommended by the Royal Commission on Indian Labour.

(6) The clause relating to references of disputes to the Industrial Courts at the instance of Government is redrafted to give it a wider field for the exercise of discretion. Such a course has been rendered necessary by the frequent calls on Government, during recent years, from employers as well as employees, for compulsory adjudication of disputes.

(7) Apart from reducing the penalties for going on or continuing on an illegal strike the Bill removes an ambiguity regarding the circumstances in which the penalties in consequence of an illegal strike arise.

(8) Provision is also made to enable Government to set up a Court of Enquiry, when this procedure is considered appropriate in a particular situation or dispute in an industry.

(9) The maintenance by Government of a record of conditions, usages and conventions relating to labour in each undertaking will be compulsory. This information will prove helpful to the authorities under the Act in setting disputes and determining whether a certain change was illegal or not.

(10) The powers and duties of the Labour Officer are expanded so as to enable him to function more efficiently.

(11) Annual election of representatives of employees is provided for in lieu of the present system of election of representatives for a particular dispute only.

There are in addition a number of minor changes in the wording of several clauses to surmount certain legal and administrative difficulties which have been encountered in the working of the Act of 1938.

(12) In view of the scope of the Bill which embraces a much wider

field than the Bombay Industrial Disputes Act, 1938, it has been entitled the Bombay Industrial Relations Bill.

5th September 1946.

(Signed) Gulzarilal Nanda,
By order of the Governor of Bombay
K. M. Chitnvis,
Assistant Secretary to the Government
of Bombay,
Legal Department.

Poona, dated 5th September 1946.

THE BOMBAY INDUSTRIAL RELATIONS ACT 1947.

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ADDENDA

(While the present work was going through the press, the following decisions have been published. Decisions published up to the end of December 1947 have been digested here)

Section 3 (13), Clerks:

The words 'skilled or unskilled manual or clerical work' appear to limit the scope of the employees of any undertaking. If clerical work means work done by high officials like the General Manager, one could have expected the definition of the workman to mean all employees employed for hire or reward instead of the words 'persons employed to do manual or clerical work'. The definition 'clerical work in any trade or industry must be limited to the work done by persons who are occupying a subordinate position and working under the orders and supervision of other servants of the company under whom they work and who are generally designated as officers'[1].

Section 3 (13). Discharged on account of the Strike :

After the employees went on strike for the increase of wages the management discharged them for going to strike. Thereafter the Government referred the matter to adjudication under Rule 81A of the Defence of India Rules. It was contended that as the employees had been discharged before the date of the order referring the matter to adjudication they were not employees and therefore there was no dispute between the workmen and the employer at the date of the order and therefore the order was ultra vires. The Court overruled the objection holding 'the word workman as defined in the Trade Disputes' Act 1929 includes a workman discharged during the dispute and therefore the employees though discharged must be held to be workmen as they were discharged during the dispute. If the construction were otherwise the employers could succesfully defeat the demands of the workers by discharging the employees as soon as a trade dispute arises and thus avoid any order of adjudication that would be made later on'[1].

' It is true that even during the pendency of an industrial dispute it is open to the employer to discharge the worker for any reason which is not connected with the trade dispute For example if the worker is negligent or guilty of gross misconduct or habitually negligent he would be liable to be discharged'.[2]

Section 3 (24 . Lock-out:

The employees of the company went on a strike on account of a dispute regarding the wages, dearness allowance etc. While the strike was going on, the

1. In the matter of a trade dispute between the Empire of India Life Assurance Co. Ltd and its employees Bombay Govt. Gazette Part I 14th August 1947, page 3414

2. In the matter of trade dispute between the Empire of India Life Assurance Co Ltd and its employees. Reference No. 2/46 Bombay Govt. Gazette Part I. 14th Aug. 1947, page 3414.

company discharged the employees by written orders but at the same time carried on negotiations with the workers and did other acts from which it was proved that the company did not really want to discharge the workers but the discharge notices were merely a threat to compel the employees to accept the terms of the company for resuming work. Held, the action of the company really amounted to a lock-out as the company refused to continue their appointment in consequence of the dispute that was going on and was intended for the purpose of compelling the strikers to accept its terms.

Some days thereafter the Government referred the matter to adjudication. On the next day the workers went to resume work but the management refused to allow them to work. The employees contended that this act was also a lock-out. The Court held that this action was not a fresh lock-out but continuation of the lock-out. Under the definition of the term lock-out, the refusal of an employer to continue to employ persons already employed is also a lock-out within the meaning of the term.[1]

Section 3 (39). **Minimum Wage–Principle of–Fixation of**--

In every scheme of standardisation a minimum occupational wage has got to be fixed and the fact that in doing so the lowest wage for the unskilled worker is also to be fixed does not mean that the minimum is fixed in an arbitrary manner. Along with the nature of the work and the skill involved therein, the costs of living is one of the accepted factors in the fixation of standard wages and if it appears that any wage below a certain amount would push the worker and his family below the minimum standard of even animal existence it would not be improper to fix that amount as a minimum which even an unskilled worker should get as his basic wages. When the cost of living rises, the earnings may be regulated by giving the relief in the form of dearness allowance in addition to the fixed living wage. But if it appears that there is little chance of the increased cost of living going down below a certain amount, it may be desirable to fix the minimum wage which is necessary for a bare animal existence. The Court fixed Rs 30 P. M. as minimum wages of a textile worker in Bombay. Such a pay would provide the barest needs for existence and does not include comforts of any kind.[2]

Section 46, Sch. II, Item 1. **Object of this item :**

The reduction referred to in this item has a two-fold aspect and it is considered a change both because it deprives certain individuals of work and because it imposes additional burden to work on the remaining individuals.[3]

Reduction of a Permanent Nature :

Where the Mills had five doubling machines in the spinning department on

1. In the matter of a trade dispute between the Empire of India Life Assurance Co. Ltd. and its employees Bombay Govt Gazette Part I, 14th Aug 1947, page 3414

2 The Mill Owners Association Bombay Versus the employees in the Cotton Textile Mills; reference No. 1/45 Bombay Government Gazette Part I, 2nd June 1947, page 2257

3. The Textile Labour Association Versus The Ahmedabad Ramkrishna Mills Co. Ltd. App: No. 62/46 Bombay Govt. Gazette Part I, 16th Oct 1947, page 4023.

which ten tenters worked but they reduced the number of tenters to 6 and employed 4 tenters to work on four machines, one on each and the two remaining tenters to work on the 5th machine. Held that the reduction was of a permanent nature and also it introduced rationalisation as the arrangement was not experimental or of a temporary nature. And as no notice of change was given, the change was held to be illegal. [1].

Reduction of a Permanent Nature—Temporary Department :

If a department is a temporary department the reduction of employees by the closure of such a department is not an illegal change. Thus where the Government Folding Department of the Mills was started to meet the war orders of the Government and the number of the employees was not fixed at any time, held that the department was temporary and there was no illegal change by reduction of the number of the employees therein.[2].

Section 46, Sch. II. Item 9. **Dearness Allowance :**

Non-payment of the dearness allowance on a scale awarded by the Industrial Court to the sweepers was held to be an illegal change [3]

Extra Work without Remuneration :

The mills required women reelers to do the additional work of cleaning bobbins of waste yarn sticking into them without additional remuneration. The workers complained that such a work took an hour and a half per day and therefore they lost a portion of their wages in piece work and therefore this act of the Mills Co. amount to an illegal change. Held that the dispute related in substance and effect to wages and fell within item 9 of Sch. II. A dispute relating to work or wages is one relating to an industrial matter and wages being an industrial matter mentioned in Sch, II an employer who intends to effect a change therein must give a notice of change. As no such notice was given the employees were entitled to apply for an illegal change in addition to their remedy under the Payment of Wages Act. [4].

Right to Dearness Allowance for the Period of Closure of the Mill.

The company closed the Mills of its own accord from 12 A. M. owing to the death of the son of the Company's Agent. The Company paid half the dearness allowance for that day. The applicant claimed that this constituted an illegal change as the company had by withholding the dearness allowance for the day made a change in an industrial matter falling under Sch. II item 9. The

1. The Textile Labour Association Versus The Ahmedabad Ramkrishna Mills Co. Ltd Application No. 62/46 Bom. Govt. Gazette part 1. 16th Oct. 1947. page 4023.

2. Ratilal Lallubhai Vs The Lalbhai Trikamlal Mills Ltd. Appl No 76/46 Bom Govt Gazette, Part. 1., 23rd Oct 1947, page 4087.

3. The Chalisgaon Girni Kamgar Union Vs The Chalisgaon Shree Laxminarayan Mills Co Ltd. Appl. No 60/46 Bom. Govt Gazette Part 1, 25th Sept. 1947, page 3822.

4. The Chalisgaon Girni Kamgar Union Vs The Chalisgaon Shree Laxminarayan Mills Co Ltd. Appl. No. 23/47 Bom. Govt. Gazette Part. 1, 21st Aug. 1947, page 3467.

Court rejected the plea holding that the applicant was not entitled to the dearness allowance for the whole day. "It is not contended that such workers were entitled to claim wages or remuneration for half the day, though they may not have claimed them. The dispute is only with respect to dearness allowance. I cannot accede to the argument for the applicant that dearness allowance is not related in any manner to work or wages. If an employee cannot and does not in fact claim wages in respect of the work not done by him or in respect of a portion of the day during which he could else have worked, it seems to me difficult to hold that he can claim dearness allowance in respect of such work or portion of the day. It may be that in the calculations (of dearness allowance) the number of working days has no place; but the amount arrived at upon calculation is made payable as for the actual number of working days, never-the-less. The actual number of working days in the present case, was 24 and the amount arrived at upon calculation in the manner prescribed was Rs. 48 If any particular employee worked for only 20 days out of 24, he could not claim 48 Rs. but only Rs. 40 in proportion.[1]

Section 46 (3). **Agreement** :

The agreement must be a registered agreement within the meaning of the Act. Thus where the agreement alleged to have been contravened was a promise to the president of an Union by the Assistant Spinning Master to the effect that a senior most head will be appointed to the post of a double sider held it was not an agreement the breach of which would constitute an illegal change.[2]

Section 63. **Completion of Conciliation Proceedings** :

In an under noted case the conciliation proceedings were commenced on 10th September 1946. The strikers went on strike on 18th January 1947. The report of the conciliation was published on 23rd January 1947. It was contended that the strike was illegal as it was commenced after two months of the completion of the conciliation proceedings. The contention was upheld. As no time limit had been initially fixed by the Government, the conciliation proceedings must be deemed to be completed on 11th November 1946 and as the strike was commenced after two months thereof it was illegal. The purpose of section 42 of the B. I. D. Act (corresponding to Section 63 of this Act) is to determine the date on which the proceedings are deemed to be completed for the purposes of other sections of the Act such as sections 28, 62 (i) (e), 62 (2), 63 (1) (d), 63 (2) and 73 (1) (corresponding to section 42, 97 (1) (f), 97 (2), 98 (1) (e), 98 (2) and 46 (2) of this Act).

It was urged that as the last date fixed for the hearing before the conciliator was 11th December 1946 i. e. beyond two months of 10th September the date on which the proceedings had commenced, the employees could legitimately assume that the parties had mutually extended the time for completion of the conciliation proceedings as in section 41 (a). The argument

1. Mahem-Ishan Saidakhan Vs. The Ahmedabad Kaisar I. Hind Mills Co. Ltd No. 2 Appl.No. 67/46 Bom. Govt. Gazette Part I., 23rd October 1947 page 4085

2. Daulat Chindu Dhangar Vs. The Chalisgaon Shree Laxminarayan Mills Co. Ltd; Appl, No. 22/47 Bom. Govt Gazette Part 1, 21st Aug. 1947, page 3468

was negatived on the ground that no initial time limit was originally fixed under section 41 (1) (corresponding to sec. 62 of this Act). The sub section 2 provides for the extention of time by mutual consent only when the time limit is fixed by the Provincial Government. The fact that the conciliation proceedings have extended beyond two months is not *per se* evidence of such an agreement. [1]

Completion of conciliation proceedings :—

Where the conciliation proceedings commenced on 23rd August 1946 and the change was effected on 23rd November 1946 held that as no initial time limit was fixed by the Government, the change effected by the Mills being one month after 22nd October on which date the proceedings are deemed to be completed (i. e. on expiry of two months) was legal though the report of the conciliator was published afterwards [2]

Section 79. **Competency to apply :—**

Where two operatives made an application to the Industrial Court for a declaration that the Mills committed an illegal change by searching the persons of two other employees at the gate of the Bleaching Department in contravention of the Standing Order No. 5, held that as the applicants were not the persons searched they were not the employees *concerned* and therefore the application by them was not maintainable.[3]

Where certain permanent employees applied to the Industrial Court that the opponent Mills committed an illegal change by gradually reducing the number of the permanent empoyees in the ring spinning department from 244 to 209, held that the employees were not the employees *concerned* and had no *locus standi* to make the application on that ground. The gradual reduction and substitution of permanent employees may diminish the sense of security of the remaining permanent operatives but in that they are only indirectly or remotely affected.[4]

Section 79. **Application by an employee under notice of discharge :—**

Where the employee who had been given a notice of discharge applied to the Industrial Court before the termination of the period of notice for a declaration that the Mills has committed an illegal change by making a permanent reduction in the number of persons employed, the contention that the applicant had no *Locus Standi* to apply was overruled on the ground that as the application was preferred before the lapse of the notice period, he

1. The Indian United Mills Ltd. No. 5 Vs The Government Labour Officer and others, Appl. No. 10/47 Bom Gov. Gazette Part 1, 21st Aug. 1947. page 3466

2. Hari Bhikhaji Kambali Vs. The Indian Manufacturing Co Ltd. Appl. No 78/46 Bom. Govt. Gazette Part 1. 5th June 1947. page 2453.

3 Kalyani Rangrao and another Vs The Laxmi Cotton Manufacturing Co. Ltd. Appl No 94/47. Bom Govt .Gazette. Part 1. 11th Dec. 1947. page 4657

4. Hari Bhikhaji Kambali Vs The Indian Mafg Co Ltd. Appl. No. 78/46 Bom. Govt Gazette Part 1., 5th June 1947. page 2453.

was an employee at the date of the application and therefore was competent to apply[1].

Misjoinder of Parties :

Where an application for an illegal change was made by two persons for their alleged suspension, one of them wanted to withdraw it while the other wanted to prosecute it. The Court held that there was a misjoinder and the Court could not go on with the application in respect of one of the applicants and refused to go on with it in respect of the other man. Held the application as framed was not tenable and was dismissed.[2] With very great respect it is submitted that the decision is wrong. It has been a practice to present joint application by several workers. If such applications are tenable and not bad for misjoinder of parties they do not become bad because one of the joint applicants afterwards wishes to withdraw it. The correct view, it is submitted would be, to allow the operative intending to withdraw, to withdraw the application in so far as it respects him and to proceed with the application in respect of the other.

Application by an Association of the Employers

Where a Mill Owners' Association is a recognised Association, it is included within the definition of the term 'employer' and has a right to file an application for the declaration of an illegal change on behalf of the member mills which may be affected under the Act. Just as the employees can make the Association a party as opponent in their application for an illegal lock-out by several mills the Association has also the right to maintain an application in respect of a strike concerning member mills. [3]

Thus where the Mill Owners' Association made an application that the strike of the drawers in 56 member Mills was illegal, held that the application was competent.[4]

Section 92 :

"There is no reason in law or equity why an application relating to strike or change on account of the alleged infringement of an award cannot be heard by an Industrial Court who was party to an award."[5]

Section 97. **Burden of Proof as to Concerted Refusal :**

"When a large number of employees remain absent or refuse to work either simultaneously or in quick and close succession a presumption would

1 Ratilal Lallubhai Vs The Lalbhai Trikamlal Mills Ltd. Appl No. 76/46 Bom. Govt. Gazette Part I, 23rd Oct. 1947 page 4087.

2 Abdulkayum Abdulla Vs. Monogram Mills Co. Ltd Appl No 15/46, Bom Govt. Gazette September 1947 Vol. 27 page 31

3 The Mill Owners' Association Bombay Vs The Government Labour Officer and others Appl. No. 153/47 Bom Govt Gazette Part I 9th Oct. 1947. page 3958

4 Ibid.

5 Ibid

arise that the absence or refusal was the result of a concert or a common understanding. The employees must then rebut such presumption by proving the absence of concert or common understanding." Thus where the company alleged that the reason or the concerted refusal to work was a demand that Muslim workers should not be employed, the Court held that owing to the presumption arising from the fact of a large number of employees remaining absent or refusing to work either simultaneously or in close and quick succession the burden was upon the employees to rebut the presumption by showing that the cessation was not a concerted refusal or a refusal under a common understanding.[1]

In Consequence of Industrial Dispute. Strike for Non Payment:

Non-employment of persons who are the employees is an industrial matter.

Where the workers struck work because the manager did not hand over to the police the badli muslim worker who had a hidden knife with him held the dispute related to the personal security or safety of the workers or in other words a condition of employment It was therefore a dispute relating to an industrial matter within the meaning of section 3 (14) of the B. I. D. Act. Therefore the strike was in consequence of an industrial dispute.

Strike for Higher Wages:

Where the workers went on strike for higher wages than given by the award of the Industrial Court, it was held that even if the award was illegal the cessation of work being for higher wages was in respect of an industrial dispute and amounted to a strike and if the award was legal the strike being in contravention of the award was illegal.[3]

Strike in Sympathy with Other Workers:

Where the drawers-in went on strike for higher wages and warpers and reachers stayed away from work in sympathy with them held that "if an employee refuses to work in sympathy with the demand of other employees relating to an industrial matter, his action must partake of the same nature as that of the employees who have made the demand. Therefore it was held that the cessation of work by the warpers and reachers amounted to strike [4]

Strike as a Protest Against Dismissal:

A strike as a protest against the alleged dismissal of a co worker was held illegal as no notice of change was given.[5]

1 The Modern Mills Ltd No 2 Vs The Govt Labour Officer and others. Appl No. 65/46 Bom. Govt. Gazette Part. I. 9th Oct. 1947, page 3956.

2 Ibid.

3 The Mill Owners' Association, Bombay Vs The Govt. Labour Officer and others Appl. No 153/47 Bom. Govt, Gazette Part 1, 9th Oct. 1947, page 3958.

4. Ibid.

5. The Bharat spinning and Weaving Co. Ltd, Vs, The Government Labour Officer Appl No. 30/47 Bom. Govt Gazette Part 1, 4th September 1947, page 3611.

Strike for Payment of Wages on a Different Date:

The applicants struck work because their demand that their wages which were nominally payable on 27th Oct. should be paid on 22nd Oct. was not satisfied, held it amounted to a strike and was illegal as no notice of change was given [1]

Strike Against Transfer to Another Machine :

Where the workers in the winding department struck work from 12-30 p. m. to 4 p. m. because one of them was ordered to work on another machine of the same type in order to enable the Weaving Master to watch his work personally, held the cessation of work was a concerted refusal and there was a partial cessation of work and was consequently a strike and as no notice was given was an illegal strike.[2]

Burden of proof as to cessation being in consequence of an industrial dispute:—

The burden of proving that the cessation of work was not in respect of an industrial matter is on the employees and unless the burden is discharged, the cessation would be presumed to have been in consequence of an industrial dispute.[3]

" If the applicant company had alleged that it did not know the reason of the cessation of work, the Court would have called upon the opponent employees to explain the reason of such cessation. And if it was then proved by the opponents, who alone could know the reason, then it was not in consequence of an industrial dispute, the cessation though concerted. would not have amounted to a strike "[4]

Resumption of work on the advice of an union :—

The workers illegally struck work as they wanted the night shift to be closed at 12 P. M instead of 12-30 A. M. But on persuation of the union officials they resumed work It was conceded that the strike was illegal. But the Court observed, " I should observe that the applicant company would be well advised in not pursuing any penal remedies against the opponents in this particular case in as much as the strike was misconceived and was in respect of a minor change that was desired by the opponents to be introduced. It has also to be taken into account that they came round on the advice of the opponent No. 1 Association within about five days and resumed work unconditionally. I would insist on the notice of the company the desirability of

1 The Shorrock Spinning and Manufacturing Co. Ltd Vs. The Textile Labour Association Appl. No. 74/46 Bom. Govt. Gazette. Part I, 23rd Oct. 1947, page 4087

2. The Monogram Mills Co, Ltd Vs The Textile Labour Association, Ahmedabad Appl. No. 130/45 Bom. Govt. Gazette Part I 10th July 1947, page 2940

3 The Gopal Mills Co Ltd. Vs The Textile Labour Union, Appl No. 54/46 Bom. Govt Gazette part I 10 July 1947, page 2943.

4 The Modern Mills Ltd. No. 2 Vs The Govt Labour Officer and others. Appl. No 65/46 Bom Govt Gazette Part I 9th Oct. 1947, page 3956.

upholding the prestige of social workers like the Association as with their mediation, strikes are many times averted or terminated to the mutual advantage. Such prestige is bound to be undermined if even after termination of the strike at their instance workers were to be prosecuted or penalised [1]

Where the opponents went on strike for increase in wages without giving a notice, held the strike was illegal but the Court also held that the Mills would be advised not to take penal action against the employees as the strike was precipitated by the refusal of the Govt. Labour Officer to convene a meeting of the employees unless the employees withdraw their demands relating to increase in wages. The Govt. Labour Officer's refusal was of course a *bona fide* mistake.[2]

Schedule III Reinstatement.—

"Every employer has a large discretion to discharge or otherwise punish his employees for inefficiency, negligence or dishonesty, insubordination or misconduct and as long as that is done in good faith and without any ulterior motive his discretion cannot be interfered with."[3]

As to reinstatement the law in United States of America is as follows:—

A strike may be in consequence of an unfair labour practice committed by the employer as by his refusal to bargain collectively with the proper bargaining agency of his employees or it may on the other hand be the utilisation of the strike weapon as a weapon of enforcing a demand in a situation wherein the employer is blameless and has committed no unfair practice but simply refuses to accede to his employee's demands. In the former case the employer is under an affirmative obligation to offer to reinstate the striking employees without discrimination. In the later case however an application for reinstatement must be made by the employee unless the employer adopts the practice of notifying the employees to return to work unless the employer's action taken at the termination of the strike reasonably induces belief that an applicatoin would be futile.

The employer who has committed no unfair labour practice is not obliged to cease the conduct of his business but may employ others to take place of the strikers and he may promise to retain such employees even after the termination of the strike; under such circumstances the employer's obligation to reinstate extends only to such of striking employees whose places have not been filled. Where however the strike is as a result of unfair labour practice the employer is under an obligation to discharge those emloyees hired to take place of the strikers and to offer to reinstate them,[4].

1. The Bihari Mills Ltd. Vs. The Textile Labour Association, Appl. No. 9/47 Bom. Govt Gazette, Part 1, 23rd Oct 1947, page 4086.

2. India United Mills No. 1, Vs. The Govt. Labour Officer Appl. No. 8/47 Bom. Govt. Gazette, Part, 1. 21st, August 1947 page 3466,

3. The Bharat Spinning and Weaving Co Ltd. Vs. its employees, Referece No. 1/47Bombay Govt Gazette part, 1. 6th Nov 1947, page 4264

4. Labour Dispute and Collective Bargaining Volume, II. Ludwing Teller page 819

" The Board's power of reinstatement is discretionary in nature to be exercised in the light of all the circumstances of each case in the manner best calculated to effectuate the policies of the Act. In the exercise of that discretion the probable effect of restoration of the working relationship upon future relations between the employers and the employees."[1]

At page 853 it is stated, "recognising that restoration of working relationship would not only not produce harmony but might involve actual danger to the employer and his representatives however, and for the further purposes of effectuating the general policy of the Act and securing the promotion of the industrial peace, the Board has read into the Act a proviso empowering the Board to withhold reinstatement orders in cases involving serious unlawful conduct by discriminatorily discharged or a striking employees"[2]

The said rules were followed in an adjudication under the Defence of India Rules. Under the B. I. R. Act the power of reinstatement is discretionary and the Court has to see the propriety of the order of termination of service. The principles enunciated above are not binding in case under the B. I. R. Act, unless and until they are endorsed by the tribunal created under that Act, but they are given here as they may afford a useful guidance.[3]

Standing Order No. 2 (c). **MANAGER:—**

The expression " Company's manager "means and includes the manager who is in charge of the affairs of the company as such, as well as the factory manager or the manager who holds the charge of running the mills of the company. [4]

Standing Order No. 3. **OPERATIVE :—**

Where the applicant's name appeared on the muster roll of the company held that the applicant was an employee of the company.[5]

PERMANENT EMPLOYEE. :—

Where the employee was not given the permanent pass nor did his name appear on the muster roll he was not a permanent employee, [6]

Standing Order No. 11, **LOSING OF LIEN :—**

An operative who stayed over his leave for more than eight days after the expiry of the period of his leave when he came to the mills was told that he

1. Ibid volume II, page 852.

2. Ibid Volume II page 853

3 In the matter of a trade dispute between the Empire of India Life Assurance Co, Ltd, Bombay Government Gazette part, 1. 14 August. 1947, page 3414.

4 Sitaram Chandoo Vs. The Hirjee Mills Ltd. Appl. No 66/47 Bom. Govt Gazette. Part, 1, 16th Oct. 1947 page 4017.

5. Abdul Hafiz Hafizullah Vs. The Silver Cotton Mills Co. Ltd. Appl No. 60/46 Bom. Govt. Gazette Part 1. 16th Oct, 1947 page 4021.

6. Harising Kesarisingh Vs. The Lalbhai Trikamlal Mills Co Ltd. Appl. No 5/47 Bom. Govt, Gazette Part I 25th Spt, 1947, page 3821.

was kept on *badli* list. The operative getting angry went away. Held that the action of the mills was justified. For under standing order No. 11 as soon as the operative fails to turn up in eight days after the expiry of his leave he loses lien on his permanent appointment and becomes entitled only to be kept on the *badali* list.[1]

Standing Order 19 and 22. Burden of Proof :—

The burden is on the Mill Co. to show why the individuals had been discharged or dismissed and whether the procedure prescribed in the relevent standing orders has been followed. It is a fact within their special knowledge and can be proved from records in their possession.[2]

Notice of Discharge. —

Notice of discharge must be fourteen days' notice. A notice of thirteen days would not be sufficient. When the notice was given on the 19th January *at the time* the operative came to work to the effect that she would be discharged from the evening of 1st of February it was held that the notice was a fourteen days' notice and the dismissal was not illegal. [3]

Discharge Order. :—

Mere giving of a discharge notice cannot operate as a discharge. It is incumbent on the Company to pass a distinct order of discharge and to hand it over to the applicant as required by the Standing Order No. 25. The company's contention that they had sent a notice on 13th December informing the worker that his services had been dispensed with as per notice given on 29th November was not borne out. The Court however held that even if the order of discharge had been made on 13th December it would have been premature by one day and therefore could not be in compliance with Standing Order 19.[4]

Suspension.;—

Under Standing Order No. 22 (11) the copy of the confirmed or the findl order of suspension is to be suplied to the operative and it would be illegal if the copy of such an order is not supplied to him. There is no justification for supposing that the intention of this standing order is that a copy of the order was to be supplied to the operative only when it was asked for. If ihe framers of the standing orders had intended that a copy of the final suspension order or confirmed suspension order was to be supplied to the operative only in case

1. Dhana Ganga Vs, Shree Ambica Mills Co. Ltd Appl. No. 120/45, Bom. Govt Gazette, part, 1, July 1947. Vol, 27, page 911,

2. The Bharat Spinning and Weaving Co Ltd. Vs. its employees Reference No. 1, of 47 Bom, Govt, Gazette part. 1. 6th Nov, 1947, page 4264,

3. Tani Sakuntala, Vs. The New Manekchawk spinning and Weaving Co, Ltd, Appl. No. 22/45 Bom. Govt. Gazette part 1. 10th July 1947, page 2937,

4. Ratilal Lallubhia Vs. The Lalbhia Trikamlal Mills Ltd, Appl. No, 76/47 Bom. Govt. Gazette, part, 1 23rd Oct. 1967, page 4087,

of a demand by him, they would have used different language in respect thereof.[1]

Suspension,:—

The applicants were on strike from 9th March onwards. On the 20th they appeared for resuming work but the Manager had instructed the gate-keeper not to admit into the Mills the 68 workers among whom were the applicants. When these 68 workers came to the gate they were served on that date with notices which contained a statement of the charge against them and which required them to show cause why they should not be dismissed before they could resume work, held that so long as the company had not suspended or dismissed the applicants, they had a right to resume work from 20th onwards, and the action of the manager was a refusal to allow them to work and therefore was a suspension of those 68 workers until cause could be shown, even if it may not amount to a lock out. That being so the Company ought to have followed the procedure prescribed in Standing Order No. 22 (I) which requires the period of suspension to be specified and not to exceed four days in any case. The notices served on 20th did not say that the applicants were being suspended nor did they mention the period of suspension. The applicants should not have been left in doubt as to the precise nature of the notices and also as to the position the company was taking when it was refusing to admit certain of its emloyees to work. The notices did not even mention the date and time at which the inquiry was proposed to be held. The applicants were sought to be kept out indefiniely. On noticing this defect the manager served fresh notices on 21st giving the date and time of inquiry. Held there was suspension of the applicants on the 20th and 21st March which had not been in conformity with Standing Order No. 21, and therefore was an illegal change[2].

Failure to Give a Show Cause Notice .—

Where it was admitted that no show cause notice was given to the employee dismissed held it was an illegal change.[3]

1. Dana Suban Vs The Monogram Mills Co Ltd Appl No 5/45 Bom. Labour Gazette. Spt, 1947, Vol 27 page 26

Ahmed Hussain Vs. The Monogram Mills Co Ltd Appl. No 6/46 Bom. Labour Gazette Spt. 1947 Vol, 27 page 28

Khadim Hussein Mahommadbhai Vs. The Monogram Mills Co. Ltd. Appl. No. 16/46 Bom. Labour Gazette Spt. 1947 Vol 27, page 32.

Nayaz Mahommad Noor Mahommad Vs. The Monogram Mills Co. Ltd. Appl. No. 3/46 Bom. Labour Gazette Aug. 1947, Vol 27 page 986.

Mahommad Isac Abdual Gufur Vs, The Mongram Mills Co. Ltd. Appl. No. 3/46 Bom. Labour Gazette Aug, 1947, Vol 27 page 988

2 Sitaram Chandu Vs. The Hirjee Mills Ltd Appl. No 66/47 Bom. Govt. Gazette, part I. 16th Oct. 1947, page 4017.

3 Abdulhamid Gulamrasul Vs. The Monogram Mills Co Ltd. Appl No. 7/46 Bom. Labour Gazette Sept 1947 Vol 27 page 30

Show-cause notice vague :—

Relevant details of misconduct ought to be given in the show cause notice. It should not be vague or such as does not give sufficient opportunity to refute. Where an operative was dismissed for કામના કલાકો દરમ્યાન મિલની હદમાં તોફાની વર્તન માટે i. e. for disorderly behaviour in Mills premises during working hours, the Court held that the notice was vague and did not allow him sufficient material or opportunity to explain. No date nor the precise time when the alleged misconduct took place was given nor was the person towards whom the applicant was guilty of mischievous conduct stated. The Court held, the expression 'તોફાની વર્તન' was too vague to give the applicant any idea whatever of what he was accused of. It simply meant mischievous conduct. The Notice was held not to be a proper notice or a notice within the Standing Order No. 22 and therefore the dismissal of the opponent amounted to an illegal change.[1]

Show Cause Notice—Procedure when Refused :—

Where the Mills contended that the show cause notice was given to the employee but he refused to sign the counterfoil the Court observed, "It is not understood why the counterfoil was not forwarded to the Government Labour Officer with a request that it should be returned to the Mill after taking the signature of the applicant."[2]

Failure to take Circumstances into Account :—

Where the manager does not take into account in dismissing an operative the gravity of the misconduct and the previous record, the defect would entitle the operative to apply for an illegal change.[3]

Discretion of the Manager: Court to see whether on facts Constitute a Misconduct :—

The applicant was dismissed for the alleged theft of the Company's property. The manager found her guilty of theft because she had taken two chits or passes from the mill clerk and had delivered only one basket of bobbins of yarn. She should have delivered two baskets corresponding to the two chits or passes and she was accused on account of that default, of having 'stoten' from the Mukadam from whom the additional chit had to be obtained before removing the corresponding basket to the clerk. But according to the applicant whom the Court believed, it was impossible to carry two baskets at a time; so she had retained one basket behind and she was going to get that basket immediately after delivering the first basket to the clerk. The Court held that this action could not amount to a theft and that there was no misconduct and therefore the dismissal was improper and amounted to an illegal change. The Court observed:—it is perfectly open to us without sitting in appeal over the

1. Partapsing Keshavlal Vs. The Ahmedabad New Textile Mills Co Ltd. App. No. 123/45 Bom. Govt. Gazette part I 10th July 1947. page 2240.

2. Rajaram Jagatguru Vs. The Ahmedabad Cotton Manufacturing Co, Ltd. Appl. No. 78/45 Bom. Govt. Gazette part I. 10th July 1947. page 2938.

3. The Bharat Spinning and Weaving Co. Ltd Vs. its employees. Reference No. 1/47 Bom. Govt. Gazette. part I 6th Nov. 1947, page 4264.

finding of the manager to inquire whether the facts on which the manager was satisfied as to the misconduct of the applicant did constitute misconduct at all within the meaning of Standing Order No. 21 (d) [1].

Court to see Whether the Facts alleged amount to Misconduct :—

It is perfectly open to the Court to inquire whether certain facts alleged as amounting to misconduct can at all amount to misconduct within the meaning of the Standing Order No. 21. Thus where an operative was dismissed for having an altercation with another worker in a tea shop within the compound of the Mill it was held that the altercation or disorderly behaviour had not taken place in the Mill premises which means the departmental sheds of the Mill as distinct from tea shops or other places of retirement which are usually outside the premises proper though within the compound of the Mills. If an exchange of abuse or altercation happens between two individual workmen at such places of retirement, without of course, doing damage to the Mills furniture, appertenances or structure that is more a private matter between individuals themselves than one calling for any disciplinary action on the part of the Mills. Held the conduct did not amount to misconduct and therefore the dismissal was illegal.[2]

Where certain women workers were dismissed for illegal strike and for inciting other workers to illegal strike it was proved at the trial that these women workers had not struck work at all but the manager was satisfied that they had incited other workers to remain on illegal strike, held that the dismissal was not illegal and there was no illegal change.[3]

Standing Order No. 21. (i) : Object :—

There is a special reason why the collection of money within the Mill premises without the sanction of the manager is not permitted. There is the danger of rival unions or factors creating trouble and causing damage or breach of peace within the Mill premises in collecting such monies and there is also the risk of the time workers producing less if a portion of the Mill's working time be spent in such activities within the premises.[4]

Standing Order No. 25 : Written order :—

Whether an operative's employment is terminated by the Mills or he leaves the service of his own accord, the Company would be guilty of an illegal change if no written order as enjoined by Standing Order No. 25 is not given

1 Greshbai Lalji Vs. The Monogram Mills Co. Ltd Appl. No 58/46 Bom. Govt. Gazette, part 1. 2nd Oct. 1947 page 3904

2, Kanaji Karsan Vs. The Bharat Suryoday Mills Co. Ltd Appl. No. 61/46 Bom Govt. Gazette part 1, 16th Oct, 1947, page 4022

3. Sitaram Chandu Vs The Hirjee Mills Ltd. Appl No. 66/47 Bom Govt. Gazette part 1. 16th Oct 1947, page 4017.

4. The Bharat Spinning and Weaving Co. Ltd Vs. its employees. Reference No. 1. of 1947 Bom. Govt. Gazette, part 1. 6th Nov. 1947. page 4264

to such an employee. Even in case of voluntary abandonment of service, a written order is necessary. [1]

Even where an operative voluntarily leaves service, a written order under Standing Order No. 25 is necessary. The Court held that strictadherence to this very salutary provision in this standing order should be insisted on by the Industrial Court in order to put an effective check in the setting up of false and frivolous defences by the employer that the operative had voluntarily left service or was on leave. It is no answer that the operative had not asked for an order. He need not be given the Service Certificate referred to in paragraph 2 of Standing Order 25 unless he asks for it. The paragraph only declares that the employee is entitled to such a certificate. But paragraph 1 makes it the duty of the employer to pass the relevant order and give it to the employee. If the employee refuses to take it, it can be put on the notice board and the copies be sent to the Government Labour Officer and to the employee by post.[2]

Written order of discharge :—

Where the applicant was given a fourteen days' notice of discharge but no written order of discharge was given at the expiry of the period of notice, the Court held that the discharge constituted an illegal change.[3]

Refusal to accept dismissal order :—

Where the Mills alleged that the operatives did not accept the dismissal order offered to him but the order was not sent to the Govt. Labour Officer until after that officer had written a letter requesting reinstatement, held the story of the Mills that the dismissal order was refused by the operative was not believable.[4]

Schedule 11. Item. (3) and Standing Order No. 21.

Does a wrongfully dismissed Servant Continue In Law to be on Service ?

The legal status of wrongfully dismissed servant and his rights to get entitled to the salary far the period of service after the dimissal have been a most controversal subjects both in the field of industrial jurisprudence and at common law.

At one time Mr. Weston. J. at the Bombay High Court held that even after the wrongful dismissal of a servant he ceases to have any claim on wages

1. Mahomed Hanif Abdul Rehman Vs. The Ahmedabad Jaybharat Cotton Mills Ltd. Appl No. 121/45 Bom. Labour Gazette July 1947 Vol. 26. page 913 Nathu Vasir Vs The Ahmedabad Jaybharat Cotton Mills,Ltd Appl No. 122/45 Bom. Labour Gazette. July 1947, Vol. 26 page 914

2. Soma Rama Vs. The Aryoday Spinning and Weaving Co. Ltd. Appl. No 36/46 Bom Govt. Gazette, part I. 12th June 1947. page 2518.

3. Bai Bhani Wali Vs. The Silver Cotton Mills Co. Ltd Appl No. 118/45 Bom. Govt Gazette part I. 10th July 1947. page 2938.

Bai Shanti Hiri Vs The Silver Cotton Mills Co. Ltd. Appl. No. 119/45 Bom. Govt. Gazette part I. 10th July 1947. page 2939.

4. Kanaji Karsan Vs The Bharat Suryoday Mills Co. Ltd. Appl No. 61/46 Bom Govt. Gazette part I. 16th Oct 1947. page 4022.

he would have otherwise earned if he would not have been dismissed. The status of an illegally dismissed servant is also governed by the ordinary law of master and servant, and his remedy lies in damages.[1]

But the Federal Court of India while deciding the case of an illegally dismissed servant of the Punjab Government has taken quite a different view.

In the course of the judgment their Lordships held "The order..... purporting to dismiss..... .....having being made by an authority expressly debarred from making it was utterly void of all effect. It was in the eye of Law no more than a piece of waste paper. The position is that the respondent was never legally dismissed from service and continued in law to be a Sub-Inspector of police till the date on which he was under the conditions of his service due to retire. He was thus entitled to receive his salary for the period of his service after the 19th March 1938 (date of dismissal)"[2]

1. Civil Revision Application Nos. 611 of 1944 and 138 of 1945 Bom Labour Gazette. Vol. 26 March 1947, page 49.

2. Civil Appeal No. 1. of 1946. 49 Bombay Law Reporter Page 697, Federal Court of India. The Punjab Province vs. Pandit Tarachand. 1942. I M. L. J. Page 77. Suraj Narain Anand. vs. North West Frontier Province,. Federal Court India, followed.

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65/43	7,15	1943	Sept.	23	55	1943	,,	2192
66/43	243	1543	Nov.	23	199	1943	,,	2575

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73/43	226,231,252	1944	July.	23	690	1944	,,	1453
78/43	51,146	1943	Dec.	23	273	1943	,,	2782
79/43	226,252	1944	July.	23	692	1944	,,	435
83/43	203	1944	March	23	447	1944	,,	436
85/43	234	1944	Jan.	23	312	1944	,,	154
87/43	247,248,250,254	1944	Oct.	24	92	1944	,,	2521
90/43	266	1944	Oct.	24	109	1944	,,	2527
93/43	235	1944	Jan.	23	314	1944	,,	201
94/43	253	1944	Oct.	24	113	1944	,,	2529
104/43		1943	Nov.		200	1943	,,	2593
106/43	243	1944	Oct.	24	114	1944	,,	2530
108/43	74,93	1944	Oct.	24	117	1944	,,	2531
112/43	237,249,260	1943	Nov	23	201	1943	,,	2595
113/43 to 118/43	224,259,260	1944	July.	23	694	1944	,,	1454
119/43	202,223	1944	Oct.	24	118	1944	,,	2531
121/43	112,181	1944	July.	23	695	1944	,,	1455
122/43	240	1944	July	23	699	1944	,,	1456
123/43		1944	July.		695	1944	,	1455
124/43	240	1944	July	23	699	1944	,,	1456
126/43	240	1944	July	23	699	1944	,,	1456
128/43	240	1944	July.	23	699	1944	,,	1456
130/43	227	1943	Dec.	23	275	1943	,,	2783
131/43	239,242	1944	Jan	23	315	1944	,,	202
132/43 to 140/43	114	1944	March	23	448	1944	,,	623
142/43	237,248,250	1944	Jan.	23	316	1944	,,	202
144/43	253	1944	Oct.	24	120	1944	,,	2532
145/43	236,247,249	1945	Jan.	24	291			
146/43	227,250,260	1944	March	23	451	1944	,	696
148/43	151,233,247,250	1944	Jan.	23	318	1944	,,	205
150/43	225	1944	April	23	497	1944	,,	773
153/43	57,75,77,219	1944	Aug.	23	753	1944	,,	1956
154/43	250,260	1944	March	23	451	1944	,,	696
157/43	201,223	1944	April	23	500	1944	,,	774

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162/43	28,88,266,268	1944	Oct.	24	123	1944	,,	2593
163/43	75,198,201,203, 210	1944	Oct.	24	96	1944	,,	2522
164/43	75.198,201,203, 210	1944	Oct.	24	102	1944	,,	2524
165/43 to 191/43	226,227	1944	Jan.	23	326	1944	,,	203
192/43	246	1944	Oct.	24	127	1944	,,	2535
195/43	247,250	1944	April	23	501	1944	,,	775
197/43	212,213	1944	Jan.	23	330	1944	,,	205
199/43	199,210	1944	July.	23	701	1944	,,	1457
202/43	246,253,259	1945	Jan.		293			
203/43	250	1944	Aug.	23	757	1944	,,	1957
204/43	237	1944	June.	23	626	1944	,,	1405
205/43	235,246	1944	June.	23	627	1944	,,	1405
206/43	235	1944	June.	23	629	1944	,,	1406
207/43	235,236	1944	June.	23	631	1944	,,	1407
208/43	237	1944	June.	23	633	1944	,,	1415
209/43	236	1944	June.	23	634	1944	,,	1407
210/43	236	1944	June.	23	636	1944	,,	1408
211/43	236	1944	June.	23	638	1944	,,	1409
212/43	236	1944	June.	23	640	1944	,,	1410
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214/43	236	1944	June.	23	644	1944	,,	1411
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4/44	32,136,143,144	1945	June	24	626	14th June 1945	,,	1611
8/44	227	1944	July.	23	707	1944	,,	1531
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11/44	129	1945	March	24	415	22nd Mar. 1945	,,	661
16/44	77,217	1944	July.	23	708	1944	,,	1532
17/44	218,221,241	1944	July.	23	709	1944	,,	1532
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21/44	270	1945	May.	24	551	31st May 1945	,,	1499
22/44	129	1945	Feb.	24	356	15th Feb 1945	,,	430
23/44	11,126	1945	April.	24	491	22nd Mar. 1945	,,	662
25/44	64	1945	April	24	492	22nd Mar. 1945	,,	662
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31/44	89	1945	May.	24	553	31st May. 1945	,,	1500
33/44	146	1944	July.	23	711	1944	,,	1533
34/44	144	1945	Dec.	25	267	20th Dec. 1945	,,	3144
35/44	11	1946	July.	25	837	4th July. 1946	,,	2199
36/44	144,232	1945	Dec.	25	268	20th Dec. 1945	,,	3144
39/44	92,181	1946	Jan.	25	341	21st Feb. 1945	,,	642
40/44	243,246,247	1945	May.	24	555	31st May 1945	,,	1502
41/44	90,148	1944	Aug	23	759	1944	,,	1958
43/44	63,74,83,209	1944	Nov.	24	193	1944	,,	2536
72/44	254,258	1945	May.	24	561	31st May. 1945	,,	1506
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91/44	92	1945	June.	24	615	31st May. 1945	,,	1503
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103/44	240	1945	June.	24	634	21st June. 1945	,,	1670
108/44	243	1945	Dec.	25	271	20th Dec. 1945	,,	3145
109/44	144	1945	Dec.	25	272	20th Dec. 1945	,,	3146
110/44	11	1945	June.	24	616	31st May. 1945	,,	1504
115/44	225,226,258	1945	June	24	620	31st May. 1945	,,	1504
117/44	153	1945	Jan.	24	288	18th Jan. 1945	,,	256
119/44	147,157	1945	Jan.	24	290	18th Jan. 1945	,,	257
121/44	237	1945	June.	24	638	21st June. 1945	,,	1672

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25/46	218	1946	Oct.	26	98	1946	,,	3166
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By The Registrar, Bombay Industrial Relations Act, 1946.

N. 7/48--In exercise of the powers conferred on me under section 11 (*1*) of the Bombay Industrial Relations Act, 1946, I hereby recognise the following concerns in the cotton textile industry as undertakings in that industry for the purposes of the Act :—

List of concerns in the Cotton Textile Industry.

1. Ahmedabad Advance Mills Ltd., Ahmedabad.
2. Ahmedabad Cotton Manufacturing Co. Ltd., Ahmedabad.
3. Ahmedabad Fine Weaving Works, Ahmedabad.
4. Ahmedabad Jayabharat Cotton Mills Ltd., Ahmedabad.
5. Ahmedabad Jupiter Spinning, Weaving and Manufacturing Co. Ltd., Ahmedabad.
6. Ahmedabad Kaiser-I-Hind Mills Co. Ltd., Ahmedabad.
7. Ahmedabad Laxmi Cotton Mills Co. Ltd., Ahmedabad.
8. Ahmedabad Manufacturing and Calico Printing Co. Ltd. (Calico Mills), Ahmedabad.
9. Ahmedabad Manufacturing and Calico Printing Co. Ltd. (Jubilee Mills), Ahmedabad.
10. Ahmedabad New Cotton Mill Co. Ltd., Ahmedabad.
11. Ahmedabad New Textile Mills Co. Ltd., Ahmedabad.
12. Ahmedabad Sarangpur Mills Co. Ltd., Ahmedabad.
13. Ahmedabad Shree Ramkrishna Mills Co. Ltd., Ahmedabad.
14. Ajit Mills Ltd., Ahmedabad.
15. Anant Mills Ltd., Ahmedabad.
16. Aruna Mills Ltd., Ahmedabad.
17. Arvind Mills Ltd., Ahmedabad.
18. Aryodaya Ginning and Manufacturing Co. Ltd., Ahmedabad.
19. Aryodaya Spinning and Manufacturing Co. Ltd., Ahmedabad.
20. Asarwa Mills Ltd., Ahmedabad.
21. Ashok Mills Ltd., Ahmedabad.
22. Bechardas Spinning and Weaving Mills Co. Ltd., Ahmedabad.
23. Bhalakia Mills Co. Ltd., Ahmedabad.
24. Bihari Mills Ltd., Ahmedabad.
25. Bharat Suryodaya Mills Co. Ltd., Ahmedabad.
26. Bharatkhand Textile Manufacturing Co. Ltd., Ahmedabad.
27. City of Ahmedabad Spinning and Manufacturing Co. Ltd., Ahmedabad.
28. Commercial Ahmedabad Mills Co. Ltd., Ahmedabad.
29. Girdhardas Harivallabdas Mills Ltd., Ahmedabad.
30. Gujarat Colour Grinding and Weaving Works, Ahmedabad.

31. Gujarat Cotton Mills Co. Ltd., Ahmedabad.
32. Gujarat Hosiery Factory (Spinning Section), Ahmedabad.
33. Gujarat Spinning and Weaving Co. Ltd., Ahmedabad.
34. Gujarat Weaving Works, Ahmedabad.
35. Harivallabhadas Mulchand Mills Co. Ltd., Ahmedabad.
36. Hathisingh Manufacturing Co. Ltd., Ahmedabad.
37. Himabhai Manufacturing Co. Ltd., Ahmedabad.
38. Jehangir Vakil Mills Co. Ltd., Ahmedabad
39. Kalyan Mills Ltd., Ahmedabad.
40. Lalbhai Tricumlal Mills Ltd., Ahmedabad.
41. Maheshwari Mills Ltd., Ahmedabad.
42. Manekchowk and Ahmedabad Manufacturing Co. Ltd., Ahmedabad.
43. Maneklal Harilal Spinning and Manufacturing Ltd., Ahmedabad.
44. Marsden Spinning and Manufacturing Co., Ltd., Ahmedabad.
45. Monogram Mills Co. Ltd., Ahmedabad.
46. Nagri Mills Co. Ltd., Ahmedabad.
47. National Mills Co. Ltd., Ahmedabad.
48. New Commercial Mills Co. Ltd., Ahmedabad.
49. New Manekchowk Spinning and Weaving Co. Ltd,, Ahmedabad.
50. New National Mills Ltd., Ahmedabad.
51. New Rajpur Mills Co. Ltd., Ahmedabad.
52. New Swadeshi Mills of Ahmedabad Ltd., Ahmedabad.
53. Nutan Mills Ltd., Ahmedabad.
54. Patel Mills Co. Ltd., Ahmedabad.
55. Rajpur Manufacturing Co. Ltd., Ahmedabad.
56. Rajnagar Spinning, Weaving and Manufacturing Co. Ltd., Mill No. 1, Ahmedabad.
57. Rajnagar Spinning, Weaving and Manufacturing Co. Ltd., Mill No. 2, Ahmedabad.
58. Rohit Mills Ltd., Ahmedabad.
59. Rustom Jehangir Vakil Mills Co. Ltd., Ahmedabad.
60. Sarangpur Cotton Manufacturing Co. Ltd., Mill No. 1, Ahmedabad.
61. Sarangpur Cotton Manufacturing Co. Ltd., Mill No. 2, Ahmedabad.
62. Saraspur Mills Ltd., Ahmedabad.
63. Shorrock Spinning and Manufacturing Co. Ltd., Ahmedabad.
64. Shree Anand Cotton Mills Ltd., Ahmedabad.
65. Shree Bhagwati Spianing and Weaving Works, Ahmedabad.
66. Shree Ambica Mills Ltd., Mill No. 1, Ahmedabad.
67. Shree Ambica Mills Ltd., Mill No. 2, Ahmedabad.
68. Shrinagar Mills Ltd., Ahmedabad.
69. Shree Vivekanand Mills Ltd., Ahmedabad.
70. Silver Cotton Mills Co. Ltd., Ahmedabad.
71. Vijaya Mills Co. Ltd., Ahmedabad.
72. Vikram Mills Ltd., Ahmedabad.

73. Parikh Weaving Mills, Ahmednagar.
74. Sarada Weaving Mills, Ahmednagar.
75. Pratap Spinning, Weaving and Manufacturing Co. Ltd., Amalner.
76. Barsi Spinning and Weaving Mills Ltd., Barsi.
77. Jayshankar Mills Ltd., Barsi.
78. Lokmanya Mills Ltd , Barsi.
79. Shree Krishna Weaving Mills., Belgaum.
80. A. A. Patel Weaving Factory, Bhiwandi.
81. Abdul Samad Haji-Lal Mohmed Weaving Factory, Bhiwandi.
82. Haji Suleman Alaudin Company's Weaving Mills, Bhiwandi.
83. J. L. Gokani Mills, Bhiwandi.
84. Lahoti Weaving Mills, Bhiwandi.
85. Parsharam Karwa Mills, Bhiwandi.
86. Secunder Sari Mills, Bhiwandi.
87. Acme Thread Co. Ltd., Bombay.
88. Amritlal Harjivandas & Co., Bombay.
89. Anwar Textile Mills, Bombay.
90. Apollo Mills Ltd., Bombay.
91. B. K. Dalal Knitting Factory, Bombay.
92. Bankdam Industries Ltd., Bombay.
93. Bombay Dyeing and Manufacturing Co. Ltd., (Spring Mill), Bombay.
94. Bombay Dyeing and Manufacturing Co. Ltd. (Textile Mills), Bombay.
95. Bombay Textile Ltd., Bombay.
96. Bradbury Mills Ltd., Bombay.
97. Calcuttawala Tape Works, Bombay.
98. Century Weaving and Manufacturing Co. Ltd., Bombay.
99. Colaba Land and Mill Co. Ltd., Bombay.
100. Crown Spinning and Manufacturing Co. Ltd., Bombay.
101. David Mills Ltd., Bombay.
102. Dawn Mills Co. Ltd., Bombay.
103. Dhanraj Mills Ltd., Bombay.
104. Diamond Surgical Works, Bombay.
105. Digvijaya Spinning and Weaving Co. Ltd., Bombay.
106. Eastern Tape Manufacturing Co. Ltd., Bombay.
107. Edward Textile Ltd., Bombay.
108. Elphinstone Spinning and Weaving Mills Co. Ltd., Bombay.
109. Finlay Mills Ltd., Bombay.
110. Gold Mohur Mills Ltd., Bombay.
111. Hindustan Spinning and Weaving Co. Ltd., Bombay.
112. Hirjee Mills Co. Ltd., Bombay.
113. India United Mills Ltd., Mills No. 1, Bombay.
114. India United Mills Ltd., Mills No. 2 and 3, Bombay.
115. India United Mills Ltd., Mills No. 4, Bombay.
116. India United Mills Ltd., Mills No. 5, Bombay.

117. Indian Manufacturing Co. Ltd., Bombay.
118. Jam Manufacturing Co. Ltd., Mill No. 1, Bombay.
119. Jam Manufacturing Co. Ltd., Mill No. 2, Bombay.
120. Jubilee Mills Ltd., Bombay.
121. Kamla Mills Ltd., Bombay.
122. Khatau Makanji Spinning and Weaving Co. Ltd., Bombay.
123. Kohinoor Mills Co. Ltd., Mills Nos. 1 and 2, Bombay.
124. Kathiawar Textile Mills, Bombay.
125. Lokmanaya Textile Mills, Bombay.
126. Madhavji Dharamsi Manufacturing Co. Ltd., Bombay.
127. Madhusudan Mills Ltd., Bombay.
128. Mayer Mills Ltd., Bombay.
129. Modern Mills Ltd., Mill No. 1, Bombay.
130. Modern Mills Ltd., Mill No. 2, Bombay.
131. Modern Textile Manufacturing Co., Bombay.
132. Moon Mills Ltd., Bombay.
133. Morarjee Gokuldas Spinning and Weaving Co. Ltd., Bombay.
134. National Cotton Products Ltd., Bombay.
135. New China Mills Ltd., Bombay.
136. New City of Bombay Manufacturing Co. Ltd., Bombay.
137. New Great Eastern Spinning and Weaving Co. Ltd., Bombay.
138. New India Textiles, Bombay.
139. New Kaiser-I-Hind Spinning and Weaving Co. Ltd., Bombay.
140. New Pralhad Mills Ltd., Bombay.
141. New Sun Mills Co. Ltd., Bombay.
142. New Union Mills Ltd., Bombay.
143. Phoenix Mills Ltd., Bombay.
144. Podar Mills Ltd., Bombay.
145. Raghuvanshi Mills Ltd., Bombay.
146. Ruby Mills Ltd., Bombay.
147. Saksaria Cotton Mills Ltd., Mill No. 1, Bombay.
148. Saksaria Cotton Mills Ltd., Mill No. 2, Bombay.
149. Samartha Eng. and Weaving Co. Ltd., Bombay.
150. Sassoon Spinning and Weaving Co. Ltd., Bombay
151. Shree Ram Mills Ltd., Bombay.
152. Sri Niwas Cotton Mills Ltd., Bombay.
153. Simplex Mills Co. Ltd., Bombay.
154. Sir Shapurji Broacha Mills Ltd., Bombay.
155. Standard Mills Co. Ltd., Bombay.
156. Sunrich Mills. Bombay.
157. Suryakant Textile Mills, Bombay.
158. Swan Mills Ltd., Bombay.
159. Swastik Silk Weaving Mills Ltd., Bombay.
160 Swastik Textile Mills Ltd., Bombay

161. Tata Mills Ltd., Bombay.
162. Thread House Ltd., Bombay.
163. Universal Textiles, Bombay.
164. Universal Textiles Ltd., Bombay.
165. Venus Silk Mills, Bombay.
166. Victoria Mills Ltd., Bombay.
167. Western India Spinning and Weaving Co. Ltd., Bombay.
168. Broach Fine Counts Spinning and Weaving Co. Ltd., Broach.
169. Gopal Mills Co. Ltd., Broach.
170. Chalisgaon Shri Laxmi Narayan Mills Co. Ltd., Chalisgaon.
171. Deopur Weaving Factory, Dhulia.
172. New Pratap Spinning Weaving and Manufacturing Co. Ltd., Dhulia.
173. Narayandas Chunilal Cotton Spinning and Weaving Mills, Gadag.
174. Yelamali Weaving Mills, Gadag.
175. H. M. Weaving Factory, Gogha.
176. Gokak Mills Ltd., Gokak.
177. Bharat Spinning and Weaving Co. Ltd., Hubli.
178. Gendalal Mills Ltd., Jalgaon.
179. Khandesh Spinning and Weaving Mills Co. Ltd., Jalgaon.
180. Saraiya Weaving Mills, Karad.
181. Amjad Vazir Weaving Mills, Kurla.
182. Coorla Spinning and Weaving Co. Ltd., Kurla
183. Jalem Weaving Factory, Kurla.
184. Swadeshi Mills Co. Ltd., Kurla.
185. Ashok Mills, Malegaon.
186. Diamond Weaving Mills, Malegaon.
187. Golden Weaving Mills, Malegaon.
188. Hakeem Weaving Mills, Malegaon.
189. Iquabal Sadi Works, Malegaon.
190. Kakani Weaving Mills, Malegaon.
191. Kohinoor Sari Works, Malegaon.
192. Manjur Sari Factory, Malegaon.
193. National Weaving and Dyeing Works, Malegaon.
194. New Abbasia Dyeing and Weaving Mills, Malegaon
195. Shree Laxmi Narayandas Weaving Mills, Malegaon.
196. Star Weaving Factory, Malegaon.
197. Usmania Weaving Factory, Malegaon.
198. New Shorrock Spinning and Manufacturing Co. Ltd., Nadiad.
199. Raja Rahadur Motilal Mills Ltd., Poona.
200. Shree Sudarshan Silk Mills Ltd., Poona.
201. Vijaya Textile Ltd., Poona.
202. Vijaya Textile Mills Ltd., Poona.
203. Lokseva Weaving Mills, Satara.
204. Jam Shri Ranjit Singhaji Spinning and Weaving Mills, Sholapur.

205. Laxmi Cotton Manufacturing Co. Ltd., Sholapur.
206. Marda Weaving Mills, Sholapur.
207. Narsinggiriji Manufacturing Co. Ltd., Sholapur.
208. Sholapur Spinning and Weaving Co. Ltd., Sholapur.
209. Vishnu Cotton Mills Ltd., Sholapur.
210. Aziz Silk and Cotton Factory, Surat.
211. Bhagubhai Dahyabhai Gajiwala Weaving Factory, Surat.
212. Bhagwandas Nathubhai Weaving Factory, Surat.
213. Dhamanwala Silk Mills, Surat.
214. Dhamanwala Textile Mills, Surat.
215. Garden Silk Weaving Factory, Surat.
216. Ghariwala Durlabhram Narbheram Weaving Factory, Surat
217. J. H. Kadiwala Weaving Factory, Surat.
218. Jermadas Narandas Weaving Factory, Surat.
219. Hathiwala Silk Mills, Surat.
220. Hatiwala Textile Mills, Surat.
221. Hatiwala Weaving Mills, Surat.
222. Hindi Fabrics Weaving Factory, Surat.
223. Huns Textile Factory, Surat.
224. Kalidas Hargovandas Silk Weaving Factory, Surat.
225. Kalyan Weaving Factory, Surat.
226. Kanti Silk Mills, Surat.
227. Kashiram Jagdish Weaving Factory, Surat.
228. Keshav Silk Factory, Surat.
229. Kohinoor Woollen and Silk Mills Surat.
230. Laxmi Weaving Factory, Surat.
231. Mohanlal Maneklal Chelvi Weaving Factory, Surat.
232. Monoco Silk Mills, Surat.
233. Mulchandbhai Harkisondas Topiwala Weaving Factory, Surat.
234. Nagindas Chunilal Mathawala Weaving Factory, Surat.
235. Narayan Weaving Factory, Surat.
236. Narbheram Laloobhai Ghantiwala Weaving Factory, Surat.
237. Niranjan Mills Ltd., Surat.
238. Nutan Weaving Factory, Surat.
239. N. V. Shah and Co.'s Weaving Factory, Surat.
240. Parmar Weaving Factory, Surat.
241. Shah Weaving Works, Surat.
242. Singapuri Weaving Factory, Surat.
243. Surat Cotton Spinning and Weaving Mills Ltd., Surat.
244. Surya Prakash Weaving Factory, Surat.
245. Vasant Weaving Factory, Surat.
246. B. Thanawala & Sons Ltd., Thana.
247. Tikekar Textile Mills Ltd., Tikekarwadi.

No. 9/48.—In exercise of the powers conferred on me under section 11 (1) of the Bombay Industrial Relations Act, 1946, I hereby recognise the following concerns in the Woollen textile industry as undertakings in that industry for the purposes of the Act:—

List of concerns in the Woollen Textile Industry.

1. Eastern Woollen Mills Ltd., Bombay.
2. Indian Woollen Mills, Bombay.
3. Nagapal Woollen Mills, Bombay.
4. Raymond Woollen Mills Ltd., Thana.

No. 10/48.—In exercise of the powers conferred on me under section 11 (1) of the Bombay Industrial Relations Act, 1946, I hereby recognise the following concerns in the hosiery textile industry as undertakings in that industry for the purposes of the Act:—

List of concerns in the Hosiery Textile Industry.

1. Crescent Hosiery Works, Ahmedabad.
2. Doshi Hosiery Factory, Ahmedabad.
3. Fine Knitting Co. Ltd., Ahmedabad.
4. Kishore Hosiery Factory, Ahmedabad.
5. Kumar Hosiery Works, Ahmedabad.
6. Ladhawala Hosiery Factory, Ahmedabad.
7. Laxmivijay Hosiery Mills, Ahmedabad.
8. Mehboob Knitting Works, Ahmedabad.
9. Raman Hosiery Works, Ahmedabad.
10. Shri Ambica Hosiery Works, Ahmedabad.
11. Asgarali Taybali Sutarwala, Bombay.
12. Bombay Hosiery Works, Bombay.
13. Eastern Hosiery Works, Bombay.
14. India Hosiery Factory, Bombay.
15. Katrak Hosiery Works, Bombay.
16. Menora Hosiery Works, Bombay.
17. Modern Hosiery Works, Bombay.
18. Styleez Hosiery Works, Bombay.
19. Borivili Hosiery Works, Borivili.
20. Shree Jam Hosiery Works, Borivili.
21. Bharat Knitting Works, Poona.
22. Southern Knitting Works, Poona.
23. Thana Hosiery Works, Thana.

No. 8/48.—In exercise of the powers conferred on me under section 11 (*1*) of the Bombay Industrial Relations Act, 1946, I hereby recognise the following concerns in the Silk textile industry as undertakings in that industry for the purposes of the Act:—

List of concerns in the Silk Textile Industry.

1. Abdul Karim Silk Mills, Bombay.
2. Ahmedabad Silk Factory Ltd., Bombay.
3. Alliance Silk Mills, Bombay.
4. Ambika Silk Mills Co. Ltd., Bombay.
5. Apollo Silk Mills Ltd., Bombay.
6. Associated Rayon Mills Ltd., Bombay.
7. Bipin Silk Mills Ltd., Bombay.
8. Bombay Silk Mills Ltd., Bombay.
9. Central Weaving & Manufacturing Co. Ltd., Bombay.
10. Chhoi Silk Mills Co. Ltd., Bombay.
11. Deepak Silk Mills, Bombay.
12. Indianese Silk Mills Co. Ltd., Bombay.
13. Jasmine Mills Ltd., Bombay.
14. Jaya Spun Silk Mills, Bombay.
15. Kohinoor Mills Co. Ltd., Bombay.
16. Kothari Silk Mills, Bombay.
17. Mahendra Silk Mills, Bombay.
18. Manhar Mills Ltd., Bombay.
19. Narendra Silk Mills, Bombay.
20. National Art Silk Mills, Bombay.
21. New Era Textile Mills Ltd., Bombay.
22. New India Rayon Mills Co. Ltd., Bombay
23. New Mahalaxmi Silk Mills Ltd., Bombay.
24. Nehru Silk Mills, Bombay.
25. New Prabhat Silk Mills, Bombay.
26. New Vinod Silk Mills Ltd., Bombay.
27. Panalal Silk Mills, Bombay.
28. Pearl Thread Mills Ltd., Bombay.
29. Popular Silk Mills, Bombay.
30. Ramlal Silk Mills, Bombay.
31. Rayon Weaving Works, Bombay.
32. Roop Rayon Mills, Bombay.
33. Sadhana Textile Mills Ltd., Bombay.
34. Sassoon and Alliance Silk Mills Co. Ltd., Bombay.
35. Sharada Silk Mills Ltd., Bombay.
36. Shree Shakti Silk Mills Co., Bombay.
37. Shree Shanti Silk Mills, Bombay.
38. Shree Laxmi Silk Mills, Bombay.

39. The Hind Silk Mills, Bombay.
40. Vishnu Silk Mills Ltd , Bombay.

Bombay, 18th February 1948.

D. G. KALE,
Registrar,
Bombay Industrial Relations Act.

BY THE REGISTRAR OF UNIONS, BOMBAY INDUSTRIAL RELATIONS ACT, 1946.

No. 15/48.—In exercise of the powers conferred on me under section 11 (2) of the Bombay Industrial Relations Act, 1946, I hereby recognise the following Sections of the Hosiery Textile Industry as occupations in that industry for the purposes of the Act :—

LIST OF OCCUPATIONS FOR THE HOSIERY TEXTILE-INDUSTRY WITH THE INDIVIDUAL OPERATIONS INCLUDED UNDER EACH OPERATION.

A. Process Operatives—

1. Alcher.
2. Backing Sewing for button holes.
3. Bleachers and Dyers (including Scourers).
4. Binder (stitching braids to the coat edges).
5. Buttoner.
6. Button Hole making.
7. Body maker.
8. Body slitter (cutter).
9. Brusher.
10. Bundlers.
11. Bag Hosiers.
12. Carrier in and out.
13. Cutters.
14. Neck shapers.
15. Cheek-menders.
16. Calendermen (including Pressmen.)
17. Cutlookers and Examiners.
18. Coat makers; knitted wat; Coat Finishers or fitters.
19. Corrector, Sorter, Looker, Examiner, Finisher.
20. Clipper.
21. Countermen (folder hosiery finishing).
22. Circular hand : Circular fabric hand.
23. Coat folders (knitted coats).
24. Coat finishers.
25. Chain stitchers.
26. Coat fitter.
27. Crocheters.

28. Darners (including menders); dress menders : Rough menders).
29. Dollymen; Dollier; Scourers; Calenders and Finishers.
30. Feller.
31. Flat Lookers.
32. Floss Stitcher, Over Lock Stitchers.
33. Fringers,
34. Folders.
35. Frame Hand ; Hosiery hand (Machine).
36. Finisher.
37. Finish Mender.
38. Fancy Hosiery Milliners.
39. Garment Makers ; Girdle Makers.
40. Glove Hands.
41. Glove Fabric Maker.
42. Gold Machinist.
43. Griswold hand ; Griswold Knitters.
44. Hand Ironing Men; Ironer; Shaper; Logger; Presser.
45. Elastic Hosiery ; Elastic Hosiery Finisher.
46. Hydraulic Pressman (Hosiery Finishing).
47. Hosiery Frame Tenters and Machine Knitters: Footer (Hose) Frame Hand ; Hosiery Hand (Machine).
48. Hosiery Finisher, Presser, Examiners, Hosiery Layer : Ribboner.
49. Hosiery Maker-up.
50. Hosiery Mangle Maker.
51. Hosiery Milliner.
52. Hosiery Needle Maker ; Hosiery Moulder ; Hosiery Caster.
53. Hosiery Roller Maker.
54. Hosiery Printer ; Machine Printers.
55. Hosiery Shape Maker.
56. Hosiery Sorter.
57. Hosiery Stover.
58. Hosiery Tabber.
59. Hosiery Runners on : Hosiery Transferer.
60. Hosiery Finisher.
61. Hosiery Cutter.
62. Hosiery Yarn Spinner.
63. Handkerchief Makers.
64. Hand Splicer (Winder).
65. Hosiery Layer (Process Hose distinct from Hydraulic Pressmen).
66. Hosiery Machinist or Hosiery Hand.
67. Hosiery Whaler; Hosiery Runners on.
68. Hosiery Worker.
69. Hosiery Presser.
70. Joiner : Runner off.

71. Jumper Knitter.
72. Knitters (tie knitters : woollen knitters : Hand knitters ; Hand frame-worker ; Hand knitting Machine worker : Hand Splicer ; Jumper knitter ; Belt knitter : Elastic Knee ; Cap knitter ; Stockinger ; Gas Mantle knitter).
73. Latch Needle Hand.
74. Label attaching.
75. Legger.
76. Loop-worker.
77. Linkers.
78. Lookers and Examiners ; Burlers and Menders.
79. Miller ; Millmen.
80. Maker up or Seamer, Point Stitcher.
81. Machine Hand ; Automatic Seamless hand ; Seamless Hand ; Seamless Machine Hand ; Seamless Machine Minder.
82. Over Locking.
83. Over locker.
84. Over lock machinist.
85. Pattern Cutter.
86. Puller out (under pressmen).
87. Packers, wrappers and Labellers.
88. Paper Box-making machinemen.
89. Pressmen (finishing) ; Patent Pressmen.
90. Reinforcement of Sleeves Sewing.
91. Rib top hand ; Rib top worker ; Rib top makers.
92. Rib cutter.
93. Rotary fingerer.
94. Rough mender.
95. Runner off, Runner on.
96. Sewers (including Thread cutters).
97. Seamers.
98. Shoulder Slit Making.
99. Sleeves and Collar with backing Sewing.
100. Stitchers ; Button Stitchers ; Pocket Stitchers.
101. A Seamer.
102. Sox Hand ; Sox knitting machine hand : Stockinger ; Band knitter.
103. Socks Jobber.
104. Socks Knitting Machineman.
105. Socks Linking Machineman.
106. Socks thread remover.
107. Socks turner.
108. Sorter.
109. Shaper.

110. Splicing hand.
111. Stripper ; Stripping hand.
112. Stayer (obsolescent).
113. Silk Hosiery Hand ; Hosiery hand ; Hosiery Machinist ; Hosiery Worker.
114. Tier-up (HosieryFinishing).
115. Turner.
116. Turner off.
117. Tackers.
118. Transferer (Hosiery).
119. Trimmer (Hosiery Finishing) (36a.)
120. Winders.
121. Warp Hand.
122. Wet boarder.
123. Welter.
124. Welting.
125. Welting Machinist.
126. Woollen Yarn Baller.

B. Jobbers and Mukkadams—

1. Jobbers (including Head Jobbers, Fancy, Line and Doffer Jobbers and Assistant Jobbers), Assistant in Weaving ; Comber Gangers ; Shed Supervisors ; Line Tacklers).
2. Women Supervisors (Naikins).
3. Mukkadams.
4. Maistries.

C. Clerks—

1. Cashiers.
2. Book-keepers.
3. Head Clerks.
4. Clerks (including Departmental Clerks); Draftsmen ; Plan Makers.
5. Laboratory Assistants.
6. Stenographers and Typists.
7. Telephone Operators ; Telephone Boys.
8. Time-keepers and Assistant Time keepers.
9. Wrapping Boys.
10. Threads Counters.
11. Ticket Boys, Tally Boys and Production Checkers ; Scale Boys.
12. Store-keepers ; Store distributors.
13. Gate Clerks.

D. Power Plant Operators and Mechanics—

1. Engine Drivers (Steam, oil and gas).
2. Boiler Attendants ; Sarangs.
3. Firemen.
4. Pumpmen.
5. Air Compressor Operators.

6. Cooling and Refrigeration Plant Attendants.
7. Humidifier Attendants and Sprinklers ; Steaming men.
8. Oilmen (including Oilers from all Departments).
9. Ropemen (including Rope Splicers).
10. Electric Motormen ; Bellis Engine Drivers.
11. Turbine Drivers.
12. Stokers.
13. Switchboard Attendants.
14. Electricians (including Armature Winders and Wiremen).
15. Boilermakers.
16. Crane Drivers.
17. Patternmakers.
18. Moulders.
19. Turners (including Machinists).
20. Drillers and Welders.
21. Blacksmiths.
22. Hammermen or Strikers.
23. Tinsmiths ; Tube Cutters or Tube Makers ; Ticket Cutters (Mechanic).
24. Fitters (including Departmental and Erector Fitters and Head Mechanics; Needlers ; Loom Repairers).
25. Roller Coverers.
26. Painters ; White Washers.
27. Carpenters (including Departmental Carpenters and Saly Makers) ; Joiners.
28. Hoop Makers and Cutters.
29. Moochis or Cobblers.
30. Mechanical Apprentices ; Unpaid Apprentices.
31. Motor and Lorry Drivers ; Steam Roller Drivers.
32. Other skilled Artisans, e. g., Electrolysers ; Masons ; Polishers ; Shafting Operators : Millwrights : Ring Polishers.

E. General Workers—

1. Hoistmen.
2. Weighmen and Scalemen.
3. Warehouse-men ; Cloth Carriers.
4. Compounders, Dispensary Attendants and Ward Boys (including Creche Nurses and Ayahs).
5. Nowghanies and Bale Stackers.
6. Engine, Turbine, Boiler and Machine Cleaners.
7. Motor and Lorry Cleaners.
8. Peons and Sepoys ; Office Boys.
9. Cartmen ; Coachmen
10. Jamadars.
11. Watchmen.
12. Line Levellig Coolies.
13. Mechanics' Coolies.

14. Fire Servicemen ; Bumbawallas.
15. Watermen (for supplying drinking water to employees).
16. Lampmen.
17. Domestic Servants (including Malis) ; Canteen Staff except Supervisor ; Tea Shop men.
18. Coolies (ordinary unskilled labourers including coal coolies, patiwallas, toplawallas, basket coolies, bobbin carriers, bobbin cleaners, bobbin cutters and operatives in mixing and waste departments of cotton mills such as cotton mixers, lap carriers, fly gatherers, dropping gatherers, etc.) ; Blowers ; Cotton Bundlers ; Window cleaners ; Tare and Waste Pickers ; Scale Begaris ; Brushers ; Pieces Suppliers ; Bundle Carriers ; Weft and Cloth Carriers ; Cotton Balers ; Damping Machine Holders ; Flywallas ; Mixing Chakuwallas (in cotton mixing) ; Mixing Attendant (in cotton mixing) ; Vacuum clearer ; Machine Operators (in Ring Frame) ; Waste cleaners ; Kharva ; Injured Men.
19. Sweepers (including Departmental Sweepers ; Bhangis and Halalkhores).

D. G. KALE,
Registrar, Bombay Industrial Relations Act. Bombay 22nd February 1948.

THE
BOMBAY INDUSTRIAL RELATIONS ACT.

ACT XI OF 1947.

(First Published after having received the assent of the Governo General in the Bombay Government Gazette on the 10th April 1947.)

An Act to regulate the relations of employers and employees, to make provision for settlement of industrial disputes and to provide for certain other purposes.

WHEREAS it is expedient to provide for the regulation of the relations of employers and employees in certain matters, to consolidate and amend the law relating to the settlement of industrial disputes and to provide for certain other purposes, it is hereby enacted as follows :—

Preamble.

Law enterior to the Bombay Industrial Relations Act.

With the advent of large scale industries in Europe, slowly and slowly there emerged conditions which necessitated the regulation of relations between employers and employees. To day most of the countries in the world have more or less comprehensive legislation regulating these relations.

India is in the course of being industrialised. Large scale industries have been established and there is a vast scope and probability for further development and these conditions have necessitated the legislation to regulate the relations between the employers and employees. The first of the Acts was the All India Trade Disputes Act of 1929. This Act has rarely been used In 1934 the Government of Bombay passed the Bombay Trade Disputes Conciliation Act of 1934. There was nothing in this Act making it obligatory on the parties to a Trade Dispute to endeavour to obtain a settlement of it by conciliation before resorting to a strike or lockout. This defect was sought to be remedied by the enactment of the Bombay Industrial Disputes Act (Act XXV of 1938.) This was an important and extensive piece of legislation. But it was made applicable only to the textile industry. However it was availed of extensively by the employers and employees, The Industrial Relations Act has been based on the said Bombay Industrial Disputes Act. This Act however cuts new ground in several directions. It embraces a much wider field then the Bombay Industrial Disputes Act.

(2) Scope and applicability of the Act

The Act as the preamble shows consolidates and amends the law as relating to the settlement of Industrial Disputes. The object of consolidation is "to collect the statutory law bearing upon a particular subject and to bring it down to date in order that it may form a useful act applicable to the

circumstances *existing* at the time when the consolidating act was passed".[1]

In the case therefore of a consolidating statute the constructions must be not with reference to the circumstances existing at the time of the preceding Act but in relation to those existing at the time of the consolidating Act itself,[2] and the law thenceforth be ascertained from that enactment itself instead of being searched for in prior decisions[3]. A reference to earlier case law is however permitted for construing the word of the statute but not for the purpose of adding something to it.[4] But in applying a consolidating Act, statutes not expressly repealed should be held to continue in force without modification.[5]

The act applies to all matters referred to in the Act except that it does not affect any special or Local Law or any specific form of procedure prescribed by or under any law for the time being in force. When there is a conflict between this Act and a special Law the latter prevails over the former on the principle that the special law prevails over the general.[6] In the absence of certain provision in allied Act, however, on any particular matter the provisions of that Act will apply.[7] It must, however, be applied with reference to circumstances peculiar to those matters.[8]

The preamble of the Act shows that it is not merely a fragmentary enactment but a consolidatory one, repealing all other previous Acts on the subject. The preamble read with some other important sections of the Act make it clear that the Act does profess to consolidate the law on subject in a complete statute and that it is introduced with a view to create new rules and principles. It may be observed that the Act so far as it goes must be regarded as exhaustive and in any case covered by the Act, the provisions of the Act must be applied. The wording of Sections must be regarded as a proper guide in all matters specifically dealt with by the Act.

Interpretation of the Act :—

During the course of the actual administration of the Act important points are likely to arise, the judicial decision of which would depend on the interpretation of the provisions of the Act. Based on experience of the law Courts, and consistent with the principle of justice, equity and good conscience certain fundamental principle rules have now been laid down relating to interpretation of a statute. The fundamental principle of interpretation of a statute is that it should be construed according to the intent of the legislature 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 Law-giver. But if any doubt arises from the term employed by the legislature, it has always been held a safe

1 22 Ind App. 107 (P C)
2 22 Ind App 107 (P C)
3 23 Ind App 18 (P C)
4 46 Mad. 605 (F B)
5 52 All 619 (F B.)
6 (42) 29 A I R 1941 Cal 49-60
7 16 Ind. App 156 (P C P)
8 (84) 9 Pom 241 (244) D B.

means of collecting the intention to have recourse to the preamble.[1] There is another rule, however, which must not be overlooked in this connection. It is to the effect that the court must not create or imagine an ambiguity in the aid of the preamble. To do so would in many cases frustrate the enactment and defeat the general intention of the legislature.[2]

As a general rule, the intention of the legislature is to be ascertained from the language it has preferred to use in the Act. The Court's function is not to surmise what the legislature meant but it has only to ascertain what the legislature has said it meant. The speculative opinion of the intentions of the legislature even on matters it has omitted to enact should not guide the Law Courts in the interpretation of the Act. In a court of law what the legislature intended to be done or not to be done can only be legitimately ascertained from that which it has chosen to enact either in express words or by reasonable and necessary implication.[3]

One of the most important rules of construction is the *rule of literal construction.* If there is nothing to modify, nothing to alter, nothing to qualify the language which the statute contains, it must be construed in the ordinary and natural meaning of the word and sentence.

The plain, obvious, grammatical and ordinary sense of the word is to be adhered to, unless that meaning would be in direct conflict with the rest of statute and create an absurdity. In the latter case the obvious, grammatical sense of the word may be modified so as to avoid the absurdity or inconsistency and no further.

The Courts should not zealously volunteer the interpretation of the provisions of the statute specially when the meaning attached to the language is plain and unambiguous. For such a zealous undertaking on the part of a Law-Court would go to transform its status from that of an administrator of law to that of a law-giver. To add, amend or supply any deficiency in the status even though an apparent one and whether covered intentionally or by error is no concern of law-Courts.

The scope for the interpretation of the provisions of a statute by a law-court arises only when the meaning of the provisions of the statute is ambiguous, absurd or repugnant or inconsistent with the rest of the statute and also sufficiently flexible to admit interpretation. In thes cases those provisions may be construed which if less correct grammatically are more in harmony with the intention of the lagislature.[4]

In the above circumstance to arrive at a real meaning, it would not only be perfectly legitimate and judicial for the law court, but be incumbent on it to get an exact conception of the aim, scope and object of the whole Act. The true meaning of a passage is that which harmonises with the subject and

1. Commisioners for Income-tax V. Penosal (1591) A. C 531 per Lord Holsbury, L C. at page 543

2. See per Lord Davey in Powall Vs Hempton Pork Race Course Co (1899) Ac. 143 185.

3 (1897) A C 22 38 Solomon v Solomon & Co.

4 Moxwel on interpretation of statutes 7th Ed P 17 (1933) 11 Rang. 192.

with every other passage of the statute and it is well settled rule that the same words are to be primafacie construed in the same sense in the different parts of the same statute.[1]

Construction of a particular piece of the statute must be harmonious with the remaining portion of the statute, and it should not be construed as a detached piece of legislation without sufficient regard to the setting in which it is found.

Reference to the proceedings of the legislature.

In the case of the Administration general V Pre, Lal Mallik 22. Ind. App. 107. P. C. their Lordships of the Privy Council have laid down definitely that it is not competent to refer to the proceedings of the legislature as legitimate *aids* to the construction of the *statute*. This is in consonnance with the principle stated above, that when the language is plain no extraneous matter should be taken into account in the interpretation of the Act. Previous law contrary to this ruling cannot be considered good law after the date of this decision Where the language is doubtful or ambiguous or in circumstances stated above such proceedings may of course be looked into 8 Bom, 241, (246,247) D B

The proceedings of the legislature would include:

1. The statement of objects and reasons
2. The report of the select committee
3. The draft stages of the Bill
4. The debates in the legislature.

Retrospective effect -

Every statute which deals with substantive law or affects or impairs vested rights must be presumed not to have a retrospective operation unless the language clearly supports a contrary conclusion.[2]

Reference to previous law -

Another rule of construction which must not be overlooked in dealing with an Act, like the present one is that the proper course is in the first instance to examine the language of the statute and to ask what its natural meaning is, uninfluenced by any consideration derived from the previous state of the law and not start with the inquiring how the law previously stood, and then, assuming that it was probably intended to leave it unaltered, to see if the word of enactment will bear an interpretation in conformity with this veiw.[3]

Headings

The heading of a chapter can be looked for the purpose of interpreting a section in the statute.[4]

1 Khan gul V Lokha Singh A I R (1918) Lah 609 F. B

2 Maxhullon interpretation of statutes 7th ed. P. 186.

3 Narendra Nath Vs. Kamlabasini (1886) 23, Cal. 563. P. C

4 Dwarkanath V Tafozer (1917) 44 Cal. 267.

Marginal Notes.

It has been observed by the Judicial Committee of the Privy Council, that marginal notes to the Sections cannot be referred to for the purpose of construing an Act of the legislature,[1] but also see Ram Saran V Bhagvat Prasad (1929) 51 All. 411. (F. B.)

There is no reason, however, why marginal notes may not be looked at in order to see the general trend of a section.[2]

Punctuations.

It reading the Act of the legislature the court takes no notice of the comma.[3]

It is an error to rely on punctuations in construing Acts of the legislature.[4]

Preamble.

A preamble for an enactment of the legislature was formerly regarded as "a key to open the minds of the makers of the Act, and the mischief which they intended to redress"

The practice of inserting elaborate preamble in Act of the legislature has disappeared and it is now regarded as well settled law that the preamble cannot either restrict or extend the enacting part when the language and scope of an act are not open to doubt.[5]

In Powell V Hempton Pork Race Course Co. Lord Halsbury observed "Two propositions are quite clear-one that a preamble may afford useful light as to what a statute intend to reach, and another that, if an enactment is itself clear and unambiguous no preamble can qualify or cut down the enactment."[6]

1 Balraj V Jagatpal (1904) 26 All 393 406. P C

The Bharat Spinning and Weaving Co Ltd Vs Girni Kamgar Sangh Hubli Appeal No 1/1945 Bom Lab Gaz (March 1945) Vol 24 page 417

2 Secretary of State Vs Bombay Municipality (1938) 237 Bom. L R 499 508

Dharwark union Bank Ltd V Krishnorad (1937) 39 Bom L. R 203 209. 210.

3 Pug Vs Ashutosh Sen (1929) 31 Bom L. R 702 (P. C)

4. Maharani of Burdwan V Krishna Kamini 14 Cal 365. (372) (P C)

5. Corporation of Calcutta V Arunchandra (1934) 61 Cal 1047

6 1899 A C 143-147

CHAPTER I

PRELIMINARY.

Short title

1. This Act may be called the Bombay Industrial Relations Act, 1946

Extent, commencement and application

2. (i) This Act extends to the whole of the Province of Bombay.

(ii) It shall come into force on such date as the Provincial Government may by notification in the Official Gazette specify

(iii) In the areas in which the Bombay Industrial Disputes Bom XXV of 1938 Act, 1938, was in force immediately before commencement of this Act, this Act shall apply to the industries to which the said Act applied.

(iv) The Provincial Government may by notification in the Official Gazette apply all or any of the provisions of this Act to all or any other industries, whether generally or in any local area, as may be specified in such notification.

Application of the Act:

By sub section (3) of Section (2) in the areas in which the Bombay Industrial Disputes Act 1938 was in force, this Act applies to the industries to which that Act applied. By the undernoted notification[1] the said Act was applied to the whole of the Province of Bombay,[2] and by the Notifications undernoted the said Act was made applicable to the Cotton Textile Industry in the whole of the Province of Bombay,[3] the silk industry in the city of Bombay[4] and the woollen industry in the City of Bombay and the Thana Municipal Borough.[4] Recently the Act was made applicable to the banking industry,[5] as well as to Public passenger Transport Services & Electric Supply Concerns, in the city of Bombay. According to the original notification, the hosiery industry was included in the Cotton Textile Industry and was deemed to be a part of Cotton Textile Industry But on the special representation by the industry that the conditions in that industry were different, by the undernoted Notification, the

1 Notification No 2847/34/1 dated 14th March 1939 as amended on 3rd April 1939 see appendix 5

2 Notification No 2847/34/A dated 30th May 1939 as amended on 10th June 1939, 21st July 1939 and as amended by No 3269/34 (b) dated 11th January 1940 see appendix

3 Notification No 3269/34 dated 30th September 1939

4 Notification No 3269/34 (a) see appendix 5

5 Notification No 396/46-I dated 26th Sept 1946 and Notification No 396/46-I dated 26th Feb 1947 see appendix 5.

Government of Bombay declared hosiery industry to be a seperate industry and made the Bombay Industrial Disputes Act applicable to the hosiery industry in the City of Bombay, the Ahmedabad City Municipal Borough with the Cantonment and village of Sabarmati, the Poona Cantonment and Thana Municipal Borough and the notified area of Borivali.[1]

This Act applies to the above industries. Under Sub-Section 4, the Government is empowered to apply by notification this Act to any industry in any local area.

By section 122 of the present Act every appointment, order, rule, notification or notice made, issued or given under the provisions of the Bombay Industrial Dispute Acts is deemed to be made, or issued under the provisions of this Act unless superseded by an appointment order etc. under this Act.

Similarly standing orders settled, agreements registered, changes which have come into operation, settlements recorded, submissions registered, awards made, orders passed by the Industrial Court under the provisions of the Bombay Industrial Disputes Act shall be deemed to have been made under the corresponding provisions of this Act.

This act does not apply to an industry conducted by the Central Government.

The definition of the word employer in sec. 3 (11) of this Act by necessary implication excludes any industry run by the Central Government because clause (C) of that sub-section includes only any industry carried on by the department of the Provincial Government. If the Crown is to be bound down by an Act there must be a specific provision in the Act similar to one in the Factories Act or an inference to that effect must arise by necessary implication. Therefore the legislature had no intention of including any industry conducted or carried on by the Central Government within the scope of Bombay Industrial Disputes Act.[2]

Act not confined to disputes originating out of civil or contractual rights

It is not necessary that the rights which could be brought before an Industrial Court shall be based on contract or civil law. Where it was contended that the Industrial Court should not countenance a demand for dearness allowance as it had no basis either in contract or any other civil rights, it was held that "this contention would frustrate the very object for which the Bombay Industrial Disputes Act 1938 has been enacted. If the rights which parties could bring before the Industrial Court were rights based on a contract or any other law for the time being in force then the parties could have been left to their remedies in the ordinary civil Courts and there was no necessity for devising the elaborate machinery of the Bombay Industrial Disputes Act. The Act contemplates a distinction between disputes with respect to an industrial matter and a civil right as such. The industrial dispute is a wider term than the dispute arising out of a contract or a civil right and it is in order to give opportunities to the parties to settle their disputes amicably

1 Notification No 2847/3411 dated 17th July 1945. see appendix 5

2 Shivshanker Nandlal Vs Hutteshing, Mills Appleation No 65/1943 Labour Gazette Vol 23 P 55

before resorting to a strike or lock out that the elaborate machinery had been devised under the Bombay Industrial Disputes Act. So long as the dispute relates to an industrial matter, the parties are entitled to resort to the machinery provided by the Act.[1] It is because there may be demands arising out of the relationship of the employers and the workers which either party can make on the other and which can not be enforced in a Court of law but the settlement of which is desirable for the smooth working of the industry that the Bombay Industrial Disputes Act is enacted for the purpose of settling such disputes in the Industrial Court.[2]

3. In this Act unless there is anything repugnant in the subject or context:—

Definition

(1) "approved list" means the list of approved unions maintained by the Registrar under section 12;

(2) "approved union" means a union on the approved list.

"The provision is made for the maintenance of a list of approved unions and all registered unions that satisfy among other certain conditions (laid down in S 23) regarding the regulating of meetings of the executive committee, Government audit of their accounts and avoidance of resort to strikes so long as means of settlement and conciliation are available under the Act will be placed on the list. Approved unions will derive substantial advantage under the Act including the right of inspecting any place where their members work, collecting union dues on the employer's premises and legal aid at Government expense in important proceedings before the Labour Court and the Industrial Court" (Statement of objects and reasons.)

(3) "arbitration proceeding" means.

(i) any proceeding under this Act before an arbitrator,

(ii) any proceeding before a Labour Court or the Industrial Court in arbitration;

(4) "arbitrator" means an arbitrator to whom a dispute is referred for arbitration under the provisions of this Act and includes an umpire;

(5) "association of employers" means any combination of employers recognised by the Provincial Government under Section 27;

(6) "award" means any interim or final determination in an arbitration proceeding of any industrial dispute or of any question relating thereto;

1 The Textile Labour Association Ahmedabad Vs Ahmedabad Mill Owners Association. Submission No. 1/1945 Labour Gazette (Oct 1945) Vol 25 page 107

2 The Textile Labour Association Vs. The Ahmedabad Mill Owners Association Ref:-No 1/1945 Bombay Labour Gazette (Oct 1945) Vol 25 page 122

(7) "Board" means a Board of Conciliation appointed under section 7;

(8) "change" means an alteration in an industrial matter;

COMMENT.

The definition is the same as in the Bombay Industrial Disputes Act and this word is one of the most important words in the Act. The scheme of the Act is that whenever any change is desired in specified industrial matters either by the employers or employees, they should not attempt to force that change on the other party by a strike or a lock-out without following the procedure laid down in the Act for peaceful settlement thereof. The Act has made illegal, the changes in industrial matters in contravention of the provisions of the Act and has provided punishment for it. Also Labour Courts have been established who can order changes in certain specified industrial matters on an application of an employee.

For full consideration of the subject see commentary under section 46.

(9) "Commissioner of Labour" means an officer appointed by the Provincial Government for the time being to be the Commissioner of Labour; and in respect of any of the powers and duties of the Commissioner of Labour that may be confirmed and imposed on any person, includes such person;

(10) "conciliation proceeding" means any proceeding held by a Conciliator or a Board under this Act;

(11) "Conciliator" means any conciliator appointed under this Act and includes the Chief Conciliator or a Special Conciliator;

(12) "Court of Enquiry" means a Court constituted under section 100.

(13) "employee" means any person employed to do any skilled or unskilled manual or clerical work for hire or reward in any industry, and includes:—

(a) a person employed by a contractor to do any work for him in the execution of a contract with an employer within the meaning of sub-clause (e) of section (14);

(b) a person who has been dismissed or discharged from employment on account of any dispute relating to a change in respect of which a notice is given or on application made under section 42 whether before or after his dismissal or discharge;

Contractors' employees

The definition has been amended, clause (a) is new. Under this clause, the persons engaged by a contractor in execution of the contract with an employer are specifically included under the category of an employee. Under the Bombay Industrial Disputes Act, the definition of the term "employer" included within its scope the owner of an undertaking who has employed a contractor to execute the whole or part of the ordinary work of the undertaking but there was corresponding provision making a person employed by a contractor to be an employee. But in spite of that it was held by the Industrial Court that the persons engaged by a contractor were the employees within the meaning of the Act.[1]

The insertion of clause (a) makes the position absolutely clear. Though according to the definition the employees of a contractor are included within the meaning of the term employees in the "industry," in practice the rights and privileges of a contractor's employees are less than the employees of the mills. The position of the employees of the contractor has been explained by the Industrial Court thus:- "In the first instance these persons are not employed by the mills themselves, but are employed by the contractors to whom a contract is given for doing a particular work. After the contract is given it is no concern of the mills as to how many people are employed and how much is paid to them by the contractor. It is true that under section 3 (11) of the Bombay Industrial Disputes Act an employer includes "Where the owner of any industry in the course of or for the purpose of conducting such industry contracts with any other person for the execution by or under the contract of the whole or any part of work which is ordinarilly part of the said industry, the owner of such industry." By reason of this definition the mills technincally come within the category of employer in respect of persons engaged on contract labour and for this reason standing orders had to be framed in which the term "Operative" means all work people male or female employed in the mill or in mill permises either directly or through contractors, for the purpose of maintaining discipline and having uniformity in the industry it may be necessary to frame standing orders with regard to persons employed by the contractors, but that does not make the mills responsible for the ordinary remuneration paid to these people. If the mills are not responsible for their normal wages, we do not see how the responsibility for paying dearness allowance vests on them,

"It may also be noted that the standardization scheme in force in Ahmedabad does not apply to the wages of workers employed by the contractors. "[2]

It has been held that though the contractors' employees would be operatives, as defined in clause (a) of standing order No. 2 for operatives, they cannot be regarded as permanent operatives and could be discharged

1. The Textile Labour Association Ahmedabad Vs The Maneklal Harilal Mills Co Ltd Appl No 37/1942. Bom Labour Gazette. Vol 23 Page 52. F B

2 The Textile Labour Association Ahmedabad Vs The Ahmedabad Mill Owners Association. Appl No 19/1940 Bombay Labour Gazette -(Oct. 1940) Vol 20 page 148.

without notice.[1]

In view of this difference in rights and privileges between the two types of employees it becomes an important question whether the particular employees are the employees of the mills or the employees of the contractor. To determine whether the operatives were employees of the mill company and the mill company was their employer, the important critarion is who was responsible for payment of remuneration to the operative.

Where therefore the operatives were paid by the mill company through a contractor, they became the employees of the mill company and the contractor was merely a supplier of labour.[2] But where the contractor appointed his own employees and laid down conditions of work and could also dismiss them and was not merely mechanical medium to transmit the wages from the mills to the company held that the employees were contractor's employees and not of the mills.[3] But where the employees were appointed by the mills and were discharged by the mills, held that they were the employees of the mills. For once the working of a department is put in the charge of contract labour, it is the contractor who decides whom he should employ and whom he should discharge.[4] Clause (b) of the definition includes within the term "employees" the persons who have been dismissed or discharged from employment on account of any dispute regarding the change. The word "dismissed" has been added in this definition. It was not included in the definition under the Bombay Industrial Disputes Act. Similarly the words "whether before or after his dismissal or discharge" have been added.

Discharged or dismissed employee.

After a valid discharge from the mill an employee cannot be an employee of the mill unless he has been discharged on account of any dispute relating to a change of which notice is given under section 28 (the present section 42.) Thus where an employee was validly discharged, he has no *locus standi* to make an application on the ground of reduction in the number of employees specified in item 1 of Schedule II.[5]

Similarly where a person who was discharged by a valid notice made an application that the mill had committed an illegal change by wrongly designating as temporary certain employees who were doing work of a permanent character, held that the appicant was not an employee and therefore had no *locus standi* to make an application under section 55 of the Bombay Industrial Disputes Act.[6]

1 The Textile Labour Association Ahmedabad Vs. The Maneklal Harilal Mills Co Ltd Appl. No 37/1942 Bombay Labour Gazette (Sept. 1943) Vol 23 Page. 52. The Textile Labour Association Ahmedabad Vs The A' bad Cotton Manufacturing Co. Ltd Appl 7 1942 Bombay Labour Gazette. (Sept 1943) Vol. 23 Page 48

2 Prabhudas Girdhar Vs The Rohit Mills Ltd. Appl. No. 230 1943 Bombay Labour Gazette. (March 1945) Vol. 24 P 412

3. Vithaldas Girdhar Vs. The Harivallabhdas Mulchand Mills Co. Lts Appl. No. 110 /44 Bombay Labour Gazette (June 1945) Vol. 24 Page 616

4 Gordhan Kastur Vs The Aryodaya Ginning and Manufacturing Co Ltd. Appl No. 35/1944 Bombay Labour Gazette. (July 1946) Vol 25 Page 837.

5 Ganpat Rambhan Vs The New Prahlad Mills Ltd Appl No 16/1941 Labour Gazette Vol. 20. Page 935.

6. Govind Gangaram Vs The Khatau Makanji Spinning and Weaving Mills Co. Ltd. Appl. 23/1944 Labour Gazette Vol. 24 Page 491.

Where an employee after his valid discharge made an application to the Industrial Court for declaration of an illegal change on the ground that the mills company had not paid him the dearness allowance payable to him under the award of the Industrial Court, held that under section 55 an application for illegal change is to be made either by the *employee concerned, representative of employees or the Labour Officer.*

The applicant was discharged from services on 13th November 1945. Thus from that date he was no longer an employee of the mill and so he had no *locus standi* to make an application which was made on 29th November 1945.[1]

Discharged on account of any dispute etc.

The words "discharged on account of any dispute relating to a change in respect of which notice is given under section 28" clearly show that all persons discharged for other reasons are excluded from the meaning of the term "employee".[2]

Future Employees.

Where the mills contended that the persons who are employed after the making of an award, would not be entitled to the benefit of the award on the ground that they were not the employees at the time of the award, the Industrial Court held overruling the contention that the term "employee" as defined in Section 3 (10) of the Act (corresponding to section 3 (13) of the present Act) is not restricted to the persons employed in the industry at any particular time and includes any person who is engaged in the industry at any time and therefore the persons employed after the award would be employees within the meaning of the term and therefore be entitled to the benefit of the award.[3]

Officers

Though all persons from the Manager right up to the lowest paid member of the staff are 'employees' of a bank, yet for the purpose of Bombay Industrial Disputes Act, "employees" of the bank mean only those employees who are clerks i. e. persons doing clerical work or peons, jamadars etc., who are doing manual work. All other employees of the bank such as Superintendents and junior or senior officers are excluded. Therefore no reference can be made under the Act for deciding disputes between the banks and such officers.[4]

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1. Dahyabhai Kalidas Vs The Vijaya Mills Company Ltd appl. No. 114 of 1945 Bombay Labour Gazette (July 1946) Vol. 25 page 848.

Nutwarlal Sankalchand Vs. The Vijaya Mills Co. Ltd. Appl. No. 113/1945 Bombay Labour Gazette (July 1945) Vol 25 Page 859.

Yeshvant Ramji Vs. The Silver Cotton Mills Ltd. Appl. No. 76/46 Bom. Govt Gazette Part. I (19 Dec. 1946.) P. 3713

2. Sahdeo Ganpat Savani Vs. The New Pralhad Mills Ltd. Appl. 87/1946 Bombay Labour Gazette (June 1946) Vol. 25 page 760.

3 Government Labour Officer Ahmedabad Vs. The Anant Mills Ltd, Appl. No. 42 of 1941. The Textile Labour Association Vs. Harivallabhdas Mulchand Mills Co. Ltd. Appl. No. 33 of 1941 Labour Gazette (Oct. 1941) Vol 21 page 153 (F. B.)

4. Certain Banking Companies Vs. Their employees Ref. No. 6/1946 and 10/1947. Bombay Government Gazette Part. I. (9th April 1947) Page 1099.

Clerks.

The word " clerk " is not defined under the Act. We have therefore to go by its ordinary meaning. A clerk is generally a person who does routine work of writing, copying or making calculations under the direction or supervision of an officer. A person whose work is of a purely supervising or technical character is not a clerk.

The use of the word "employee" or similar words in awards.

An award was given by the Industrial Court fixing the quantum of dearness allowance to be paid to the workers employed in the textile industry in Ahmedabad on a submission filed by the Textile Labour Association and the Ahmedabad Mill Owners' Association. The award granted dearness allowance to the workers employed in the textile industry in Ahmedabad. Then the dispute arose as to the meaning of the words " workers employed in the textile industry ". The Textile Labour Association contended that the word " workers " used in the submission was synonymous with the word " employee " as defined in section 3 (10) of the Bombay Industrial Disputes Act. The Court held that they cannot decide the point by referring to the definition of the term " employee " as appearing in the Bombay Industrial Disputes Act for construing the term " worker " as appearing in the terms of the submission. The terms of the submission must be considered in the light of the circumstances giving rise to the dispute. The court held that the word " worker " as used in the submission meant " persons who are employed by the mills in connection with the textile industry, for the payment of remuneration to whom the mills hold themselves responsible, whose cost of living is affected by rise in cost of foodstuff and to whom the grant of dearness allowance would come as an appreciable relief." Having interpreted in this way the word " worker " as used in the submission, the court held that the dearness allowance would be payable to clerks, members of the staff, time keepers, supervisors, part-time workers, badlis, patawalas, watch and and ward men, jobbers and mukadams whose pay does not exceed Rs. 75/- per month. But the Court however held that, though mills by virtue of the definition given in section 3 (11) come technically within the definition of the word " employer " in respect of the persons engaged by contractors, the benefit of dearness allowance, should not be extended to the people engaged by contractors in connection with the textile indusrty on the ground that such persons do not come within the perview of the interpretation put upon to the word " worker " by the Court. [1]

It must be noted that there is a distinction between the words "employee in the textile industry " and the words " persons employed in connection with the textile industry" used in the decision of the Industrial Court in connection with the meaning of the word " Worker ". The court held that the employees of the textile mills would obviously mean the persons actually employed in the textile mills while in the case of the latter expression, the connection is not

1. The Textile Labour Association Ahmedabad Vs. The Ahmedabad Mill Owners' Association. Appl. No. 19/1940 Bombay Labour Gazette. (Oct. 1940) Vol. 20 Page 148.

necessarily so close.[1]

The said award of the Industrial Court and the above decision are of great practical importance in Ahmedabad where questions daily arise as to whether a particular person is entitled to the dearness allowance or not. These cases are decided in light of the above interpretation put upon by the Industrial Court.

It has been held that Dhobighat workers who were not engaged on contract basis are " workers " within the meaning of the award even though they were paid daily wages;[2] so also a gardener working in the mills[3] and a waterman in the mills[4] have been held to be a " worker " within the meaning of the award and therefore entitled to the dearness allowance. Where a canteen was run by the mill, the Court held that even though it was run on welfare basis and the mill may not stand to profit thereby, it does not cease to be a hotel run in connection with the textile industry and therefore the mills canteen staff are " workers " within the meaning of the award and are entitled to the dearness allowance under the award.[5]

Where the average pay of the applicants did not exceed Rs. 75/- per month in the majority of calendar months during the period of their serivce in the mills, held they would be entitled to dearness allowance under the award.[6]

(14) "employer" includes :-

(a) an association or a group of employers :

(b) any agent of an employer ;

(c) where an industry is conducted or carried on by a department of the Provincial Government, the authority prescribed in that behalf, and where no such authority has been prescribed, the head of the department ;

(d) where an industry is conducted or carried on by or on behalf of a local authority, the chief executive officer of the authority :

(e) where the owner of any undertaking in the course of or for the purpose of conducting the undertaking con-

1 Babu Natha Vs The Silver Cotton Mills Co Ltd Appl No 108 of 1943 Bombay Labour Gazette (Oct. 1944) Vol 24 Page 117

2. The Textile Labour Assosciation Ahmedabad Vs. The New Swadishi Mills Co. Ltd Appl No 30/1942 Bombay Labour Gazette (Sept. 1942) Vol 22 Page 48

3. Jiwan Kalidas Vs. The Vijaya Mills Co Ltd Appl. No. 100/ 1945 Bombay Labour Gazette (July 1946) Vol. 25 Page 846

4. Krishnaram Vasantbhai Vs. The Vijaya Mills Co. Ltd Appl No. 101/1945. Bom Labour Gazette, (July 1945) Vol. 25 Page 847.

5 The Government Labour Officer Vs. The Silver Cotton Mills Co. Ltd. Appl No 24/ 1942 Bombay Labour Gazette (August 1942.) Vol 21 Page 1187.

6 Yashvant Ramji Vs. The Silver Cotton Mills Co. Ltd Appl. No 76 of 1945 Bombay Government Gazette. Part I (19 Dec. 1946) Page 3713.

tracts with any person for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the undertaking, the owner of the undertaking.

Legislatvie Changes :

This sub-section corresponds to sub-section 3 (11) of the Bombay Industrial Disputes Act, the only change is that under sub-clause (e) for the word " industry " the word " undertaking " has been substituted.

Industry carried on by the Central Government.

Where the Central Government carries on any industry, they do not become employers within the meaning of this sub-section because of the absence of any provision including the Central Government within the definition of the word " employer " and the express provision as regards an industry conducted by the Provincial Government in sub-clause (e) of sub-section 3 (11) of the Bombay Industrial Disputes Act (Corresponding to this sub-section). If the Crown is to be bound down by an Act there must be a specific provision to that effect similar to the one in section 80 of the Factories Act or an inference to that effect must arise by necessary implication. [1]

Contractors' employees.

By reason of the clause (e) of this definition the mills technically come within the catagory of employers in respect of persons engaged by contractors.[2]

(15) "illegal change" means an illegal change within the meaning of sub-section (4) or (5) of section 46 ;

For comments see comments under section 46.

(16) "Industrial Court" means the Court of Industrial Arbitration constituted under section 10 ;

(17) "industrial dispute" means any dispute or difference between an employer and employee or between employers and employees or between employees and employees and which is connected with any industrial matter ;

COMMENT.

This sub-section is the same as section 3 (13) of the Bombay Industrial Disputes Act.

Industrial Dispute is dispute connected with an industrial matter

1 Shivshanker Nandlal and others Vs The Hattenley Mills Ghatkopar Appl No 65/1943 Bombay Labour Gazette (Sept 1943) Vol 23 Page 55

2 The Textile Labour Association Ahmedabad Vs The Ahmedabad Mill Owners Association and others Appl. No. 19/1940 Bombay Labour Gazette (Oct. 1940) Vol 20 Page 140

The Textile Labour Association Ahmedabad Vs The Maneklal Harilal Mills Co Ltd Appl. 37/1942 Bombay Labour Gazette. (Sept 1943) Vol. 23 Page 52 (F P)

between an employer and employees or employees and employees. So a dispute is an industrial dispute only if it is connected with an industrial matter. For the meaning of the word industrial matter and cases thereon see section 3 (18).

Distinction Between Industrial Dispute and Dispute Regarding Civil Rights.

The Act contemplates a dispute with respect to an industrial matter and a Civil right as such. " The industrial dispute " is a far wider term than the dispute arising out of a contract and civil right. So long as the dispute relates to an industrial matter the parties are entitled to resort to the machinery provided by the Act. The whole of the Bombay Industrial Disputes Act would become infructuous for all practical purposes if the operation of the Act is confined to disputes which have their origin in civil or contractual rights. If the rights which the parties could bring before the Industrial Court were the rights founded upon contract or any other law for the time being in force, then the parties could have been left to their remedies in the ordinary civil courts and there was no necessity for devising elaborate machinery of the Bombay Industrial Disputes Act.[1]

Where a union acting on behalf of some of the workers demanded standardization of wages and dearness allowance and gave a notice of strike to the Bombay Mill Owners ' Association if the employers did not entertain the proposals, held that the demands related to Industrial matters and an industrial dispute had arisen.[2]

(18) "industrial matter" means any matter relating to employment, work, wages, hours of work, privileges, rights or duties of employers and employees, or the mode, terms and conditions of employment, and includes :-

(a) all matters pertaining to the relationship between employers and employees or to the dismissal or non-employment of any person ;

(b) all matters pertaining to the demarcation of functions of any employees or classes of employees ;

(c) all matters pertaining to any right or claim under or in respect of or concerning a registered agreement or a submission, settlement or award made under this Act ;

(d) all questions of what is fair and right in relation to any industrial matter having regard to the interest of the person immediately concerned and of the community as a whole ;

1 The Textile Labour Association Ahmedabad Vs. The Ahmedabad Mill Owners Association, Submission No. 1/1945 Bombay Labour Gazette (Oct .1945) Vol 25 Page 107.

2 The Mill Owners ' Association Bombay Vs, The employees in the Cotton Textile Mills Reference No. 1/1946 Bombay Labour Gazette (August 1946) Vol. 25 Page 926.

COMMENT.

Legislative Changes.

This sub-section reproduces the definition of " an industrial matter " as given in section 3 (14) of the Bombay Industrial Disputes Act 1938 with slight changes. The words " relating to employment " are new.

The words " pay " and " reward " which appeared in the former Act have been deleted for the simple reason that they come within the new definition of " wages " in S. 3 (39) of this Act. So these words are not necessary here.

Wages.

(1) Demand for higher wages is an industrial matter.[1]

(2) Demand for dearness allowance is an industrial matter within the meaning of this clause. For, the " wages " would include the dearness allowance.[2]

(3) A demand for bonus is an indutsrial matter.[3]

(4) Demand of the employees for the payment of war bonus relates to an industrial matter.[4]

(5) The demand of the weavers of a mill that they should be paid on scale weight instead of on nominal or standard weight is an industrial matter.[5]

Where the workers demand the payment of unclaimed wages on a day other than the day fixed for payment of such wages, held that it amounts to asking for a change in the industrial matter because it relates to payment of wages.[6]

Appointment, dismissal, discharge etc. of officers and operatives:—

Grievance against the management with regard to the appointment of a

1 Swadeshi Mills Co Ltd Kurla Vs. Government Labour Officer, Bombay. Appn. No. 57/1941 Bombay Labour Gazette (Dec. 1941) Vol 21. Page 382

2. The Textile Labour Association Vs. Shrinagar Weaving and Manufacturing Co. Ltd Appn. No 10/1941 & 32/41 Bombay Labour Gazette (Sept. 1941) Vol. 21 Page 35 The Government Labour Officer Vs The Anant Mills Co. Ltd Appn No. 33/1941 and 42/1941 Bombay Labour Gazette, (Oct 1941) Vol. 21 Page 135.

The Textile Labour Association Vs. The Ahmedabad Mill Owners' Association submission No 1/1945 Bombay Labour Gazette (Oct 1945) Vol. 25 Page 107

Mill Owners' Association Bombay Vs. Baboo Shamji Appn. No 2/1940 Bombay Labour Gazette (March 1940) Vol. 19. Page 592.

Hattersley Mill Ghatkoper Vs Government Labour Officer, Bombay Appn No 53/1941 Bombay Labour Gazette (Dec. 1941) Page 380.

3 The Textile Labour Association Ahmedabad Vs The Ahmedabad Mill Owners' Association Reference No 1/1945 Labour Gazette. (Oct. 1945) Vol 25 Page 122.

4. Swadeshi Mills Co. Ltd. Kurla Vs. The Govt Labour Officer, Bombay and others, Appn. No. 6/1943 Bombay Labour Gazette (April 1943) Vol 22. Page 527.

5. The Laxmi Cotton Manufacturing Co. Ltd. Vs. Government Labour Officer and others. Appn. No. 10/1940 and 11/1940. Bombay Labour Gazette (Sept. 1940) Vol. 20. Page 45,

6 The Mill Owners ' Association Bombay Vs. The Govt. Labour Officer, Bombay and others Appn No. 5/1940 Bombay Labour Gazette. (April/1940) Vol. 19 Page. 693.

new Weaving Master is an industrial matter.[1]

Demand for reinstatement of an employee who is lawfully discharged under standing orders is an industrial matter within the meaning of the Act.[2]

Suspension of a jobber is an industrial matter.[3]

Question as to whether an operative was improperly discharged is an industrial matter.[4]

Dismissal of an employee is an industrial matter.[5]

Work.

The demand of *Badlis* that they should all be given work comes under the definition of industrial matter.[6]

Demand for a Holiday.

Demand for a holiday is a demand with reference to an industrial matter and it may be that an industrial dispute arises when the workers demand a holiday and the management refuses to grant the same.[7]

But where the workers remained absent because they wanted to take part in municipal elections, held " the real question is whether the cessation of work was in respect of an industrial matter and for that purpose we have to see whether the reason given for refusing to work on that day " because they wanted to take part in the municipal elections, " is an industrial matter." In my opinion this cannot be described as an industrial matter and the dispute between the employees and the mills for an exchange of holiday on this ground cannot be regarded as an industrial dispute.[8]

Hours of Work.

Question about hours of work is an industrial matter and when there is a dispute between employers and employees as regards the right to take extra

1. The New China Mills Ltd. Bombay Vs. The Govt. Labour Officer, Bombay Appn. No. 14/1940 Bombay Labour Gazette (Sept. 1940) Vol. 20 Page 50.

2. Ahmedabad Cotton and Waste Manufacturing Co. Ltd. Vs. The Textile Labour Officer, Ahmedabad and others Appn. No. 44/1940 Bombay Labour Gazette. (Oct. 1940) Vol. 20. Page 146.

Standard Mills Co. Ltd. Vs. Government Labour Officer, and others Appn. No. 7/1943 Bombay Labour Gazette (April 1943) Page 528.

3. Reghuvansi Mills. Ltd. Bombay Vs. The Government Labour Officer and others. Appn. No. 9/1942 Bombay Labour Gazette (July 1942) Vol. 21. Page 1122.

4. The Khandesh Spinning and Weaving Mills. Co. Ltd. Vs. The Government Labour Officer and others Appn. No. 48/1941 Bombay Labour Gazette (Sept. 1941) Vol. 21 Page 52.

5. The Khatau Makanji Spinning and Weaving Co. Ltd. Vs. S. R. Deshpande. Appeal No. 1/1943. Bom Lab. Gazette. Vol. 23 Page 372. High Court Decision.

6. The Laxmi Cotton Manufacturing Co. Ltd. Sholapur. Vs. The Government Labour Officer and others Appns. Nos. 10/1940 and 11 /1940 Bombay Lobour Gazette. (Sept. 1940) Vol. 20, Page, 45.

7. The Manekchowk and Ahmedabad Manufacturing Co. Ltd. Vs. The Textile Labour Association Ahmedabad. Appn. No. 3/1941. Bombay Labour Gazette. (April 1941) Vol. 20. Page 626.

8. The Pratap Spinning Weaving and Manf. Co Ltd. Vs The Amalner Girni Kamgar Union and others Appn No, 27/1942 Bombay Labour Gazette. (Dec. 1942) Vol. 22 Page 252.

hours of work it is an industrial dispute.[1]

Privileges.

The word " privilege " is used in addition to the ' rights " or "duties" of employers or employees and it should therefore mean something which cannot be demanded as of right and it is not therefore a duty on the part of the other party but a concession which is made without any legal obligation.[2]

The distribution of foodstuffs at cheaper rates from mill is a privilege enjoyed by the operatives of a particular mill which opens the grain shop. It is also a matter pertaining to the relationship between the employers and the employees within the meaning of the industrial matter. Because it is as the employees of the mills that they would be entitled to the ' privilege ' of getting cheap foodstuffs from the grain shop opened by their employer.[3]

Refusal to give names.

Where the management refused to give the names of persons who gave them information that the workers were intending to go on strike, held that the refusal to give names of such persons was 'an industrial matter'.[4]

Non-employment.

Demand of some of the workers that Muslim workers should not be employed by the mills is an 'industrial matter' as it relates to non-employment of employees.[5]

(19) "industry" means :—

(a) any business, trade, manufacture or undertaking or calling of employers ;

(b) any calling, service, employment, handicraft; or industrial occupation or avocation of employees ;

and includes–

(i) agriculture and agricultural operations ;

(ii) any branch of an industry or group of industries which the Provincial Government may by notification in the *Official Gazette* declare to be an industry for the purposes of this Act ;

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1. The Ahmedabad Cotton Manufacturing Co. Ltd. Vs. The Textile Labour Association Ahmedabad. Appn. No. 4/1941 Bombay Labour Gazette. (April 1941) Vol. 20 Page 629.

The Century Spinning and Manufacturing Co. Ltd. Vs. The Government Labour Officer Bombay. Appn. No. 59/1941 Bombay Labour Gazette. (Jan. 1942) Vol. 21. Page 519.

Mahadeo Vishnu Vs. The Victoria Mills Ltd. No. 2 App. No. 29/1943 Bombay Labour Gazette. (Nov. 1943) Vol. 23. Page 197.

2. The Standard Mills Co. Ltd. Vs. The Government Labour Officer Bombay. Appn. No. 7/1943 Bombay Labour Gazette. (April 1943) Vol. 22. Page 528

3. Ibid.

4. David Mills Co. Ltd. Vs. The Government Labour Officer and others Application No. 42/1946 Bombay Government Gazette. (6th March 1947) Part I Page 812.

5. The Bombay Dyeing and Manufacturing Co. Ltd. Vs. The Government Labour Officer and others. Application No. 64/1946. Bombay Government Gazette Part I. (6th March 1247) Page 814.

Legislative Changes.

There have been important and far reaching changes in the definition of industry' in this Act. Under the Bom. Industrial Disputes Act the definition of industry in section 3 (15) of that Act used the word "includes" while the present definition uses the word " means ". It means that the definition in this Act is exhaustive.

Moreover sub-clause (i) of clause (b) is entirely new and by it agriculture and agricultural operations are specifically included in the definition of " industry. " So this Act can be made applicable to agriculture also. By clause (ii) the Provincial Government has been empowered to declare a branch of any industry to be an industry for the purposes of the Act, while under section 3 (15) (c) of the Bombay Industrial Disputes Act, the Registrar had powers to recognise a branch of an industry to be an industry for the purposes of this Act.

(20) "Joint Committee" means a Joint Committtee constituted under section 48. ;

(21) "Labour Court" means a Labour Court constituted under section 9 ;

As to the powers and the procedure of the Labour Courts see Chapter XII. The prvoision for the establishments of the Labour Court is new.

(22) "Labour Officer" means an officer appointed to perform the duties of a Labour Officer under this Act; and includes in respect of such powers and duties of the Labour Officer as may be conferred and imposed on him, an Assistant Labour Officer ;

For powers and duties of the Labour Officer see Chapter VI. The provision for Assistant Labour Officer is new.

(23) "local area" means any area notified as a local area for the purposes of this Act.

Under proviso (a) to section 122, notifications issued under the Bombay Industrial Disputes Act are to remain in force until superceded by a notification under this Act. The local areas notified by the Government notification No. 2847/34/B/ dated 19-5-1939 are given in Appendix V (6).

(24) "lock-out" means the closing of a place or part of a place of employment or the total or partial suspension of work by an employer or the total or partial refusal by an employer to continue to employ persons employed by him, where such closing, suspension or refusal occurs in consequence of an industrial dispute and is intended for the purpose of–

(a) compelling any of the employees directly affected by such closing, suspension or refusal or any other employees of his, or

(b) aiding any other employer in compelling persons employed by him,

to accept any term or condition of or affecting employment.

Legislative Changes.

This section reproduces section 3 (19) of the Bombay Industrial Disputes Act with slight changes. An important change is that the words "any of the employees directly affected by such closing, suspension or refusal or any other employees of his" have been substituted for the words "those persons" occurring in the Bombay Industrial Disputes Act. Under the Bombay Industrial Disputes Act the closing of the place or refusal by the employer to continue to employ persons must be with the intention of compelling those *very persons* to accept any term or condition of employment and if it was with the purpose of compelling other employees to accept terms of employment it was held it did not amount to a lock-out under that Act.[1]

The law has now been changed and the definition of lock-out is made wider and if the purpose of the employer in refusing to continue to employ persons employed by him is to compel those employees or *any other employees* of his to accept any terms of employment, it would amount to a lock-out.

Definition Exhaustive.

The use of the words "means" shows that the definition is exhaustive.

Lockout; Illegal Lockout; Penalty.

Lock-out has been defined by this sub-section.

The circumstances in which it would be illegal have been laid down in section 98 and section 102 prescribes the penalty for declaring or commencing an illegal lock-out.

Purpose of Closing or Refusal must be to compel etc.

The mill company increased the daily hours of work which they were legally entitled to. Some workers resented this proposal to work for an extra hour and they came to work and left the work according to the old timings. The next day the mills refused admission to those workers and replaced these workers permanently by other employees. In an application to declare this action of the mill company to be an illegal lock-out, the industrial Court held[2] that unless the exclusion of the workers was intended for compelling *them* to accept any condition of the employment, the action of the mill authorities would not amount to be a lock-out. The mill authorities dismissed those workers in consequence of the strike and they were not prepared to take them even if they accepted new conditions of employment. The refusal

1. The Ahmedabad Cotton Manufacturing Co. Ltd. Vs. The Textile Labour Association Ahmedabad Appl. No. 4/1941 and Appn. No 8/1941 Bombay Labour Gazette. (April 1941) Vol. 20 Page 629.

2. The Ahmedabad Cotton Manufacturing Co Ltd. Vs The Textile Labour Association Ahmedabad Appn. No 4/1941 and the Textile Labour Association Ahmedabad Vs The Ahmedabad Cotton Manufacturing Co. Ltd. Appn. No. 8/41 Bombay Labour Gazette (April 1941) Vol. 20 page 629.

to take them therefore was not for the purpose of compelling them to accept any term or condition of employment and was not therefore a lock-out under the Act.

In order that a refusal by the employer to continue to employ persons employed by him would amount to a lock-out, it is necessary that the purpose of such refusal must be to compel the employees to accept any term or condition affecting employment. Thus where the purpose of the employer in refusing to take back the employees was to punish them rather than to compel them to any term of employment, held that it was not a lock-out. There was a demand by the workers to remove a spinning master. Conciliation proceedings under the Act started and subsequently the workers resorted to strike as they were legally competent to do. After about five days the strike was called off and all workers went to work but some were refused work and were told that no work would be given to them for the part they had played in bringing about the strike. They were taken on work 27 days after they first went to resume work. The workers prayed that the refusal of the mills to allow them to work for these 27 days was an illegal lock-out as well as an illegal change held that it was not a lock-out, for the management wanted to punish these workers. Under the definition of lock-out it must be intended for the purpose of compelling a worker to accept any term affecting employment. But these workers when they called off the strike and offered themselves for work along with other workers, it must be taken, unless proved to the contrary, that they had given up their demand and there would be no question of compelling them to accept any conditions of employment. The refusal to employ the workers after the strike was called off does not come within the definition of a lock-out. The Court however held that refusal to take them back amounted to an illegal change.[1]

At the end of the above judgment it has been printed that " lock-out is illegal, but it seems to be a mistake.

It should be " change " is illegal. For in the body of the judgment it has been very clearly held that it was not a lock-out.

(25) "member" means a person who is an ordinary member of a union and who has paid a subscription of not less then two annas per month :

Provided that no person shall at any time be deemed to be a member if his subscription is in arrears for a period of three months or more next preceding such time :

Legislative Changes.

Under the definition given in section 3 (20) of the Bombay Industrial Disputes Act, the word " member " meant an ordinary member of a union who has been paying a subscription not less than one anna. Under this Act,

1. Pandurang Hari Vs. The New City of Bombay Manufacturing Co. Ltd. Appn. No. 110/1945. Bombay Labour Gazette. (April 1946) Vol 25 Page 601.

the minimum subscription shall not be less than 2 annas and also the subscription should not be in arrears for a period of three months or more.

Payment of Subscription Necessary.

An employee whose name is entered in the register of members of a Union but who has not paid a single instalment of subscription cannot be said to be a member of a Union.[1]

But a member does not cease to be as such only because one or two instalments of subscription may have remained in arrears.[2]

(26) "occupation" means such section of an undertaking as is recognised under section 11 to be an occupation.

(27) "prescribed" means prescribed by rules made under this Act;

(28) "Primary Union" means a union for the time being registered as a Primary Union under this Act;

(29) "Qualified Union" means a union for the time being registered as a Qualified Union under this Act;

For the full meaning of the terms Primary Union and Qualified Union and Registered Union see sections 13. 14 and comments under those sections.

(30) "registerd union" means a union registered under this Act;

For further details see sections 13 and 14.

(31) "Registrar" means a person for the time being appointed to be the Registrar of Unions under this Act; and includes in respect of such powers and duties of the Registrar as may be conferred and imposed on him, an Assistant Registrar of Unions;

(32) "representative of employees" means representative of employees entitled to act as such under section 30,

(33) "Representative Union" means a union for the time being registered as a Representative Union under this Act;

For the full meaning of the term Representative Union see section 13 and 14.

(34) "schedule" means a schedule appended to this Act;

(35) "settlement" means settlement arrived at during the course of a conciliation proceeding;

1. The Textile Labour Association Ahmedabad. Vs The Ambica Mills Co. Ltd. No 2. Appn. No. 13/1940 Bombay Labour Gazette. (Sept 1940) Vol 20 Page 55

2 The Textile Labour Association Ahmedabad Vs The Ambica Mills Co L'd. No 2 Appn. No 8/1940. Bombay Labour Gazette. (Oct 1940) Vol. 20 Page 139

(36) " strike " means a total or partial cessation of work by the employees in an industry acting in combination or a concerted refusal or a refusal under a common understanding of employees to continue to work or to accept work, where such cessation or refusal is in consequence of an industrial dispute;

Legislative Changes.

The definition of strike is the same as given under section 3 (33) of the Bombay Industrial Disputes Act except the deletion of the words " in any industry " occurring at the end of the definition in that Act. But that does not make any material change

Definition Exhaustive.

The use of words " means " shows that the definition is exhaustive.

Strike; Illegal Strike; Penalty.

Strike has been defined by this sub-section. The circumstances in which it would be illegal have been laid down in section 97 and section 103 prescribes the penalty for declaring or commencing an illegal strike.

Three Conditions of a strike.

In order that a cessation of work or refusal to work by the employees may amount to a strike, three conditions must be satisfied (1) There must be a partial or total cessation of work or refusal to work or to accept work by the employees.

2 The cessation must be by employees acting in combination or the refusal must be concerted or under a common understanding of the employees.

3 The cessation or refusal must be in consequence of an industrial dispute.

If any of these three conditions is not satisfied, the cessation of or refusal to work is not a strike within the meaning of the term as used in this Act.

It must also be remembered that every strike is not illegal. Only if the strike is commenced or continued under any of the circumstances mentioned in section 97 subsection (1) or (2), the strike would be illegal. So in order to prove that the strike is illegal in addition to proving the necessary conditions for constituting the strike, one of the circumstances mentioned in sub-sections (1) and (2) of section 97 must also be proved.

For full and detailed consideration of the subject see the commentary under section 97.

(37) "undertaking" means such concern in any industry as is recognised by the Registrar under Section 11;

XVI of 1926 (38) union" means a Trade Union of employees which is registered under the Indian Trade Unions Act. 1926;

(39) "wages" means remuneration of all kinds capable of being expressed in terms of money and payable to an employee in respect of his employment or work done in such employment and includes—

(i) any bonus, allowances (including dearness allowance), reward or additional remuneration;

(ii) the value of any house accommodation, light, water, medical attendance or other amenity or service ;

(iii) any contribution by the employer to any pension or provident fund ;

(iv) any travelling allowance or the value of any travelling concession;

(v) any sum paid or payable to or on behalf of an employee to defray special expenses entailed on him by the nature of his employment ;

(vi) any gratuity payable on discharge.

Wages:-

This term was not defined under the Bombay Industrial Disputes Act and the Industrial Court held that the Legislature must have used the word 'wages' in the same sense as is used in the Payment of Wages Act of 1936, in which the word "wages" has been defined[1].

But the word has now been defined and the definition is much wider and different in material particulars and is designed to serve a different purpose and it specifically includes items II to VI which have been specifically excluded in the definition of the term 'wages' under the Payment of Wages Act.

The definition of the term 'wages' under the Payment of Wages Act was designed to include in wages everything which the workman would receive if he fulfilled all the conditions. While this definition seems to be designed to include in the term 'wages' everything which can be the subject matter of an Industrial dispute. So decisions interpreting the word "wages" under the Payment of Wages Act and decisions under the Bombay Industrial Disputes Act under which it was held that the word "wages" is used in the same sense as in the Payment of Wages Act would now not be a safe guide for the interpretation of the word 'wages' under this Act.

Fixing of Basic Wages

In an award in an arbitration regarding basic salary between certain Banks and its employees the Industrial Court held that "the basic pay must be more than the pre-war starting pay because it is a common knowledge

1. City Deputy Collector & Labour Officer, Ahmedabad Vs. National Mills Co Ltd Appn. No. 4/1939 Bombay Government Gazette. Part IV-C dated 8-2-1940 Page 160.

based on experience of the First World War that although the rise in the cost of living occasioned by the second war may go down in future, a part of the rise is bound to remain as a permanent feature in the economic life of the country. The exact extent of it cannot be predicted or measured now.....The amount of dearness allowance which can be given may not fully neutralise the cost of living and a fair living wage. Therefore there is a need to raise the basic wage to such an amount that along with the dearness allowance the total emoluments would be sufficient to afford a decent livelihood.'[1]

Dearness Allowance.

In the definition of the term 'wages' under this Act the dearness allowance has been included in the term " wages." Even under the Bombay Industrial Disputes Act where the term " wages " was not defined, it was held that dearness allowance was included in the term " wages ".[2]

Principles for Grant of Dearness Allowance.

The Industrial Court has held, " We are not prepared, as at present advised, to accept the principle that the employers owe any duty to the employees to make good to them to the full extent the rise in the cost of living by reason of the fact that there has been such a rise. The workers would not be entitled to a rise to the full extent of the rise in the cost of living unless it could be shown that the industry has benefitted to a corresponding extent by the very contingency which has occasioned the rise.".[3]

This is an authoritative pronouncement on the principles in determining the quantum of dearness allowance due to a rise of cost in living and has been taken as the basis in numerous awards and adjudications for the grant of dearness allowance to workers.

Bonus:-

Bonus is included in the definition of the term "wages" under this Act.

Bonus is a grauitous payment as it cannot be claimed as of right i. e. a legal right enforceable in a court of law. It is an exgratia payment which an employer may make in his descretion to a worker in addition to his wages

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1 In the matter of Arbitration between certain Banking Companies and its employees. Reference No. 6/1946 and 7/1947. Bombay Government Gazette. Part I (9th April 1947) Page 1099

2. Government Labour Officer, Ahemdabad Vs The Anant Mills Co. Ltd. Appn. No 33/1941 Labour Gazette. (Oct. 1941) Vol. 21. Page 153.

The Textile Labour Association Vs. Shrimagar Weaving and Manufacturing Co. Ltd. Appn. No. 10/1941 Labour Gazette (Sept. 1941) Vol 21 Page 35.

The Textile Labour Association Ahmedabad Vs. The A'bad Mill Owners' Association Submission No. 1/1945. Labour Gazette. (Oct. 1945) Vol 25. Page 107.

3 The Textile Labour Association Vs. The Ahmedabad Mill Owners' Association. Submission No 1/1940 (May 1940) Bombay Labour Gazette. Vol. 19. Page 773.

The Textile Labour Association Vs. The Ahmedabad Mill Owners' Association. Submission No 1/1945. (Oct 1945) Bombay Labour Gazette Vol 25 Page 107.

In the matter of arbitration between the Textile Labour Assocaition Vs. The Ahmedabad Mill Owners' Association. Ref. 2/1946. Bombay Government Gazette Part I (Feb. 1946)

and which the latter cannot legally demand. But that fact does not affect the right of the worker under the Act to demand the payment of bonus as a reward or additional payment for work already done and therefore demand for bonus is an industrial matter[1].

Principles for Grant of Bonus.

Bonus by its very nature is an exgratia payment and must depend upon the total income of a company in the particular year. The facts that the employees were paid bonus at a higher rate in the previous year or that their pay or dearness allowance is on a smaller scale than in other centres are irrelevant considerations".[2]

A Civil Suit to Enforce Payment of a Bonus.

The Government of Bombay by order made under rule 81. A. sub-rule (1) of the Defence of India Rules appointed an adjudicator to decide whether the Company should grant bonus and if so on what terms and conditions. The adjudicator gave an award that the bonus be paid by the Company to its workmen at a certain rate. The Government of Bombay thereupon made an order purporting to be under clauses (d) and (e) of sub-rule (1) of rule 81. A. of the Defence of India Rules directing that the award shall be in force and shall bind the Company and its employees. But the Company did not pay the Bonus to its clerical staff. One of them filed a civil suit for recovery of the bonus in the Small Causes Court. The suit was decreed. The High Court of Bombay in revision confirmed the decree holding that though bonus not promised by an employer of his own volition can hardly be said to be a contract debt, but when that bonus is declared under provision of such as are contained in rule 81. A. of the Defence of India Rules, the payment of that bonus becomes an obligation and a debt so declared must be taken to be a binding debt and a civil suit to recover the same can lie.[3]

Reward :-

A reward is anything given or paid in return for anything done as kindness, services etc. It includes additional gratuitous payment for work already done, over and above a payment according to agreement. If the workers say that in a certain year the employers have made handsome profits and that the employers can, therefore afford to pay them some thing more than the stipulated wages, they are asking for the additional payment as a reward for work already done by them which has resulted in such high profits. Such additional payment is not a pure gift because a gift may have no relation to any work done or to be done by the donee, but it is a reward in as much as it is asked

1. The Textile Labour Association Vs. The Ahmedabad Mill Owners' Association Reference No. 1/1945. Labour Gazette (Oct. 1945) Vol. 25 Page 122.

2. In the matter of arbitration between The Khandesh Spinning and Weaving Mills Co Ltd. and its employees Reference No. 2/1946 Bombay Govt. Gazette. Part. I (13 Feb 1947) Page 614.

In the matter of Arbitrantion between Gendalal Mills Ltd. and its employees Ref. No 3/1946 Bombay Govt Gazette Part I (13 Feb 1947) Page 616

3. Standard Vacuum Oil Co Vs. Avelino D' Souza, Civil Revision Appn. No. 234/1945. Bombay Labour Gazette, Vol. 25 Page 332. (Bombay High Court Decision)

for as an extra payment for work actually done. It is true that it cannot be enforced in a Court of Law because it is not a legal right. But it does not follow that it cannot become a subject matter of an industrial dispute between the employers and workers if the latter demand such payment as a reward in the form of a bonus.[1]

Sukhadi :-

As far as *Sukhadi* and extra bonus (different from the bonus due under an agreement) are concerned, a member of the staff who has not the good will of the management cannot get these amounts. For it is not a matter of right. It depends entirely on the discretion and the good will of the management.[2]

Exgratia Allowance.

The words "wages" imports the idea of legal liability on the part of the employer to pay a definite and well settled consideration arising from a legal relationship but an exgratia payment having no relationship whatsoever either with the amount of work done or efficiency or good attendanace and which may be withheld at the option of the employer cannot be regarded 'wages'. The mills paid some workers some allowance of the aforesaid kind over and above the scheduled rates duly notified under the Standing order. The payment of this additional allowance cannot be regarded as 'wages' within the meaning of the word under the Payment of Wages Act.[3]

The term "wages" was not defined under the Bombay Iudustrial Disputes Act and the Industrial Court had held that the definition of the term "wages" under the Payment of Wages Act applies to cases under the B. I. D. Act. Now the term has been defined in this Act and the definition is wider and substantially different. The decisions therefore under the Bombay Industrial Disputes Act discussing or deciding as to whether a particular item falls under 'wages' or not cannot now be a safe guide under this Act.

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1. The Textile Labour Association Ahmedabad Vs. The Ahmedabad Mill Owners' Association, Ahmedabad Ref. No 1/1945 Bombay Labour Gazette (Oct 1945) Vol 25. Page 122

2. Dharamsi Hathising Vs. The Ahmedabad Laxmi Cotton Mills Co. Ltd Appn. No 162/1943, Bombay Labour Gazette. (Oct. 1944) Vol. 24. Page 123

3. Sukharam Jayaram Vs. The Khatau Makanji Spinning and Weaving Co. Ltd. Appn. No. 158/1943 (January 1944) Bombay Labour Gazette. Page 322

CHAPTER II.

Authorities to be Constituted or Appointed under this Act.

Commissioner of Labour

4. (1) The Provincial Government shall, by notification in the *Official Gazette*, appoint a person to be the commissioner of Labour.

(2) The Provincial Government may by general or special order notified in the *Official Gazette* confer and impose all or any of the powers and duties of the Commissioner of Labour on any person whether generally or for any local area.

COMMENTS.

Under the B. I. D. Act the Commissioner of Labour was ex officio the chief conciliator. Under this Act these two offices may be separate.

Registrar and Assistant Registrars.

5. (1) The Provincial Government shall, by notification in the *Official Gazette*, appoint a person to be the Registrar of Unions for the whole of the Province.

(2) The Provincial Government may, by similar notification, appoint a person to be the Assistant Registrar of Unions for any local area and may by general or special order, confer on such person all or any of the powers of the Registrar of Unions under this Act.

COMMENTS.

This Section corresponds to S. 4 of the Bombay Industrial Disputes Act.

Conciliators

6. (1) The Provincial Government shall appoint a person to be the Chief Conciliator. His jurisdiction shall extend throughout the Province.

(2) The Provincial Government may, by notification in the *Official Gazette*, appoint any person to be a Conciliator for any industry in a local area specified in the notification.

(3) The Provincial Government may, by notification in the *Official Gazette*, appoint any person to be a Special Conciliator for such local area or for such industry for such local area or for such industrial dispute or class of disputes as may be specified in the notification.

COMMENTS.

This section corresponds to S. 21 of the Bombay Industrial Disputes Act, but under that Act the Commissioner of Labour was ex officio the chief

Conciliator while under this Act the two offices may be separate.

Board of conciliation

7. (1) When an industrial dispute arises the Provincial Government may, by notification in the *Official Gazette*, constitute a Board of Conciliation for promoting the settlement of such dispute.

(2) The Board shall consist of a Chairman who shall be an independent person and an even number of members. Every member shall be either an independent person or a person chosen by the Provincial Government from a panel representing the interests of the employers or employees, provided that the number of persons chosen from panels representing employers and the number chosen from panels representing employees shall be equal. Such panels shall be constituted in the manner prescribed.

(3) If any vacancy occurs in the office of the Chairman or a member of the Board before the Board has completed its work, such vacancy shall be filled in the manner prescribed and the proceedings shall be continued before the Board as so reconstituted from the stage at which they were when the vacancy occurred.

Explanation: – For the purposes of this section a person shall be deemed to be an independent person if he is unconnected with the dispute for the settlement of which the Board is constituted and the industry directly affected by the dispute.

Legislative Change:–

This Section corresponds to S. 23 of the Bombay Indstrial Disputes Act with some changes.

For the manner in which the panels representing the interests of the employers and employees shall be constituted and the manner in which the vacancies in the Board of Conciliation shall be filled up, see Rules.

Labour Officer and Assistant Labour Officers.

8. (1) The Provincial Government may by notification in the *Official Gazette*, appoint Labour Officers for any local area or areas.

(2) The Provincial Government may, by similar notification, appoint Assistant Labour Officers for any local area or areas, and may by general or special order confer on them all or any of the powers of the Labour Officer under this Act,

This Section corresponds to Section 22 of the Bombay Industrial Disputes Act.

For Powers and duties of Labour Officer see Chapter VI.

9. The Provincial Government shall, by notification in the

Labour Courts. *Official Gazette*, constitute one or more Labour Courts having jurisdiction in such local areas as may be specified in such notification and shall appoint persons having the prescribed qualifications to preside over such Courts :

26 Geo 5. ch 2 Provided that no person shall be so appointed unless he possesses the qualifications, other than the qualification of age, laid down under Section 255 of the Government of India Act, 1935, for being eligible to enter the subordinate civil judicial service in the Province of Bombay.

COMMENTS.

The provisions for constitution of the Labour Courts are new. " The provisions relating to Labour Courts are an innovation so far as this country is concerned. An analysis of strikes and *lock-outs* occurring over a series of years has revealed the fact that a large proportion of stoppages arise out of disputes involving no substantial issues. Delay in the redress of grievances of workers with regard to these matters and one sided exercise of discretion in dealing with them creates a large volume of bitterness and discontent which lead to frequent disturbances of the peace of the industry and causes serious loss of production and workers' earnings. The conciliation procedure in the Act of 1938 has not been found to be quite suitable for dealing with disputes of this character both because of the length of time which the proceedings take and lack of finality at the end of the proceedings. A remedy for this will be found in the Labour Court which will be instituted under the new Act to ensure impartial and relatively quick decision in references regarding illegal changes, illegal strikes and lock-outs and the complaints that either side may bring up." (Statement of objects and Reasons.)

For powers, duties and procedure of the Labuur Courts see Chapter XII.

For the qualification for being eligible to be appointed to preside over Labour Courts see Rules.

Industrial Court. 10. (1) The Provincial Government shall constitute a Court of Industrial Arbitration.

(2) The Industrial Court shall consist of three or more members, one of whom shall be its President.

(3) Every member of the Industrial Court shall be a person who is not connected with any industry.

(4) Every member of the Industrial Court shall be a person who is or has been a judge of a High Court or is eligible for being appointed a judge of such Court :

Provided that one member may be a person not so eligible, if

in the opinion of the Provincial Government he possesses expert knowledge of industrial matters.

Legislative Changes.

This section corresponds to S. 24 of the Bombay Industrial Disputes Act. There have been some changes. Provision is made for the appointment of a person possessing expert knowledge of industrial matters as a member of the Industrial Court. Under the old Act all members were to be either High Court Judges or eligible for being appointed as High Court Judges. Under sub-clause (3) of Section 24, the Industrial Court could provide for formation of Benches consisting of one or more of its members and under sub-clause (4) the court might hold its sittings at any place as the President may direct. Both these sub-clauses are deleted here and re-enacted as sub-sections (1) and (2) of S. 92. This court is referred to throughout the Act as the Industrial Court. Under the Bombay Industrial Disputes Act, 1938 the Industrial Court was to consist of two or more members one of whom was to be its President Three Judges were in fact appointed. One of the members was absent and an interesting objection was taken that the Court consisting of two members was not competent to hear the application as a Full Bench. The objection was over-ruled and it was held that so long as there are two members of the Industrial Court present including the President the Court is properly constituted under S. 24.[1] Under this Act the law is changed in as much as the Industrial Court shall consist of three or more members. For powers, duties and procedure of the Industrial Court see Chapter XIII.

1. The Gopal Mills Co. Ltd. Vs. The Government Labour Officer Ahmedabad and others. Application No. 4/1944 Bombay Labour Gazette (June 1945) Vol. 24. Page 626.

CHAPTER III.

Registration of Unions.

11. The Registrar may, after making such inquiry as he deems fit, recognise for the purposes of this Act—

Recognition of undertakings and occupations.

(1) any concern in an industry to be an undertaking :

(2) any section of an undertaking to be an occupation.

Legislative Changes.

Under the Bombay Industrial Disputes Act a section of an industry was to be recognised as an occupation. Under this Act there is a change. The provision as to recognition of a concern as an undertaking is new.

Industry, Undertaking and Occupation.

Under this Act the Registrar may recognise any concern to be an undertaking and any section of an undertaking to be an occupation. Thus the group of textile mills in a local area would form one industry and any concern i. e. a mill may be recognised under this section as an undertaking, while a section of the mill i. e. a department thereof may be recognised as an occupation. By notification No. 1 dated 1-6-1939 sections of the Cotton Textile Industry mentioned therein were recognised as occupation in that industry. See appendix V (7). By notification No. 4 dated 10-10-1939 and notification No. 26 dated 16-1-1940 the sections mentioned therein of silk textile industry and woolen textile industry were recognised as occupations respectively for these industries. See appendix.

Maintenatce of registers and approved list

12. It shall be the duty of the Registrar to maintain in such form as may be prescribed :-

(a) registers of unions registered by him under the provisions of this Act, and

(b) a list of approved unions.

For form see appendix.

Application for registration.

13. (1) Any union which has for the whole of the period of three months next preceding the date of its so applying under this section a membership of not less than fifteen per cent. of the total number of employees employed in any industry in any local area may apply in the prescribed form to the Registrar for registration as a Representative Union for such industry in such local area.

(2) If in any local area no Representative Union has been registered in respect of an industry, a union which has for the whole of the period of three months next preceding the date of its so applying under this section a membership of not less than five per cent.

of the total number of employees employed in such industry in the said area may apply in the prescribed form to the Registrar for registration as a Qualified Union for such industry in such local area.

(3) If in any local area, neither a Representative Union nor a Qualified Union has been registered in respect of an industry, a union having a membership of not less than fifteen per cent. of the total number of employees employed in any undertaking in such industry in the said area and complying with the conditions specified in section 23 as necessary for its being placed on the approved list may apply in the Prescribed form to the Registrar for registration as a Primary Union for such industry in such local area.

Legislative Changes.

There have been far-reaching changes in the law relating to registration of unions. It has been thoroughly overhauled. Under the Bombay Industrial Disputes Act there was a provision for recognition of unions by the employers. That has been done away with. Also the percentage of membership necessary for being registered as Representative Union has been reduced from 25 per-cent. to 15 per cent. of the total number of employees. The qualifying period has been decreased from 6 months to 3 months. The provision for Primary Unions is newly introduced. Industrial Unions and Departmental Unions under the Bombay Industrial Disputes Act have been done away with. " The range of activities of a registered union is enlarged by enabling it to act as a representative on behalf of non-members who may choose such a union for the purpose of representing them in any proceeding " (Statement of Objects and Reasons.)

Representative Union: Qualified Union: Primary Union.

Under the scheme of the Act, provision is made for registration of unions either as a Representative Union, Qualified Union or a Primary Union. Any union having a membership of not less than 15 per cent. of the total number of employees employed in any *industry in any local area* may get registered as a Representative Union. In absence of any such Representative Union in respect of an industry in any local area a union which has a membership of not less than five per cent. of the total number of employees employed in the industry in any local area may get registered as a Qualified Union for such industry in such local area. In absence of both a Representative Union or a Qualified Union in respect of an industry in any local area a new catagory of Primary Unions has been introduced by this Act. A union which has a membership of not less than 15 per cent. of the total number of employees employed in any UNDERTAKING in the industry and which complies with the conditions specified in Section 23 as necessary for being placed on the approved list, may get registered as a Primary Union for such INDUSTRY in such local area. Note that both Representative and Qualified Unions must have as members a percentage of the total number of the employees IN THE INDUSTRY in the local area. a

Primary Union must have a membership of not less than 15 per cent. of the total number of the employees IN AN UNDERTAKING. The conditions regarding Primary Union are more stringent. Note also that all these unions including the Primary Union are the unions for the industry in a local area. When there is a union registered as a representative union, no union can be registered as a Qualified Union or a Primary Union and only when there is no Representative Union then only a Qualified Union can be registered and only in absence of Representative and Qualified unions a Primary Union can be registered. Also mark that there can be only one Registered Union at a time in an industry in a local area. Even if there are two unions fulfilling the conditions necessary for being registered in the same catagory (say as a Representative or Qualified Union) then one having the larger membership shall be registered, and if one union has already been registered, then one having larger membership may apply to have the registration of the former cancelled and the registration will be, on proof thereof be cancelled. The scheme of the Act is that there should be only one union to act as representative of the employees.

Note also that a union mentioned in this chapter must have been necessarily registered under the Indian Trade Unions Act 1926. The provisions of this section relate to the registration under this Act.

Registration under this Act confers various rights on the unions in connection with the representations on behalf of workers. For the right to act as representative of workers see Section 30 of the Act. For the form of application under sub-sections (1) (2) and (3) of Section 13, see Forms.

Registration of Union.

14. On receipt of an application from a union for registration under Section 13 and on payment of the fee prescribed, the Registrar shall, if after holding such inquiry as he deems fit he comes to the conclusion that the conditions requisite for registration specified in the said section are satisfied and that the union is not otherwise disqualified for registration, enter the name of the union in the appropriate register maintained under section 12 and issue a certificate of registration in such form as may be prescribed:

Provided:–

Firstly, that in any local area there shall not at any time be more than one registered union in respect of the same industry:

Secondly, that in any local area the Registrar shall in respect of an industry register a union fulfilling the conditions necessary for registration as a Representative Union in preference to one not fulfilling the said conditions, and failing such a union a union fulfilling the conditions necessary for registration as a Qualified Union in preference to one not fulfilling such conditions:

Thirdly, that where two or more unions fulfilling the conditions necessary for registration apply for registration in respect of the same industry in any local area, subject to the provisions of the proviso, the union having the largest membership of employees employed in the industry shall be registered ;

Fourthly that the Registrar shall not register any union if he is satisfied that the application for its registration is not made *bona fide* in the interest of the employees but is made in the interest of the employers to the prejudice of the interest of the employees.

COMMENT.

As stated in the notes on section 13 there shall not be more than one registered union in a local area for an industry. The second proviso lays down the order of preference for the registration of the three categories of the unions specified in Section 13. The order of preference for the registration is as follows:-

(1) Representative Union.
(2) Qualified Union.
(3) Primary Union.

When two or more unions of the same category, otherwise fulfilling the conditions for registration, apply for being registered in respect of the same industry in any local area the union having the largest membership of the employees in the industry shall be registered.

Inquiries Under this Chapter are Judicial Inquiries.

Under section 16 (corresponding to Section 118 of this Act) the Registrar is given the same powers as are vested in the Court under Civil Procedure Code for the procedure for conducting inquiries. Such inquiries are therefore of a judicial nature and must be held in the presence of the parties whose interests may be affected by the order of the Registrar.[1]

These remarks apply to the inquiries under Section 14, 15, 16 and 17 held by the Registrar.

For the fees to be paid and the form of certificate of registration to be issued see rules.

Cancellation of registration.

15. The Registrar shall cancel the registration of a union;-

(a) if the Industrial Court directs that the registration of such union shall be cancelled ;

(b) if after holding such inquiry, if any, as he deems fit, he is satisfied -

1. The Bharat Spinning and Weavnig Cc. Ltd. Vs GIRNI Kamgar Sangh Hubli. Appeal No. 1/1945 Bombay Labour Gazette (March -1945) Vol 24 Page 417.

(i) that it was registered under mistake, misrepresentation or fraud ; or

(ii) that the membership of the union has for a continuous period of three months fallen below the minimum required under section 13 for its registration :

Provided that where a strike or a closure not being illegal strike or closure under this Act in an industry involving more than a third of the employees in the industry in the area has extended to a period exceeding fourteen days in any calendar month, such month shall be excluded in computing the said period of three months.

Provided further that the registration of a union shall not be cancelled under the provisions of this sub-clause unless its membership at the time of the cancellation is less than such minimum ; or

(iii) that the registered union being Primary Union has after registration failed to observe any of the conditions specified in section 23 ; or

(iv) that the registered union is not being conducted bona fide in the interests of employees but in the interests of employers to the prejudice of the interest of employees ; or

(v) that it has instigated, aided or assisted the commencement or continuation of a strike which has been held to be illegal ;

XVI of 1926. (c) if its registration under the Indian Trade Unions Act, 1926, is cancelled.

COMMENTS.

This Section corresponds to section 9 of the Bombay Industrial Disputes Act. There have been some changes. The important changes are (a) the insertion of sub-clauses (b) (iii), (b) (v) and sub-clause (c), which are totally new. Under sub-clause (b) (ii) it is provided that the union whose membership has fallen below the minimum for a continuous period of 3 months and whose membership is below the minimum at the time of cancellation shall have its registration cancelled, while under clause (b) of Section 9 of the Bombay Industrial Disputes Act, it was sufficient for cancellation of registration that the membership was less than the minimum at the date of the application for cancellation. Under the Bombay Industrial Disputes Act the application for cancellation could be made only by an employer or a union concerned with the industry or occupation in which the members of the union, the registration of which is sought to be cancelled, are employed. This provision has been deleted in this Act.

Registration of another union in place of existing registered union.

16. (1) If at any time any union (hereinafter in this section referred to as " applicant union ") makes an application to the Registrar for being registered

in place of the union already registered (hereinafter in this section referred to as " Registered union ") for an industry, in a local area, on the ground that it has a larger membership of employees employed in such industry the Registrar shall call upon the registered union by a notice in writing to show cause within one month of the receipt of such notice why the applicant union should not be registered in its place. An application made under this sub-section shall be accompanied by such fee as may be prescribed.

(2) The Registrar shall forward to the Labour Officer a copy of the said application and notice.

(3) If, on the expiry of the period of notice under sub-section (1), after holding such inquiry as he deems fit, the Registrar comes to the conclusion that the applicant union complies with the conditions necessary for registration specified in section 13, and that its membership was, during the whole of the period of three months immediately preceding the date of the application under this section larger than the membership of the registered union, he shall, subject to the provisions of section 14 register the applicant union in place of the registered union.

(4) Every application made under this section shall be published in the prescribed manner not less than 14 days before the expiry of the period of notice under sub-section (1).

COMMENT.

This Section corresponds to section 10 of the Bombay Industrial Disputes Act. Some changes have been made.

When there is any other union having or claiming larger membership of the employees than the registered union in an industry in a local area, and it wants to get itself registered, in place of the registered union, it has to apply under this Section and if the Registrar after holding such inquiry as he deems fit comes to the conclusion that the applicant union has substantiated its claim for larger membership he shall register that union in place of the registered union. (Mark that under section 14 there is to be only one registered union in respect of an industry in a local area)

Application for re-registration

17. (1) Any union the registration of which has been cancelled on the ground that it was registered under a mistake or on the ground specified in sub-clause (i i) of clause (b) of section 15 may, at any time after three months from the date of such cancellation and on payment of such fees as may be prescribed, apply for re-registration. The provisions of sections 13 and 14 shall apply in respect of such application.

(2) A union the registration of which has been cancelled on any other ground shall not, save with the permission of the Provincial Government, be entitled to apply for re-registration.

COMMENTS.

This Section corresponds to section 13 of the Bombay Industrial Disputes Act. There are some changes.

It makes provision for the re-registration of unions whose registration has been cancelled under section 15. The Union whose registration has been cancelled on the ground that it was registered under a mistake or on the ground that its membership has fallen below the minimum required under section 13 can apply for re-registration at any time after three months from the date of cancellation. The Union whose registration is cancelled on any other ground than those mentioned above shall be required to take the previous permission of the Provincial Government before applying for re-registration.

Liability of union or members not relieved by cancellation.

18. Notwithstanding anything contained in any law for the time being in force, the cancellation of the registration of a union shall not relieve the union or any member thereof from any penalty or liability incurred under this Act prior to such cancellation.

Periodical returns to be submitted to Registrar.

19. Every registered union shall submit to the Registrar on such dates and in such manner as may be prescribed, periodical returns of its membership.

For the dates on which and the manner in which the returns shall be submitted see rules.

Appeal to Industrial Court from order of Registrar cancelling registration.

20 (1) Any party to a proceeding before the Registrar may within 30 days from the date of an order passed by the Registrar under this Chapter, appeal against such order to the Industrial Court;

Provided that the Industrial Court may for sufficient reasons admit any appeal made after the expiry of such period.

(2) The Industrial Court may admit an appeal under sub-section (1) if on a perusal of the memorandum of appeal and the decision appealed against it finds that the decision is contrary to law or otherwise erroneous.

Legislative Changes.

This section corresponds to section 18 of the Bombay Industrial Disputes Act. Under that Act " a person entitled to appear before the Registrar " could appeal while under this Act " any party to a proceeding before the Registrar " can appeal.

Can an Employer Appear or Appeal ?

Under section 17 of the Bombay Industrial Disputes Act, every employer in the Industry concerned and every representative of the employees whose interests may be affected were entitled to appear at any inquiry made by the Registrar. There is no corresponding provision under this Act. It seems therefore, by reason of the deliberate deletion of the provisions of section 17, that an employer is not entitled to appear in a proceeding under this chapter nor would he be entitled to appeal under this section.

Marginal Notes Wrong.

" It may be observed that marginal note to this section is not in conformity with the provisions of the section itself. While the marginal note speaks of appeals from the order of the Registrar cancelling registration of unions, the section itself provides for appeals against any order passed by the Registrar under this chapter. The marginal notes cannot control the clear provisions of the section itself." Therefore all orders of the Registrar under this chapter are appealable.[1]

The discrepancy between the marginal notes and the section existed under the Bombay Industrial Disputes Act and the above decision was under that Act. In spite of this clear ruling of the Industrial Court and the undoubtedly patent defect, the same wrong marginal notes remain unaltered. It is rather a case of slovenly legislation.

Publication of order

21. Every order passed under Section 14, 15 or 16 and every order passed in appeal under section 20 shall be published in the prescribed manner.

For the manner of publication of orders see rules.

Registration of union for more than one local area

22 Subject to the foregoing provisions of this Chapter, a union may in the prescribed manner be registered for an industry for more local areas than one.

For the manners of registration of a union for more local areas than one see rules.

1. The Bharat Spinning and Weaving Co Ltd. Vs. The Sarni Kamdar Sangh, Hubli Appeal 1/1945 Bombay Labour Gazette. (March 1945) Vol. 24 Page 417.

CHAPTER IV.

Approved Unions.

Government seeks to achieve its declared object of facilitating the organisation of labour by creating a list of approved unions.....

An approved union is invested with substantial privileges but is also required to undertake a corresponding set of obligations in the interests of the stability and the progress of sound trade unionism"

" Provision is made for the maintenance of a list of approved unions and all unions that satisfy among others, certain conditions regarding the regularity of meetings of the executive committee, Government audit of their accounts and the avoidance of resort to strikes so long as means of settlement and conciliation are available under the Act, will be placed on the list. Approved unions will derive substantial advantages under the Act including the right of inspecting any place where their members work, collecting union dues on the employer's premises and legal aid at Government expenses in important proceedings before the Labour Court and the Industrial Court". (Statement of Objects and Reasons.)

Approved list: maintenance of: Conditions for being entered in

23. (1) On an application being made in the prescribed form, by a union for being entered in the approved list, the Registrar may after holding such inquiry as he deems fit enter the union in such list if he is satisfied that the union has made rules, that the provisions of the said rules are being duly observed by the union, and that the rules provide that–

(i) its membership subscription shall be not less than four annas per month;

(ii) its executive committee shall meet at intervals of not more than three months ;

(iii) all resolutions passed, whether by the executive committee or the general body of the union, shall be recorded in a minute book kept for the purpose;

(iv) an auditor appointed by Government may audit its accounts at least once in each financial year ;

(v) every industrial dispute in which a settlement is not reached by conciliation shall be offered to be submitted to arbitration, and that arbitration under Chapter XI shall not be refused by it in any dispute :

(vi) no strike shall be sanctioned or resorted to by it unless all the methods provided by or under this Act for the settlement of an industrial dispute have been exhausted and the majority of its members vote by ballot in favour of such strike ;

Provided that the Registrar shall not enter a union in the approved list if he is satisfied that it is not being conducted *bona fide* in the interest of its members, but to their prejudice.

Explanation.- " Member " for the purposes of clause (vi) means a member of the union for the purposes of the Indian Trade Unions Act, 1926. XVI of 1926

(2) The Provincial Government may by notification in the *Official Gazette* direct that in the case of any union or class of unions specified in the notification the membership subscription may, subject to a minimum of two annas per month, be less than four annas.

(3) Notwithstanding anything contained in sub-section (1) there shall not at any time be more than one approved union in respect of any industry in a local area.

(4) Any union complying with the conditions specified in sub-section (1) and having a larger membership in an industry in a local area than an approved union for such industry shall on application in that behalf be entered in the approved list in place of such approved union.

COMMENTS.

This chapter cuts a totally new ground and provides for a totally new class of unions called approved unions. Those unions which satisfy the conditions laid down in sub-clause (1) would be entitled to be placed in the approved list

We have seen in Chapter III which deals with registration of unions that there are three categories of unions so far as registration of unions under this Act is concerned: Representative, Qualified and Primary. We have also seen that there can be only one Registered union at a time in any local area in respect of an industry. The registration under the Act gives rights to represent the employees and has been meant for that purpose. Now this chapter makes provision for the ' approved unions'. It should be marked that any union whether registered under this Act or not can apply for being put on a list of approved unions. It is not necessary that the union applying for being put on an approved list must be necessarily registered under the provisions of this Act. It is sufficient that a union applying under this chapter satisfies the conditions laid down in section 23. Thus when there is a union registered under this Act in respect of an industry for a local area and if it does not

apply for registration as an approved union under this chapter or is not eligible to apply as approved union, any other union in the locality which is a union registered under the Indian Trade Unions Act can apply for being placed on the approved list.

The result would be that such a union would be and the registered union would not be entitled to all the privileges conferred upon it under this Chapter. Of course an approved union, if it is not also a registered union, will not get the rights and privileges of a registered union under the Act including the right to represent the employees. Mark that there can be only one approved union in respect of an industry in a local area. If there are two unions applying for being placed on the approved list, the union having the larger membership of employees in an industry in a local area shall be entered in the approved list provided it satisfies the conditions specified in section 23.

For the form of application see rules.

Removal from approved list.

24. The Registrar shall remove a union from the approved list if the registration under the Indian Trade Unions Act, 1926, is cancelled, and may also so remove a union if after holding such inquiry if any as he deems fit, he is satisfied that it–

(i) was entered in the list under mistake, misrepresentation or fraud, or

(ii) has, since being included in the approved list, failed to observe the conditions specified in section 23.

Rights of Officers of approved unions.

25. Such officers of an approved union as may be authorised by rules made in this behalf by the Provincial Government shall, in such manner and subject to such conditions as may be prescribed, have a right, and shall be permitted by the employer concerned–

(a) to collect sums payable by members to the union on the premises where the wages are paid to them ;

(b) to put up or cause to be put up a notice board on the premises of the undertakings in which its members are employed and affix or cause to be affixed notices thereon ;

(c) for the purpose of the prevention or settlement of an industrial dispute–

(i) to hold discussions on the premises of the undertaking with the employees concerned who are the members of the union ;

(ii) to meet and discuss with an employer or any person appointed by him for the purpose the grievances of its members employed in his undertaking ;

(iii) to inspect, if necessary, in any undertaking any place where any member of the union is employed.

COMMENTS

For the officers who may be authorised and the manner in which and conditions subject to which the rights under this section shall be authorised see rules.

Legal aid to approved unions at Government expense in important proceedings

26. (1) An approved union entitled to appear:-

(a) before a Labour Court in a proceeding for determining whether a strike, lock-out or change is illegal, or

(b) before the Industrial Court in a proceeding involving in the opinion of the Court an important question of law or fact,

may apply to the Court for the grant of legal aid at the expense of the Provincial Government.

(2) A copy of every application made under sub-section (1) shall be sent to the Registrar with the least practicable delay.

(3) The Court to which an application is made under sub-section (1) may fix for the hearing of the application a day of which at least three days' clear notice shall be given to the Registrar.

(4) On the day fixed or as soon thereafter as may be convenient, the Court shall examine the witnesses, if any, produced by the union and the Registrar, and may also examine the officers of the union, and shall make a memorandum of the substance of such evidence.

(5) The Court may after considering the evidence adduced under sub-clause (4) either grant or refuse the application.

(6) The Provincial Government may in consultation with the Industrial Court prescribe the fees for legal advice to, and appearance on behalf of a union before a Court.

(7) For the purpose of this section, legal aid includes advice to the union and the appearance before a Court of a legal practitioner on behalf of the union.

For the fees prescribed under sub-section (6) of section 26 see rules.

CHAPTER V.

Representatives of Employers and Employees, and appearance on their behalf.

This chapter deals with the representation of employers and employees. The scheme of the Act is that the employers and the employees should settle the disputes between them by agreement, conciliation and arbitration as far as possible. But there may be a number of employers in any industry and there will always be numerous employees, and it will be difficult, nay, next to impossible, to negotiate with each of them. Therefore there must be some one to act on behalf of them, to enter into agreement, settlements or submissions to arbitration; in short, to represent them in the proceedings under the Act. This chapter lays down rules for the representation of the employers and employees.

Recognition of combination of employers as association of employers.

27. (1) The Provincial Government may from time to time by notification in the *Official Gazette* :-

(a) recognise any combination of employers in an industry whether incorporated or not as an association of employers for the purposes of this Act, provided that one of the objects of such combination is the regulation of conditions of employment in the industry ;

(b) withdraw any recognition granted under clause (a) ;

Provided that no recognition shall be withdrawn unless an opportunity has been given to such association of employers to be heard.

(2) In any proceeding under this Act an association of employers shall be entitled to represent—

(a) any employer who is a member of the association ;

(b) any employer connected with the same industry not being a member of the association, who has intimated in writing to the prescribed authority that he has agreed to be represented by the association in such proceeding ;

and any notice or intimation given by or to such association shall be deemed to have been given by or to every employer it is entitled to represent.

(3) Where more employers than one are affected or under any of the provisions of this Act deemed to be affected, and no association of employers is under sub-section (2) entitled to represent all

of them, the representative determined in the prescribed manner shall be entitled to act as their representative.

Legislative Changes.

This section corresponds to section 74 of the Bombay Industrial Disputes Act, but the provisions of this section are made exhaustive.

Representation of Employers.

An association of the employers recognised by the Provincial Government under sub-section (1) of section 27 would be entitled to represent in any proceedings under this Act (1) its members and (2) those non-members who have intimated in writing to the prescribed authority that they have agreed to be represented by such association in such proceeding.

If there is no association of employers entitled to represent the employers, then the representative shall be determined in accordance with the rules prescribed under the Act.

Election of representatives of employees

28. (1) Where there is no Representative Union in respect of any industry in any local area, the employees in each undertaking in the industry and in each occupation therein may, in the prescribed manner, elect five persons from among themselves to represent them for the purposes of this Act :

Provided that no such persons shall be elected for any occupation the number of employees in which does not exceed ten.

(2) The persons, if any, elected under sub-section (1) shall function in such manner as may be prescribed.

(3) Within twelve months from the date on which an election under sub-section (1) is held, and within each succeeding twelve months thereafter, a fresh election shall be held ;

Provided that any person may be re-elected at any such election.

(4) The employees may in the prescribed manner recall any or all of the persons elected under sub-section (1) or (3).

(5) Vacancies in the number of the persons elected under sub-section (1) or (3) shall be filled by election in the prescribed manner.

Elected Representatives of Employees.

This section provides for the election of the representatives of the employees. Such election is to be made only when there is no Representative Union in respect of an industry in any local area. For when there is a Representative Union in respect of an industry in a local area, the Represen-

tative Union is entitled to represent all the employees in the industry in such local area under section 30 of the Act and therefore it would not be necessary to elect representatives of the employees when there is a Representative Union.

These representatives of the employees are to be elected in the manner prescribed by the rules under this Act. There are to be annual fresh elections of representatives. This is a notable departure from the provisions of the Bombay Industrial Disputes Act. Under that act the representatives were elected only for a particular dispute and once the dispute was over they were *functus officio* and for a new dispute or act, a fresh election was necessary. The industrial Court had held that the elected representatives were not a sort of standing committee of workers.[1]

" But under this Act annual election of representatives of employees is provided for in lieu of the present system of election of representatives for a particular dispute only" (Statement of objects and Reasons). Under this Act they would be a sort of a Standing Committee of Workers.

Under the Bombay Industrial Disputes Act it was held that if an elected representative of the employees leaves service he will not be able to act as a representative of employees. For a representative of employees must be an employee who continues to be so throughout the proceedings An employee can represent other employees only so long as he himself continues and remains an employee.

It was also held " if there is a vacancy in the elected representatives, such vacancy among them must be properly filled up and the remaining representatives cannot act as such unless such vacancies are filled up. It may be open to the workers to elect any representatives who may not be more than five but if after the five representatives are elected, any vacancies occur among them, the remaining representatives cannot act as the elected representatives of the workers in as much as the workers had appointed the five persons as a body in whom they had confidence as their representatives. In a reference which came before the Court, it was observed as follows :

" There is some force in the contention of the mills that the representatives must act jointly. Some of the representatives that may have died or left service may have been the most trusted representatives, and the remaining representatives can then hardly be said to be the real representatives of the employees [Labour Gazette (Sept. 1944.) page 55]. We adhere to the same view."[2]

It seems the principles laid down in the above decision are good law under this Act also.

1. In the matter of termination of a Registered Agreement dated 9-1-1942 by the elected representatives of the Podar Mills Co. Ltd. Bombay Labour Gazette (Sept. 1944) Vol. 24 Page. 55

2. The Tata Mills Ltd Vs The Government Labour Officer. Appl. no. 1/1946 Bombay Labour Gazette (July 1946) Vol. 25 Page. 855.

An application for a declaration that the opponents are not the representatives duly elected of the employees and an injunction restraining them from representating themselves as representatives can not be entertained.[1]

For the manner in which the persons are to be elected under sub-section (1), recalled under sub-section (4), the period for which they shall function and the manner, in which the vacancies shall be filled up under section 28 (5) see rules.

Act or decision of majority to be deemed to be act or decision of all.

29. Any act or decision of the majority of the persons elected under section 28 by any employees shall be deemed to be the act or decision of all the persons so elected by them.

Representative of employees

30 The following shall be entitled to act in the order of preference specified as the representative of employees in an industry in any local area—

(i) a Representative Union for such industry;

(ii) a Qualified or Primary Union of which the majority of employees directly affected by the change concerned are members;

(iii) any Qualified or Primary Union in respect of such industry authorised in the prescribed manner in that behalf by the employees concerned;

(iv) the Labour Officer if authorised by the employees concerned;

(v) the persons elected by the employees in accordance with the provisions of section 28 or where the proviso to sub-section (1) thereof applies, the employees themselves;

(vi) the Labour Officer;

Provided--

Firstly, that the persons entitled to act under clause (v) may authorise any Qualified or Primary Union in respect of such industry to act instead of them:

Secondly, that where the Labour Officer is the representative of the employees he should not enter into any agreement under section 44 or settlement under section 58 unless the terms of such

1. The Silver Cotton Mills. Co. Ltd. Vs. The Government Labour Officer, Ahmedabad. Appl. no. 38/1942 Bombay Labour Gazette (Aug 1942) Vol. 21 Page. 1194.

agreement or settlement, as the case may be, are accepted by them in the prescribed manner :

Thirdly, where in any proceeding the persons entitled to act under clause (v) are more than five, the prescribed number elected from amongst them in the prescribed manner shall be entitled to act instead.

Legislative Changes.

The corresponding section under the Bombay Industrial Disputes Act was section 3 (29). It was included in the section dealing with definitions under that Act. It has been now allotted a special section and there have been far-reaching and substantial changes and they have been noted in the comments below.

Proviso (2) to this section embodies substantially the provisions of section 31 and section 35 (5) of the Bombay Industrial Disputes Act.

Scope of the section

This section lays down the order of preference of those entitled to represent the employees One standing higher up in the order is entitled to act as a representative to the exclusion of those standing lower in the order.

This is a very important section of the Act and determines who would be entitled to act as representative of employees under the Act. The representative of the employees has got substantial rights and privileges under the Act.

Representative Union.

The first and foremost in the order of preference for those entitled to represent the employees is the Representative Union. It represents all the employees in an industry in a local area. Note that it represents all employees including those who are not its members. A Representative Union must have a membership of not less than 15 per cent of the total number of employees in an industry in a local area and thus only a minority of the total employees (of course not less than 15 per cent.) may be its members, yet by virtue of this section it is entitled to act as a representative of each and all employees whether they are its members or not, in the industry in such local area.

This is a special privilege given to a Representative Union under the Act.

Under Section 3 (29) of the Bombay Industrial Disputes Act, a Representative Union could not act as a representative of the employees, only if some of the employees directly affected by the change were its members. That provision is deleted in this Act. Under this Act a Representative Union can act as a Representative of the employees even if none of the employees directly affected by the change is its member. Ordinarily a trade union can represent only its members but by virtue of section 30 (1) a Representative Union is entitled to act as a representative not only of its members but also

of all other non-member employees in the local area. And as a reprentative of the employees it can send or receive notices on their behalf, enter into agreements, settlements, be party to submissions, arbitrations and award and these will be binding upon all the employees in the industry in such local area. The Representative Union has a special place in the scheme of the Act. A Representative Union represents not only the present employees in the industry in the local area but also represents the persons who may be employed in future and an agreement etc. to which a Representative Union is a party would be binding upon them and they would be entitled to the benefit thereof.[1]

Representation of employees.

The Textile Labour Association Ahmedabad as the Representative Union gave a notice of change for increase in wages; the conciliation proceedings pursuant to this notice failed and terminated on 10-2-10. Thereafter workers of some mills went on strike for substantially the same demand of increase in wages though in spite of the exhortations of the Textile Labour Association not to resort to strike In the proceedings taken by the mills to declare it to be an illegal strike it was contended on behalf of the mills that no notice of change was given by the workers who went on strike. It was held overruling the contention that the Textile Labour Association being a Representative Union was the representative of all employees in the industry at Ahmedabad including the opponents and therefore notice of change given by the Textile Labour Association was given on behalf of them and therefore the strike having been commenced after the conciliation proceedings were over was not illegal.[2]

Notice to employees.

The Representative Union being a representative of all employees, a notice served upon the Representative Union must be deemed to be a notice served on all the employees in the industry.[3]

Sub-clause II.

A Qualified or Primary Union can act as a representative in the following circumstances.

(1) When there is no representative union and

(2) When majority of employees directly affected by the change concerned are its members.

(3) When elected representatives of the employees authorise it to act instead of them.

1 Government Labour Officer Ahmedabad Vs. Ananta Mills Co Ltd Appn No 33/1941 Bombay Labour Gazette (Oct 1941) Vol 21 Page 153

2 The Ahmedabad Mill Owners' Association Vs The Mill Kamdar Union Ahmedabad. Appn. No 3/1940 Bombay Labour Gazette (April 1940) Vol. 19 Page 686

3 The Textile Labour Association Ahmedabad Vs The Shri Ambica Mills Co. Ltd No. 1 and 2. Appn No. 55 and 56 of 1940 Bombay Labour Gazette (Jan. 1941) Vol 20 Page 351

Majority of employees affected are its members.

Under section 3 (29) (I) of Industrial Disputes Act, a registered union could be a representative of the employees if "the majority of employees directly affected by a change are its members" which are words exactly similar to the words used in section 30 (II). These words were interpreted in the following case : "In ascertaining who is the representative of employees it is not necessary to see what proportion of the total number of employees is affected by the change. One has got to make the employees directly affected by the change as the basis or unit for computing and if majority of the members comprising that unit are members of a registered union then the registered union would be a representative of the employees.[1]

Sub-clause IV

When the number of elected representatives is more than 5, then these persons have to elect from among them persons to act as representatives, Rules under the Act provide for such election.

Labour officer.

The Labour Officer represents in the last resort all the employees in an industry in a local area.[2]

Therefore whenever the employer has to give an intimation to employees in general, the only person to whom he can give intimation is the Labour Officer in absence of any one having a preferential right of acting as a representative of employees.[3]

The Government Labour Officer is the representative of the employees. Thus where it was contended that the mills could not serve the notice of discharge personally on the employee, held that the notice should have been sent to the Labour Officer, he being the representative of the employees.[4]

In an application for a declaration that a strike was illegal, it was contended that all the employees who had gone on strike should have been made parties. The Government Labour Officer had been made a party. Held that the Government Labour Officer was a representative of the employees as there were no elected representatives of the employees.[5]

For the manner of authorising a Qualified or a Primary Union under clause (III), for the manner of accepting the terms of an agreement or settlement under proviso two and for the number of representatives and the

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1 The Textile Labour Association Ahmedabad. Vs. The National Mills Co Ltd Appn No 63/1940 Bombay Labour Gazette (April 1941) Vol 20. Page 633

2 The Textile Labour Association Ahmedabad Vs. The Shree Ambica Mills Co Ltd. Nos 1 & 2 Appl No 55/1940 Bombay Labour Gazette (Jan. 1941) Vol 20 Page 351

3. The Mills Owners' Association Bombay Vs. Baboo Shamji and others. Appn No. 2/1940 Bombay Labour Gazette (March 1940) Vol 20 Page 592

4 Nurkhan Mirkhan Vs Ahmedabad New Textile Mills Co Ltd. Appn-No. 72/1943 Bombay Labour Gazette (Oct 1944) Vol. 24 Page 107

5. The Niranjan Mills Co. Ltd. Surat Vs The Government Labour Officer and others Appn No. 73/1943 Bombay Labour Gazette (Dec 1943) Vol. 23 Page 273.

manner of their elections under proviso three to section 30, see rules.

Certain unions to continue to act for some time as representatives of employees

31. Notwithstanding anything contained in this Act, a registered or representative union entitled under the Bombay Industrial Disputes Act, 1938, to act as a representative of employees immediately before the application of this Act to the industry concerned shall continue to be so entitled for a period of six months from the date of its application thereto or until a representative of employees becomes entitled to act as such under section 30, whichever is earlier.

Explanation :—For the purposes of this section the expression " registered union " and " representative union " have the meanings respectively assigned to them in the Bombay Industrial Disputes Act, 1938.

Bom XXV of 1938

Persons who may appear in proceedings

32. (1) A Conciliator may, if he considers it to be necessary for the proper discharge of his functions permit any individual, whether an employee or not, to appear in any proceeding before him.

(2) The provisions of sub-section (1) shall apply so far as may be to a Board, an Arbitrator, a Labour Court and the Industrial Court.

Representation of employees

33. Notwithstanding anything contained in any other provision of this Act, an employee shall be entitled to appear through any person,—

(a) in all proceedings before the Industrial Court;

(b) in proceedings before a Labour Court for deciding whether a strike, lock-out or change or an order passed by an employer under the standing orders is illegal;

(c) in such other proceedings as the Industrial Court may, on application made in that behalf, permit:

Provided that a legal practitioner shall not be permitted under clause (c) to appear in any proceeding under this Act except before a Labour Court or the Industrial Court.

CHAPTER VI.

Powers and duties of Labour Officer.

Powers and duties of Labour Officer

34. (1) A Labour Officer shall exercise the powers conferred, and perform the duties imposed on him by or under this Act.

(2) For the purpose of exercising such powers and performing such duties a Labour Officer may, subject to such conditions as may be prescribed, at any time during working hours, and outside working hours after reasonable notice, enter and inspect–

(a) any place used for the purpose of any industry:

(b) any place used as the office of any union:

(c) any premises provided by an employer for the residence of his employees,

and shall be entitled to call for and inspect all relevant documents which he may deem necessary for the due discharge of his duties and powers under this Act.

(3) All particulars contained in or information obtained from any documents inspected or called for under sub-section (2) shall, if the person in whose possession the document was so requires, be treated as confidential.

(4) A Labour Officer may, after giving reasonable notice, convene a meeting of employees for any of the purposes of this Act, on the premises where they are employed, and may require the employer to affix a written notice of the meeting at such conspicuous place in such premises as he may order and may also himself affix or cause to be affixed such notice. The notice shall specify the date, time and place of the meeting, the employees or class of employees affected, and the purpose for which the meeting is convened:

Provided that during the continuance of a lock-out which is not illegal, no meeting of employees affected thereby shall be convened on such premises without the employer's consent.

(5) A Labour Officer shall be entitled to appear in any proceeding under this Act.

(6) It shall be the duty of the Labour Officer to-

(a) watch the interests of employees and promote harmonious relations between employers and employees ;

(b) investigate the grievances of employees and represent to employers such grievances and make recommendations to them in consultation with the employees concerned for their redress ;

(c) report to the Provincial Government the existence of any industrial dispute of which no notice of change has been given, together with the names of the parties thereto.

Provided that the Labour Officer shall not-

(a) appear in any proceeding in which the employees who are parties thereto are represented by a Representative Union,

(b) where there is a Representative Union for an industry in a local area, except at the request of the union, act under clause (b) of sub-section (6) in respect of the employees.

COMMENTS.

This section corresponds to section 25 of the Bombay Industrial Disputes Act with certain alterations. "The powers and duties of the Labour Officer are expanded so as to enable him to function more efficiently."

(Statement of Objects and Reasons)

For the conditions subject to which the powers of entry and inspection shall be exercised under sub-section (2) see rules.

CHAPTER VII.

Standing Orders.

Before the enactment of the Bombay Industrial Disputes Act 1938, there was a complete absence of any rules regulating the relations of the employers and the employees in an industry. The conditions of employment including discharge, dismissal, leave, holidays, working condition, permanency in service etc, depended entirely upon the whim and caprice of the employers which caused great amount of bitterness and strife. The "Industrial Strike" as a means to secure redress of grievances and alterations in the existing conditions of employment has been the most outstanding feature of the relations between the employers and the employed. Therefore it was deemed desirable that there should be binding rules regulating the relations of the employers and the employees in an industry. Provision was therefore made in the Bombay Industrial Disputes Act for settlement of such rules which are called Standing Orders. Under the Bombay Industrial Disputes Act, section 26 provided for settlement of the Standing Orders. That section was included in the chapter providing for changes. Under the present Act the provisions have been made exhaustive and extensive and a special chapter has been allotted for that purpose. One of the most notable change made by the present Act is regarding the procedure for making an alteration in the Standing Orders. Under the old Act if any party desired a change in any Standing Order, he had to give a notice of change to the other party and the procedure for effecting a change had to be followed, i. e. if the parties did not come to an agreement in respect of the proposed change in the Standing Orders, conciliation proceedings had to be resorted to and if these proceedings failed, the employer, was entitled to effect the change and to enforce such change by a lock-out while the employees were at liberty to resort to a strike to enforce or resist the change. Under the provisions of this Act this matter of alteration in Standing Orders has been entirely taken out of the hands of the parties. Any party desiring to make a change in the Standing Orders has to apply to the Commissioner of Labour under section 38 and his decision, subject to the provisions of appeal and Review by the Industrial Court, will be final and binding upon the parties.

Settlement of Standing Order by Commissioner of Labour.

35. (1) Within six weeks from the date of the application of this Act to an industry every employer therein shall submit for approval to the Commissioner of Labour in the prescribed manner draft standing orders regulating the relations between him and his employees with regard to the industrial matters mentioned in Schedule I.

Provided that where an undertaking in an industry is started after the application of this Act to such industry, the draft standing

orders shall be submitted within six months of the starting of the undertaking.

(2) On receipt of the draft standing orders the Commissioner of Labour shall, after consulting in the prescribed manner the representative of employees and employers and such other interests concerned in the industry and making such inquiry as he deems fit, settle the said standing orders.

(3) The Commissioner of Labour shall forward a copy of the standing orders so settled to the Registrar, who shall within fifteen days of their receipt record them in the register kept for the purpose.

(4) Standing orders so settled shall come into operation from the date of their record in the register under sub-section (3).

(5) Until standing orders in respect of an undertaking come into operation under the provisions of sub-section (4), model standing orders, if any, notified in the *Official Gazette* by the Provincial Government in respect of the industry shall apply to such undertaking.

Legislative changes.

This section corresponds to sub-section (1), (2), (3) of section 26 of the Bombay Industrial Disputes Act. Under that Act the period for submission of draft Standing Orders was two months from the date of application of that section to the industry. It has now been reduced to six weeks. The proviso to sub-section (1) is new. In sub-clause (2) the words "after consulting in the prescribed manner, the representative of the employees and employers and such other interests concerned" have been substituted for "after consulting all interests concerned". Sub-sections (3) and (4) have been redrafted and lay down as to when the standing orders come into operation. The Sub-section (5) relating to model Standing Orders is new.

Every employer in an industry to which this Act has been made applicable has to submit to the Commissioner of Labour, draft standing orders within six weeks from the date of application of the Act, for his approval. If an undertaking is started after the Act has been made applicable to the industry, draft Standing Orders are to be submitted within six months of the starting of such undertaking. While considering the effect of Section 35, we have to take into account the provisions of Proviso (b) to section 122 which deals with the standing orders already settled under the B. I. D. Act. This proviso among other things provides that any Standing Order settled under the provisions of the Bombay Industrial Disputes Act shall be deemed to have been settled by the appropriate authority under the corresponding provisions of this Act. Therefore for an industry to which the Bombay Industrial Disputes Act was made applicable, and for which Standing Orders had been already

settled, such Standing Orders shall be deemed to have been made by the appropriate authority under the provisions of this Act. Putting in a simple language, the Standing Orders settled under the Bombay Industrial Disputes Act are the Standing Orders under this Act, and the employer shall not have to submit draft standing orders for the approval of the Commissioner of Labour under this section. The old Standing Orders will remain in force.

Under the Bombay Industrial Disputes Act, Standing Orders have been settled as follows:

(1) Standing Orders for the operatives in the cotton textile mills in the areas of Bombay city, Kurla, Gokak, Poona, and Sholapur;

(2) Standing Orders for the operatives in the cotton textile mills in the areas of Ahmedabad, Viramgam, Nadiad and Surat;

(3) Standing Orders for clerks in cotton textile mills in the areas of Bombay City, Kurla, Gokak, Poona, Sholapur, Ahmedabad, Nadiad and Surat. The Standing Orders for cotton mills in other areas as well as silk and woolen mills have also been settled. The Standing Orders for the cotton textile mills in Bombay City and other places mentioned in (1) and the standing orders for the cotton textile mills in Ahmedabad and other places mentioned in (2) have been given in Appendix. The Standing Orders for other centres are practically the same with slight changes. The Standing Orders for clerks have also been given in Appendix IV.

It may be noted that the Standing Orders are for regulating the relation of the employer and his employees with regard to the industrial matters mentioned in Schedule (I) and are determinative of the relation of the employer and his employees with regard to these matters i. e. industrial matters mentioned in Schedule (I).

When there are no Standing Orders, the relations between the employees and mills are covered by the Bombay Industrial Disputes Act (now the present Act) without any assistance to be derived from the framing of the Standing Orders.[1]

For the manner of submission of draft Standing Orders under sub-section (1) and the manner of consulting the representatives of employees and other interests under sub-section (2) of section 35 see rules.

Appeal to Industrial Court.

36. (1) Any person aggrieved by any standing orders settled by the Commissioner of Labour under sub-section (2) of section 35 may within thirty days from the date of their coming into operation appeal to the Industrial Court:

Provided that the Industrial Court may for sufficient cause, admit any appeal after the expiry of the period of thirty days.

(2) On an appeal being filed, the Industrial Court may on the

1. Kalimohan Bhomik Vs. The Jam Hosiery Works. Appl. No 153/1943 Bombay Labour Gazette (Aug. 1944) Vol. 23 Page 753.

application of any party to such appeal and on such conditions as it may think fit stay the operation of all or any of such standing orders until the appeal is decided.

(3) The Industrial Court in appeal may confirm, modify, add to or rescind all or any of such standing orders.

(4) The Industrial Court shall fix the date on which all or any of the standing orders settled by it under sub-section (3) shall come into operation.

(5) A copy of the orders passed by the Industrial Court under sub-section (3) shall be sent to the Registrar who shall record them in the register referred to in sub-section (3) of Sec. 35.

Legislative changes.

This section corresponds to sub-sections (4), (5), (6) and (7) of the section 26 of the Bombay Industrial Disputes Act. The time for making an appeal to the Industrial Court has been increased from 15 days under that Act to 30 days. Proviso to Sec. 36 (1) is new.

Review.

37. (1) Any person aggrieved by a decision of the Industrial Court under Section 36 may within thirty days from the date of the decision apply to the Industrial Court for a review of the said decision.

(2) The Industrial Court shall not grant such application unless it is satisfied that there has been a discovery of new and important matter or evidence which after the exercise of due deligence was not within the knowledge of the party making the application or could not be produced by him at the time when its decision was made, or that there has been some mistake or error apparent on the face of the record or that there is any other sufficient reason for granting such application.

(3) The provisions of sub-sections (2), (3), (4) and (5) of section 36 shall, so far as may be, apply to proceedings under sub-section (1) in the same manner as they apply to an appeal against standing orders settled by the Commissioner of Labour under sub-section (2) of section 35.

No alteration in standing orders for one year.

38. (1) No alteration shall be made for a period of one year from the date of its coming into operation in any standing order settled under any of the foregoing provisions of this Chapter except by the Industrial Court in appeal or review, where such appeal or review lies.

(2) Any employer or employee may apply to the Commissioner of Labour for a change in:—

(a) any standing order settled under sub-section (2) of section 35, which has not been appealed against, or

(b) any standing order settled in appeal under sub-section (3) of section 36, in respect of which no application for review has been made, or

(c) any standing order settled in review under section 37,

after the expiry of one year from the date of such standing order coming into operation.

Alteration in standing orders

39. (1) On receipt of an application under sub-section (2) of section 38 the Commissioner of Labour shall, after giving the other party an opportunity of being heard and after consulting such other interests in the industry as in his opinion are affected, pass such order as he deems fit, and, if the order effects an alteration in any standing order, forward a copy of the standing order as so altered to the Registrar who shall, within fifteen days of its receipt record in the register referred to in sub-section (3) of section 35. The standing order as so altered shall come into operation from the date of its record in the register.

(2) The provisions of section 36, 37 and 38 shall, so far as may be, apply to an order passed by the Commissioner of Labour under sub-section (1) in the same manner as they apply to standing orders settled under sub-section (2) of section 35.

Legislative changes.

This provision is completely new. As mentioned in our comments above this is a notable departure from the provisions of the Bombay Industrial Disputes Act relating to change in Standing Orders.

Alteration in standing orders.

Where the demand of the operatives was that the unclaimed wages be paid to them on a particular day instead of the day fixed by the management according to Standing Order No. 8, held the demand of the workers was not that the standing order as it stood should be changed. Their demand was that the unclaimed wages should be paid to them on the particular day on which they demanded. Even though under the Standing Order, the management was to pay the unclaimed wages on a Thursday, they wanted their unclaimed wages *in this particular case* on a day other than the day fixed by the management That being so, the workers' demand would not constitute a request for change

in the Standing Order as such.'

Standing orders to be determinative.

40. (1) Standing orders in respect of an employer and his employees settled under this Chapter and in operation, or where there are no such standing orders, model standing orders, if any, applicable under the provisions of sub-section (5) of section 35 shall be determinative of the relations between the employer and his employees in regard to all industrial matters specified in Schedule I.

(2) Notwithstanding anything contained in sub-section (1) the Provincial Government may refer, or an employee may apply in respect of, any dispute of the nature referred to in clause (a) of paragraph A of section 78, to a Labour Court.

Act XX of 1946 not to apply to certain industries

41. The provisions of the Industrial Employment (Standing Orders) Act, 1946, shall not apply to any industry to which the provisions of this Chapter are applied.

1 The Mill Owners' Association Bombay Vs. The Government Labour Officer and others Appl No. 5/1940 Bombay Labour Gazette. (April 1940) Vol 19 Page 693.

CHAPTER VIII.

Change.

The object of the Act is the peaceful settlement of industrial disputes and avoidance of strikes and lock-outs as a means to enforce changes in industrial matters as far as possible. Therefore it makes provision for compulsory discussion and negotiation for the settlement of disputes. So this chapter lays down that if an employer wants to make a change in specified industrial matters or if an employee desires to effect a change in specified industrial matters, a notice must be given to the other party of the proposed change and if an agreement is reached as regards the proposed change, so far so good and the matter ends there ; and the parties would be bound to act in accordance with the agreement. If no agreement is reached then conciliation proceedings under chapter (X) must be instituted and the Government Conciliator will attempt to bring about settlement as regards the proposed change. If settlement is reached, it will be binding upon the parties. If no settlement is reached then and then alone and not before that, the employer will be at liberty to effect the change or to declare a lock-out to enforce it and the employees will also then be at liberty to resort to a strike to enforce or resist the change as the case may be. Provision is made for referring the matter to arbitration but reference to arbitration is voluntary and the parties are not bound to refer the matter to arbitration. But the Provincial Government is empowered to make a compulsory reference to arbitration of industrial disputes under certain circumstances mentioned in Section 73 of the Act.

Where the matter has been referred to arbitration, the change, lock-out or strike cannot be made or declared before the award is made; nor in contravention of the award.

Notice of change.

42. (1) Any employer intending to effect any change in respect of an industrial matter specified in Schedule II shall give notice of such intention in the prescribed form to the representative of employees. He shall send a copy of such notice to the Chief Conciliator, the Conciliator for the industry concerned for the local area, the Registrar, the Labour Officer and such other person as may be prescribed. He shall also affix a copy of such notice at a conspicuous place on the premises where the employees affected by the change are employed for work and at such other place as may be directed by the Chief Conciliator in any particular case.

(2) An employee desiring a change in respect of an industrial matter not specified in Schedule I or III shall give notice in the

prescribed form to the employer through the representative of employees, who shall forward a copy of the notice to the Chief Conciliator, the Conciliator for the industry concerned for the local area, the Registrar, the Labour Officer and such other person as may be prescribed.

(3) When no settlement is arrived at in any conciliation proceeding in regard to any industrial dispute which has arisen in consequence of a notice relating to any change given under sub-section (1) or sub-section (2), no fresh notice with regard to the same change or a change similar in all material particulars shall be given before the expiry of two months from the date of the completion of the proceeding within the meaning of section 63. If, at any time after the expiry of the said period of two months, any employer or employee again desires the same change or a change similar in all material particulars, he shall give fresh notice in the manner provided in sub-section (1) or (2) as the case may be.

(4) Any employee desiring a change in respect of (i) any order passed by his employer under standing orders, or (ii) any industrial matter arising out of the application or interpretation of standing orders, or (iii) an industrial matter specified in Schedule III, shall make an application to the Labour Court;

Provided that no such application shall lie unless the employee has in the prescribed manner approached his employer with a request for the change and no agreement has been arrived at in respect of the change within the prescribed period.

Legislative Changes.

This section corresponds to section 28 of the Bombay Industrial Disputes Act. But there have been very material changes. Under the Bombay Industrial Disputes Act an employer or employee desiring a change in any standing order had to give a notice under sub-sections (1) and (2) of Section 28. But that provision is deleted and the procedure for alteration in a standing order has been provided for in section 38 of this Act ; i. e a party desiring a change in any standing order has to make an application to the Commissioner of Labour.

The words "not being a change the effecting of which has for the purpose of the Factories Act become lawful by reason of a notification issued under section 8 thereof" which were inserted in sub-section (1) of section 28 of the Bombay Industrial Disputes Act by the Amendment Act XVI of 1941 have been omitted. Another far-reaching change is that the words "an employee desiring a change in any such standing order or in respect of any other industrial matter" in section 25 (2) of the Bombay Industrial Disputes Act have

been replaced by the words, "a change in respect of an industrial matter not specified in Schedule I or III."

In sub-section (3) for the words, "after conciliation proceedings.....have been completed," the words, "when no settlement is arrived at etc." have been substituted. Sub-Section (4) is new and the provision for an application to the Labour Court is an innovation.

Scope of the section.

Section 42 (1) lays down the procedure to be followed by an employer intending to effect any change in respect of an industrial matter specified in Schedule II. Section 42 (2) lays the procedure to be followed by an employee desiring a change in respect of an industrial matter not specified in schedule I or III. Section 42 (4) lays down the procedure to be followed by an employe desiring a change in respect of any order passed by his employer under Standing Orders, or any industrial matter arising out of the application or interpretation of the Standing Orders, or an industrial matter specified in Schedule III.

If an employer desires to effect a change in an industrial matter specified in Schedule II, he shall give notice under section 42 (1) and follow the procedure laid down in this chapter and the chapter X which relates to the conciliation proceedings to be held with a view to the settlement of the dispute. If the conciliation proceedings have terminated without a settlement having been reached, the employer can effect the change provided that subject matter of the change is substantially in issue in the conciliation proceedings.[1]

But the change must be made within two months of the completion of the conciliation proceedings. [Section 46 (2)]. If he however makes a change in such matter without following the procedure provided for, he would be guilty of illegal change under section 46. The punishment for illegal change has been provided for by section 106.

Section 42 (1) provides for a notice of change when the employer desires a change in industrial matters mentioned in Schedule II. But if he desires a change in industrial matters not specified in Schedule II then provisions of this chapter are not applicable and no notice is necessary. Then the question is how can he make a change in such matters (i. e. industrial matters not specified in Schedule II.) ?

Such matters may fall under Schedule I or Schedule III or may not fall under any of the Schedules. If such matter falls under Schedule III or does not fall under any Schedule, he can make the change at once without any procedure or ceremony. Standing Orders are settled with regard to industrial matters mentioned in Schedule I and if the matter is regulated by a Standing Order, he has to act according to the provisions thereof, and cannot make a change in contravention thereof. If any employee intends to effect a change in respect of industrial matters not specified in

1. Pundlik Mukund Vs The Mill Owners' Association Bombay and others Appn No 4/1940 Bombay Labour Gazette. (April 1940) Vol 19 Page 690

2 Abde Rahim Subhan Vs The Surat Cotton Spinning and Weaving Mills Co Ltd Appn No 43/1944 Bombay Labour Gazette (Nov 1944) Vol 24 Page 193.

Schedule I or III then he has to give a notice of change under section 42 (2) and follow the procedure laid down in this and the tenth chapter. If the employee desires a change in respect of industrial matters specified in Schedule III or in any order passed by his employer under the Standing Orders or in any industrial matter arising out of the application or interpretation of the Standing Orders, he shall first approach his employer with a request for the change and if no agreement has been arrived at in respect of the change, he shall make an application to the Labour Court and the decision of the Labour Court subject to the right of appeal to the Industrial Court will be final.

Sub-section 3.

This sub-section provides that if no settlement is arrived at in any conciliation proceedings relating which a notice has been given under this section, then a fresh notice with regard to the same change or a change similar in all material particulars can be given only after the expiry of two months from the completion of the conciliation proceedings and not before. On a fresh notice being given the proceedings under this chapter and chapter X shall again be gone into. But in cases where the settlement is arrived at, the parties would be bound by the settlement or registered agreement as the case may be and if a party wants to terminate the settlement or agreement, he must proceed under section 116.

Change:—

No notice of change under this section would be necessary if the change proposed is not in respect of an industrial matter. An industrial matter is defined in Section 3 (18).

Also the change which is contemplated by this chapter is one which would lead to an industrial dispute if not agreed to. Thus the grant in increase in wages is not a change of that nature because even if the change is not agreeable to employees it was not *incumbent* on them to accept it. It would not lead to an industrial dispute. Thus an employer can grant an increase in wages without giving a notice of change under this section and following the procedure prescribed in this Act.[1]

For further discussions see cases noted under the caption 'change' in comments under section 46.

Proper Notice.

If the notice of change is not given in accordance with the Act and the rules made thereunder, all subsequent proceedings would be illegal.[2]

The Court however held on the facts of the case that the proper notice was given.

1. Pundalik Mukund Vs The Mill Owners' Association Bombay Appn No 4/1940 Bombay Labour Gazette (April 1940) Vol 19. Page. 690.

For further discussion, see cases noted under chapter 'change' in comments under section 46.

2 Sakharam Jayaram Vs. The Khatau Makanji Spinning and Weaving Co. Ltd. Application No. 25/1944. Bombay Labour Gazette. (April 1945) Vol 24 Page 492

Notice of change under this section must be in the prescribed form. Where a letter was written by some of the workers but not in the form of a notice within the meaning of section 28 of the Bombay Industrial Disputes Act (corresponding to this section) it was not the statutory notice under this section and therefore a strike resorted to without giving such notice is illegal[1].

For form for the notice of change to be given by an employer and form for a notice of change to be given by an employee to the employer see forms.

Representative of The Employees.

If the employer desires a change the notice under section 42 (1) is to be given to the representative of the employees and when an employee desires a change under Section 42 (2) he has to give the notice through the the representative of the employees. Section 30 lays down who is entitled to act as representative of the employees.

Whenever the employer has to give an intimation to employees in general, the only person to whom he can give intimation is the Labour Officer, in absence of any one having a preferential right of acting as a representative of employees[2].

Notice of change when to be deemed general notice.

43. (1) Where an employer gives notice of a proposed change under sub-section (1) of section 42 affecting some of the employees in an industry in a local area, the representative of any employees engaged in the industry in the area may, within seven days from the date of service of such notice, intimate in writing to such employer that the employees mentioned in such intimation, are affected by such change.

(2) Where an employee gives notice of a proposed change under sub-section (2) of section 42 affecting one or some of the employers in an industry in a local area, any employer or an association of employers engaged in the industry in the local area may within seven days from the date of service of such notice, give a special notice in writing to the representative of employees entitled to represent such employee that other employers engaged in the industry in the area and mentioned in such special notice, are affected by such change. The employer or employers concerned shall affix a copy of such special notice at a conspicuous place on every premises where the employees concerned are employed for work.

(3) A copy of every intimation under sub-section (1) and special notice under sub-section (2) shall be sent to the Commissioner of Labour, the Chief Conciliator, the Conciliator for the industry con-

1. The Indian Manufacturing Co Ltd Vs The Govt. Labour Officer, Bombay and others. Application No. 26 1942. Bombay Labour Gazette. (Sept. 1942) Vol. 22 Page. 47

2 Mill Owners' Association Bombay Vs Baboo Shamji and others. Appn. No 2/1940 Bombay Labour Gazette (March 1940) Vol. 19. Page 592.

cerned for the local area, the Registrar, the Labour Officer and such other person as may be prescribed.

(4) On an intimation being given under sub-section (1) or a special notice being given under sub-section (2) and the provisions of sub-section (3) being complied with, the employees mentioned in the intimation or employers mentioned in the special notice, as the case may be, shall also, for the purpose of this Act, be deemed to be affected by such change, and to have been given notice under sub-section (1) or (2) as the case may be, of section 42

(5) Where an employer or an employee gives a notice of a proposed change under sub-section (1) or sub-section (2), as the case may be, of section 42, and such change, in the opinion of the Provincial Government affects the majority of employers or employees engaged in an industry or occupation in the local area, the Provincial Government may by notification in the *Official Gazette* declare that the whole of such industry or occupation, as the case may be, is affected by such change and thereupon it shall be deemed to be so affected.

Legislative Changes.

This section corresponds to section 29 of the Bombay Industrial Disputes Act. There has been a material change in sub-section (1). For the words, "any employers or an Association of employers engaged in such industry or occupation that the employees employed in such occupation by such employers and" in sub-sec (1) of S. 29 of that Act have been substituted the words, " such employer that such employees". The effect of this amendment is that the representative of the employers has to give the intimation to the employer giving notice of change.

In sub-clause (2) for the words "intimate" the words " give a special notice" have been substtiuted. There are also other minor changes in this sub-section. Sub-section (4) is essentially the same but the language is more explanatory. Sub-section (5) is a totally new addition.

Scope Of The Section.

It sometimes happens that an industrial matter in respect of which a notice of change is given by an employee or an employer is a matter of general importance and it becomes desirable that instead of there being piece-meal negotiations and settlements there should be a general and uniform settlement. As for example when a notice of change is given by some employees or employer for change in wage-rates or hours of work it may be desirable that this change in wage-rates or hours of work must be uniform in the industry in the local area. This section makes provision for making a notice of change given by some employer or employees to be made general. Sub-section (1) and (2) provide for a notice of change made general by employees and employers while sub-section (4) empowers the Provincial Government to make a notice of change given by some employer or employees to be made general.

Agreement regarding change.

44. (1) If within seven days from the date of service of a notice under section 42 or an intimation or special notice under section 43 or the date of publication of a notification under sub-section (5) of section 43, or within such further period as may be mutually fixed by the employers affected and the represenative of the employees affected an agreement is arrived at in regard to the proposed change, a memorandum of such agreement signed by the employer or employers as well as by the representative of employees shall be forwarded in the prescribed manner to the Chief Conciliator, the Registrar and the Labour Offcer:

Provided that where the employees deemed to be affected under sub-section (4) of section 43 are in the opinion of the Provincial Government the majority of the employees in the industry, or the whole industry is deemed to be affected under sub-section (5) thereof, the Labour Officer shall not enter into any agreement under this sub-section.

(2) On receipt of such memorandum of agreement the Registrar shall enter the same in a register maintained for the purpose unless on inquiry he is satisfied that the agreement was in contravention of any of the provisions of this Act or was the result of mistake, misrepresentation, fraud, undue influence, coercion or threat,

(3) An appeal shall lie to the Industrial Court against an order of the Registrar refusing to register an agreement under sub-section (2). The provisions of section 20 shall apply to such appeal.

Legislative Changes:—

This section corresponds to section 30 of the Bombay Industrial Disputes Act, with some changes. Under this section, seven days' time has been fixed uniformly for arriving at an agreement. Under this section power has been given to extend this time by mutual agreement between the employers affected and the representative of the employees affected.

Proviso to sub-section (1) is new.

Under sub-section (2) the words "in contravention of any provisions of this Act" have been added.

Sub-section (3) is new.

Agreement To Be Limited To The Notice Of Change:—

The agreement must be limited to the notice of change just as an award made by an arbitrator must be limited to the terms of the reference.[1]

1. The Seksaria Cotton Mills Co. Ltd. Vs The Govt. Labour Officer, Bombay Application No 2/1945 Bom. Labour Gazette (July 1945) Vol. 24, Page 687.

Thus where notice of change was in respect of retrenchment in the colour winding department, and the agreement, included gray winding department also held the agreement was *ultra vires* and must be limited to the notice of change.[1]

Inquiry Under The Section:-

The Registrar has no jurisdiction to hold an inquiry under this section in absence of proper parties before him. Thus where the registrar refused to register an agreement between the mill company and certain elected representatives of the employees on the ground that the agreement was procured by misrepresentation but in the inquiry he held, three of the five elected representatives of the employees who had entered into the agreement had ceased to be in the service of the mills. The Industrial Court held that neither those three nor the remaining two were competent to act as representatives of the employees and therefore the inquiry held by the Registrar was vitiated by these defects in the proceedings.[2]

In Contravention of The Provisions:-

In the present sub-section (2) which corresponds to section 30 (2) of the Bombay Industrial Disputes Act, the words "was in contravention of any of the provisions of this Act," have been added. The effect of the amendment is that the Registrar can refuse to register an agreement if he is satisfied that the agreement is in contravention of any of the provisions of the Act. Under the Bombay Industrial Disputes Act it was held that the Registrar could not refuse to register an agreement even if it was in contravention of some of the provisions of the Act. For, under the old Act his power to refuse to register an agreement was confined to the matters enumerated therein viz. fraud, misrepresentation etc. and he could not refuse to register an agreement on the ground that it contravened the provisions of the Act.[3]

But under this Act, he can refuse to register on the ground that it contravenes the provisions of the Act.

Agreement to come into force.

45. An agreement registered under section 44 shall come into operation on the date specified therein or if no date is so specified on its being recorded by the Registrar.

Illegal change.

Illegal change

46. (1) No employer shall make any change in any standing order settled under Chapter VII without following the procedure prescribed therefor in this Act.

(2) No employer shall make any change in any industrial

1. (B I D)

2 The Tata Mills Ltd. Vs. The Government Labour Officer, Bombay, and others Appeal No 1/1946. Bombay Labour Gazette. (July 1946) Vol 25. Page. 855.

3. In the matter of registration of an agreement dated 22-10-1943 between Marsden Spinning and Manufacturing Co. Ltd. and elected representatives of the employees. Labour Gazette. Vol. 24. Page 301.

matter mentioned in Schedule II—

(i) within the period provided for in sub-section (1) of section 44 unless an agreement is arrived at ;

(ii) where no agreement is arrived at and registered, before a settlement relating to the dispute comes into operation ;

(iii) where no settlement is arrived at, after two months from the date of the completion of the proceedings before the Conciliator ;

(iv) in cases where there is a registered submission or in which the dispute has been referred to arbitration, before the date on which the award comes into operation.

(3) No employer shall make any such change in contravention of the terms of a settlement, award or registered agreement.

(4) Any change made in contravention of the provisions of sub-section (1), (2) or (3) shall be illegal.

(5) Failure to carry out the terms of any settlement, award or registered agreement shall be deemed to be an illegal change.

Legislative Changes:-

This section corresponds to section 73 of the Bombay Industrial Disputes Act. There have been substantial changes. Sub-section (1) of the section 73 has been divided into two sub-sections. The new sub-section (1) is substantially different. The corresponding words under the Bombay Industrial Disputes Act were, "no employer shall make a change in any industrial matter in regard to which Standing Order has been settled under section 26." The words used here are that, "no employer shall make a change in any Standing Order settled under Chapter VIII without following the procedure prescribed therefor under the Act." There is a vast difference between "change in an industrial matter in regard to which a Standing Order has been settled" and "change in the Standing Order."

In the new sub-section (2), the language is changed to clarify and make the meaning more precise. The only substantial change is the insertion of sub-clause (3) which makes it illegal to make a change after two months from the close of the conciliation proceedings. That provision is new.

Sub-section (5) is new.

The words "not being a change the effecting of which has for the purposes of the Factories Act become lawful by reason of a notification issued under section 8 thereof" which were inserted by Act No. XVI of 1941 in the sub-section (1) of section 73 of the Bombay Industrial Disputes Act have now been omitted.

Change:—

Change must be one which would, if not agreed to, lead to, an industrial dispute. This view necessarily postulates that the change contemplated must be one which the employers could compel the empleyees to accept. Thus where the opponent mills granted dearness allowance to its employees without giving a notice of change, it was contended that it was an illegal change as no notice under section 28 (corresponding to section 42) was given, held overruling the contention that though the grant of dearness allowance was a change within the meaning of the term under the Bombay Industrial Disputes Act, the change must be one which if not agreed to would lead to an industrial dispute and the grant of an increase in wages is not a change of that nature, because if the change is not agreeable to the employees, it was not incumbent on them to accept the increased wages and it is not a matter which would necessarily lead to an industrial dispute.[1]

It is not every change (even though falling under Sch. II) which requires a notice to be given under section 28 (1) of the Bombay Industrial Disputes Act (corresponding to section 42 (1) of this Act). Only that change which is likely to affect adversely the conditions of workers requires the notice to be given[2].

Where the mills company granted bonus to its employees subject to the condition that those who were on the muster roll till the date of payment would be entitled to it, without giving a notice of change, it was contended that such grant without going through the procedure for making a change constituted an illegal change. Held overruling the contention that bonus being an exgratia payment, the grant of it subject to any condition whatsoever cannot be a circumstance affecting adversely the condition of employees as obtained before the grant and whatever the condition of the employees there was before grant of this bonus it was not worsened by the condition that the bonus was to be given only to those employees who had continued to be on the musters of the company till the dates of payment.[3]

It may be noted that the grant of this bonus was not under any agreement, settlement or award but by the free will of the mills.

The mills announced the grant of war-bonus equivalent to 1/6th of the total earning in the year 1944. The mills did not include in the earnings for the purpose of the calculation of the bonus a jawari allowance which had been afterwards turned into cash-allowance. The operatives contended that this allowance was a part of wages and should have been included in the calculation of wages for the purpose of bonus and the mills committed an

1. Pundlik Mukund and others Vs The Mill Owners' Association Bombay and others Application No 4/1940 Bombay Labour Gazette Vol. 19. Page 690.

Sakharam Jayaram Vs. The Khatau Makanji Spinning and Weaving Co Ltd Application No 158/1943 Bombay Labour Gazette (Jan. 1944) Vol 23 Page, 322

2 Sahader Gangaram Savant Vs The New Pralhad Mills Ltd. Bombay Application No 87/1944 Bombay Labour Gazette, (June 1946) Vol 25 Page 760

3 Ibid.

illegal change by excluding the said allowance in the calculation of the bonus. A preliminary objection was taken that the bonus was not paid in pursuance of any award, agreement or settlement and was a grauitous payment and therefore not a change within the meaning of that term under the Act, even if it be regarded as a part of wages. The preliminary objection was upheld and held that it was not an illegal change.[1]

Proof of illegal change.

Under the scheme of Bombay Industrial Disputes Act, an illegal change involves a criminal liability and therefore as in all criminal offences the allegations of illegal change must be proved by clear and definite evidence and without any reasonable doubt.[2]

The declaration of an illegal change is a penal provision and a party cannot be penalised on the allegation of a breach of a condition of a registered settlement, about which the parties do not seem to have been of one mind.[3]

Only employer can commit illegal change.

This section defines illegal change and section 107 provides punishment for an illegal change. It may be noted that this section makes only an employer guilty of illegal change and section 107 provides punishment to the employer committing an illegal change. That is quite natural because the employer being in control of the undertaking has power to make changes. It is in his power to dismiss an employee or refuse to pay the wages or reduce the wages in contravention of the provisions of the Act. While the employee by himself cannot make any change whatsoever. He cannot increase his wages or take his pay himself without the employer doing so. He can at the most refuse to work in order to enforce his demands. That would be a strike. If he goes on strike in contravention of the provisions of the Act he would be guilty of illegal strike and be punished therefor under section 104. But he cannot make any change in an industrial matter by himself. That is why the prohibition from making illegal changes is directed to the employer alone.

Sub-section 1 : change in standing order :

The sub-section (1) makes it illegal for an employer to make a change in any Standing Order without following the procedure prescribed therefor. Section 38 prescribes the procedure for alteration in the Standing Order. The words "change in Standing Order" have been interpreted in the case noted below.

Under the Standing Order No. 8 wages not paid on the usual pay-day became due for payment on the unclaimed wages pay-day fixed for every week,

1 Bachanna Mallapa Vs The Sholapur Spinning and Weaving Mills. Co Ltd Applications No 62/1945 to 66/1945 Bombay Labour Gazette (July 1946) Vol 25 Page 849

2 Shaikh Hussain Shaikh Ratan Vs The Jalem We ving mills. Kurla. Appn. No. 12/1942 Pombay Labour Gazette (July 1942) Vol 21 Page 1124

3. Bayobai Deepaji Vs The Ambica Silk Mills Ltd Appn No 6/1941 Bombay Labour Gazette. (May 1941) Vol 20 Page 701.

and the management had fixed Thursday for the payment of unclaimed wages. The employees did not draw their wages on pay-days and on a Friday made demand for immediate payment of the wages. The management did not pay, as Friday was not the day on which unclaimed wages were to be paid under the Standing Order. The workers went on strike. In the application to declare the strike to be illegal it was contended that the demand for pay on Friday was a demand for a change in the Standing Order. The Court overruling the contention held that, "The question is whether the employees in this case desired a change in Standing Order.....It is contended that when the employees demand the payment of unclaimed wages on Friday, they demand a change in the Standing Order.

Under the Standing Order No. 8, they were entitled to the payment of unclaimed wages on a Thursday of a week. In our opinion this would not be a change or demand for change in any Standing Order because under the Standing Order the payment of unclaimed wages was to be made on a day to be notified by the Company and the workers did not demand from the management that the Standing Order as it stood should be changed. Their demand was that the unclaimed wages should be paid to them on the particular day on which they demanded it. According to them even though the management was bound to give unclaimed wages only on a Thursday they wanted their unclaimed wages in this particular case on a day other than fixed by them in their discretion. That being so the workers' demand would not amount to asking for a change in the Standing Orders as such". The Court however held that it was a demand for a change in an industrial matter.[1]

Contravention of standing orders.

Under the Bombay Industrial Disputes Act the words used were, "change in any industrial matter in regard to which a standing order under section 26 has been settled".

The effect thereof was that whereever an employee contravened the provisions of a Standing Order, it also constituted a change in an industrial matter within the meaning of the above terms in the section 73 and so, such an act was both the contravention of a Standing Order and an illegal change. Under that Act as well as under this Act different penalties have been provided for the contravention of a Standing Order and an illegal change. (See sections 106 and 107). The law is changed under this Act and the words abovenoted have been deleted and the sub-section (1) makes a change in any Standing Order without following the prescribed procedure to be an illegal change. It should be noted that there is a distinction between a change in Standing Order and contravention of the Standing Order.

Therefore the cases of contravention of the Standing Orders are not included in sub-section (1) of section 46. Thus mere contravention of a Standing Order would not be a change in Standing Order and would not be an illegal change under Section 46 (1). But some cases of contravention of the

1 The Mill Owners' Association Bombay Vs. The Govt Labour Officer. Bombay and others. Appn. 5/1940. Labour Gazette. (April 1940.) Vol 19. Page 693

Standing Orders would fall under sub-section (2) i. e. a change in an industrial matter specified in Schedule II, then such contravention would also be an illegal change. Thus an employee may be dismissed in contravention of the Standing Orders. The dismissal of an employee except in accordance with Standing Orders is specified in the item No. 3 of Schedule II. Therefore the dismissal of an employee in contravention of the Standing Orders, would fall under sub-sec. 2 and would be an illegal change as well as contravention of the Standing Order. But if the breach of a Standing Ordar does not come under Schedule II it would not amount to an illegal change. But the employer would be guilty only of contravention of the Standing Order for which lesser penalty is provided for by section 107. When reading the decisions of the Industrial Court under the Bombay Industrial Disputes Act this change in law must be borne in mind. For under that Act all breaches of Standing Orders were illegal changes which is not so under this Act.

Settled under chapter VII.

The Court can interfere only if there is any illegal change with regard to Standing Orders settled under this Act. If no Standing Orders are settled under the Act or under the Bombay Industrial Disputes Act there would be no illegal change.[1]

It should be noted that by virtue of proviso (b) to section 122, the Standing Orders settled under the Bombay Industrial Disputes Act are deemed to be settled under the provisions of this Act and therefore a change in the Standing Orders settled under that Act without following the procedure prescribed for change in Standing Orders under this Act would be an illegal change. But mere putting a wrong number of the Standing Order in the notice of dismissal cannot be construed as an attempt on the part of an employer to make a change in standing orders.[2]

Sub-section 2 :

This sub-section fixes the outer and inner time-limits for making a change in any industrial matter specified in Schedule II. A change in such matter cannot be made before a registered agreement is arrived at or failing that, a registered settlement comes into operation. But if the conciliation proceedings fail, then the proposed change can be made by the employer but he must make the change within two months of the close of the conciliation proceedings provided that the matter has not been referred to arbitration. If the matter has been referred to arbitration no change can be effected till the date on which award comes into operation.

Sub-clauses (i), (ii) and (iv) provide the inner time-limit and sub-clause (iii) provide the outer time-limit for making a change.

The scheme of the Act is that after the conciliation proceedings are held and terminated there is nothing which precludes the employer from effecting a

1. Chandra Shekhar Shirtar Vs. The Indian Woollen Mills Ltd. Application No. 50/1940 Bombay Labour Gazette. (Dec. 1940) Vol 20. Page 298

2. Keshav Dharmayya Vs. The Manager, The Laxmi Cotton Manufacturing Co. Ltd. Appns. No. 15/1940 and 16/1940 Bombay Labour Gazette (Aug. 1940) Vol 19. Page 1022.

change in respect of an industrial matter provided the subject matter of change is substantially in issue in the conciliation proceedings.[1]

Thus where the mills gave a notice of change for introduction of change over, whereby the day shift workers were to exchange places with the night shift workers, the conciliation proceedings proved fructuous and ended on 23rd July, 1942. Held that after the failure of the conciliation proceedings the mills were entitled to enforce the change and the day workers were entitled to go on strike if they intended to. The change enforced after the end of conciliation proceedings was legal, but the change made before that date was held to be illegal.[2]

The applicants contended that in the notice of change given by the mills it was stated that they wanted to reduce the complement of 25 table folders to 14 to be selected by seniority and after the failure of conciliation proceedings the applicants who were senior were retrenched and those who were junior to them were retained and therefore the mills committed an illegal change as this was not covered by the notice of change. Held that what was stated in the notice of change was a 'desired change' and did not amount to a binding agreement and therefore there was no illegal change[3].

SCHEDULE II.

The sub-section (2) enacts that any change in an industrial matter specified in Schedule II would be an illegal change. Schedule II contains 10 items and cases under them have been discussed below.

SCHEDULE II : ITEM (1) :

Reduction intended to be of a permanent or semi-permanent character in the number of persons employed or to be employed in any occupation or process or department or departments or in a shift not due to 'force majeure:'

Legislative changes

The words, "in any occupation or process or department or departments or in a shift" have been added in this Act. They did not appear under the Bombay Industrial Disputes Act. So it was held under that Act that if some of the employees have been transferred from day duty to night duty, it would not be a permanent or semi-permanent reduction in the number of persons employed provided that the strength of the employees remains the same.[4]

So also where workers were offered work in Ring Frame Department on the closure of the Mule Department it was held it was not an illegal

1 Pundlik Mukund Vs. The Mill Owners' Association Bombay, Application No. 4/1940. Bombay Labour Gazette (April 1940) Vol. 19 Page 690.

2 Abde Rahum Subrati Vs The Surat Cotton Spinning and weaving Mills. Co Ltd Application No. 43/1944. Bombay Labour Gazette. (Nov 1944) Vol. 24 Page 193

3 Sitaram Vasudeo Salvi Vs. The Khatau Makanji Spinning and Weaving Co Ltd. Application No 26 1944 Bombay Labour Gazette. (March 1946) Vol. 25. Page 516

4 The Textile Labour Association Ahmedabad Vs The Shri Ambica Mills Co Ltd. Appn. No 18/1940 Bom Labour Gazette. (Oct. 1940.) Vol 20. Page 142.

change.[1]

The addition of the words "shift" and "department" in this section changes the law in this respect and under this act if there is a reduction of a permanent or semi-permanent character in a shift or in a department or process it would fall under this item even if the total strength of the employees remains unchanged.

SECT. 46.

Temporary reduction:-

Reduction must be of a permanent or semi-permanent character. A reduction of a temporary character does not come within the provision of this item.[2] Where the Mills Company, after dismissing one weft carrier, did not fill up the place because they wanted to make an experiment of reducing the number from four to three, held the reduction was of a temporary character and did not come under item (1) of Schedule. II.[3]

Where the number of permanent operatives in the Winding Department was 22 in May, all of whom were permanent, 21 in June, 20 in July and 17 in Aug., held that it was a reduction coming under item (i) of Schedule II. No such reduction could be made without going through the formalities of the Act and therefore the reduction having been made without such formalities amounted an to illegal change.[4]

Where a third shift which was run intermittently for two years was closed, no permanent employee having been discharged or reduced, the discharged employees being all temporary, held that the closure did not involve any reduction of permanent or semi-permanent character in the number of permanent employees and so no notice of closure was necessary under section 28 (1) of the Bombay Industrial Disputes Act, and failure to give such notice did not amount to an illegal change.[5]

Where a mill engaged a new contractor for folding department work and where the incoming contractor engaged his new men (almost the same number) in place of the men of the outgoing contractor, held that as the old men were not given any permanent tickets by the mill, they were not permanent within the meaning of Standing Order No. 3, and as such were not entitled to any notice under Standing Order No. 19 nor was there any

1. Dhondiram Vs The Sholapur Spinning and Weaving Co Ltd. Appn. No 135/1945. Bombay Govt. Gazette Part. I (6th March. 1947) Page 811.

2 The Textile Labour Association Ahmedabad. Vs. Shree Ambica Mills Co Ltd. Application No 18/1940. Bombay Labour Gazette. (Oct. 1940) Vol. 20. Page 142.

Kalimohan Bhomik Vs The Jam Hosiery Works. Appn No. 153/1943 Bombay Labour Gazette. (Aug. 1944). Vol. 23. Page 753

3. Narayan Yashvant Donde Vs The Coorla Spinning and Weaving Co. Ltd Appn. No 17/1941 Bom Labour Gazette (July 1941). Vol. 23 Page 936.

4 The Government Labour Officer Vs The Manager. Ramlal Silk Mills Appn No 152/1940. Bombay Labour Gazette (Dec 1940) Vol 20 Page 299

5 The Textile Labour Association Ahmedabad Vs The Ahmedabad Manufacturing and Calico Printing Co Ltd Appn. No. 163/1943 and 164/1943. Bombay Labour Gazette (Oct. 1944) Vol 24 Pages 96 and 103.

reduction of a permanent or semi-permanent character in the number of employees, that no notice of change under section 28 of the Act (corresponding to section 42 of this Act) read with item (1), Schedule II of the Bombay Industrial Disputes Act was necessary and that there was no illegal change.[1]

Force Majeure.

The meaning of the word "Force Majeure" has been very ably and exhaustively expounded in application No. 153 of 1943. It may be taken as a leading case on the subject. The facts of that case were that owing to the shortage of necessary kinds of yarns and particular kinds of needles that were required, the management were compelled to effect temporary reduction in the number of the employees. The Court held that, "Owing to circumstances arising on account of war which were beyond their control they were compelled to effect temporary reduction in the number of employees. This reduction must be held to be due to *Force Majeure*." Dealing with the subject at length the court further said in the judgment:—

"The word 'Force Majeure' has not been defined in the Bombay Industrial Disputes' Act and must be given its ordinary Dictionary meaning which is 'irresistible compulsion'." What is meant by 'Force Majeure' can be gathered from the provisions made in the Standing Orders for temporary stoppage of work such as is made in Standing Order No. 16 for the cotton textile mills in Bombay. In a case arising out of the Standing Order No. 16 in Application No. 16 of 1944, Mr. Justice Divatia held that the shortage of colour chemicals due to war conditions and Government control was sufficient justification for temporary stoppage of work. If the word '*Force Majeure*' is interpreted in that sense, it would appear that the shortage of yarns and needles owing to conditions created by the war was also due to *Force Majeure*. The meaning of this expression which is often used in English commercial contracts was construed by Mr. Justice Mc Cardie, in the case of Lebeaupin Versus, Richard Crispin and Company, 2. King's Bench Division (1920), page 714. The learned judge observes as follows:—

"This term is used with reference to all the circumstances independent of the will of men, and which it is not in his power to control; and such Force Majeure is sufficient to justify the non-execution of the contract. Thus war, inundations, and epidemics are cases of Force Majeure; it has even been decided that a strike of workmen constitutes a case of Force Majeure. This is a wide definition but I think that it usefully, though loosely, suggests, not only the meaning of the phrase as used on the continent, but also the meaning of the phrase as often employed in the English contracts. That war comes within the meaning of 'Force Majeure' would seem to be of the opinion of Swiften Eady L. J. in Zinc Corporation V. Hirsch (1916) I K B. 541, 554. That a strike of workmen comes within the phrase was the opinion of Bailhache J.

1. The Textile Labour Association, Ahmedabad, Vs The Ahmedabad Cotton Manufacturing Co Ltd Application No 7/1942. Bombay Labour Gazette. (Sept 1943) Vol 23, Page 48

The Textile Labour Association Vs. The Mareklal Harilal Mills Co Ltd. Application No 37/1942 Bombay Labour Gazette (Sept. 1943) Vol 23. Page 52

in Matsoukis V. Priestman, (1915) I. K. B. 681. That learned Judge was, if I may respectfully say so, clearly right when he said that the phrase 'Force Majeure' was not inter-changeable with 'Vis Major' or 'the act of God.' It goes beyond the latterphrases. Any direct legislative or administrative interference would, of course, come within the term ; for example, an embargo. But even such a thing as a breakdown of machinery through accident was deemed by Bailhache J. to come within the words 'Force Majeure' (see Matsoukis Vs. Priestman), (1915) I. K. B. 681, 687." These observations support the view which I am taking viz. that the words 'Force Majeure' do not necessarily refer to an act of God but all circumstances which are beyond the control of the party which claims the protection of 'Force Majeure' clause. In this view therefore, the reduction in the number of employees must be held to be due to 'Force Majeure'. A reduction of this character does not, therefore, require a notice of change and it is not necessary to go through the procedure laid down in Bombay Industrial Disputes Act for effecting changes. It is, therefore, not an illegal change.[1]

Item (i) of Schedule II of the Bombay Industrial Relations Act refers to the reduction intended to be of a permanent or semi-permanent character not due to 'Force Majeure'. Any temporary reduction in the number of employees due to Force Majeure is intended to be dealt with by Standing Orders framed under item (vii) of Schedule I of the Act. If therefore the action of mills is intended to be a reduction of a permanent character and is not due to Force Majeure, a notice of change is necessary. If on the other hand the reduction was not intended to be of a permanent character or was due to Force Majeure no notice of change is in fact required.[2]

Thus where certain employees were reduced on account of the shortage of needles and yarns due to war conditions, but were some time after taken back, held it was a reduction due to force majeure and was of a temporary character and therefore no notice of change under section 28 (2) of the Bombay Industrial Disputes Act was necessary.[3]

Similarly where workers were temporarily reduced due to shortage of chemicals which the Government ceased to supply, but the workers were taken back, seven days afterwards held it was a temporary reduction due to causes beyond the control of the employer and therefore came under Standing Order No. 16 and not under item (i) of the Schedule II.[4]

Similarly where looms on which the applicants were working were requisitioned by the Government for the purpose of preparing machine gun belting, the employers being given 10. p. c. over the cost of production, wages and other expenses being paid by Government, were stopped due to the sudden decision of the Government to stop production and the employees

1. Kali Mohan Bhomik V The Shree Jam Hosiery Works, Borivli Appl. No 153 of 1943 Bombay Labour Gazette (August 1944) Vol 23, Page. 753.
2. Ibid.
3. Ibid
4. The Dhulia Girni Kamgar Union Vs The New Pratap Weaving and Manufacturing Co. Ltd Appn No. 16/1944 Bombay Labour Gazette. (July. 1944) Vol 23. P. 708.

were taken back after some days, held the reduction was temporary and beyond the control of the management and the action of the mills fell under Standing Order No. 16 and not under item (I) of Schedule II.[1]

But when the management dispensed with the services of certain employees by giving 14 days' notice because of the sudden stoppage of the Government orders and no body else was appointed in their place, it was held that the reduction was not due to force majeure and was not of a temporary character. For a discharge by 14 days' notice of a permanent worker would not necessarily mean that the employer means to dispense with the services only for a short time and therefore the reduction in number of employees having been caused without giving a proper notice of change was an illegal change.[2]

Competence to apply:

The person who has been discharged or dismissed cannot make an application for declaration of an illegal change on the ground of reduction, because the application is to be made by an employee concerned under section 55 of the Bombay Industrial Dissptes Act (by an employee directly affected under section 79 of the present Act.) So such a person cannot be regarded as an 'employee concerned' because after his valid discharge from the mill he ceases to be an employee of the mill within the meaning of the definition of the term and has no *locus standi* to make an application.[3]

SCHEDULE II : ITEM II :

Permanent or semi-permanent increase in the number of persons employed or to be employed in any occupation or process or department or departments.

Legislative Changes

The words, "demands for" which occurred in the Bombay Industrial Disputes Act at the beginning have been dropped. The words "occupation or process" have been added.

Temporary increase:--

This item relates to a demand for permanent or semi-permanent increase in the number of persons employed or to be employed in any department or departments. The increase ought to be permanent or semi-permanent. Mere temporary increase does not come under this item. Thus where the management asked two persons to mind two looms which formerly were worked by one person because skilled persons were not available and as a temporary measure while filling up the vacancies, held that there was no permanent or

1 Mahomed Yusuf Ahmed Vs. The Bombay Textile Mills. Co Ltd Application No 2/1944 Bombay Labour Gazette (July 1944) Vol 23. Page 705

2. Ekanth Mahadeo Vs The Bombay Textile Mills Ltd Appn No. 1/1944 Bombay Labour Gazette. (July 1944) Vol. 23. Page 709.

3 Ganpat Rambhan Gayekwar Vs. The New Prabhad Mills Ltd Appn. No. 16/1941 Bombay Labour Gazette (July 1941.) Vol. 20 Page 935.

Sakharam Raoji Vs The Khandesh Spinning and Weaving Mills. Co Ltd Appn. No. 28/1941 Bombay Labour Gazette (July 1941) Vol 20 Page 940.

semi-permanent increase in the number of persons employed and there was no illegal change.[1]

ITEM 3:

Dismissal of any employee except as provided in the standing orders applicable under this Act.

Legislative changes:-

This item under the Bombay Industrial Disputes Act was in these terms : 'Dismissal of any employee except in accordance with law or as provided in the standing orders framed under section 26 of this Act.' The words "in accordance with law" have been dropped. Also at the end words "applicable under this Act" have been substituted for the obvious reason that the standing orders under the Bombay Industrial Disputes Act are applicable under this Act by virtue of proviso (b) to section 122 of this Act.

Except as provided in the standing orders:-

Standing order No. 19 as framed for operatives provides for discharge of an employee. Standing order No. 21 enumerates the causes for which an operative may be dismissed and standing order No. 22 lays down the procedure for dismissing an employee. If an operative is dismissed except as provided for in the Standing Order, the act of dismissal comes under this item and would amount to an illegal change.

The dismissal of an employee without following the procedure laid down in standing order No. 22 constitutes change.[2]

The standing order No. 22 provides that an operative cannot be dismissed unless he is informed in writing of the alleged misconduct and is given an opportunity to explain the circumstances against him. So where the applicant was dismissed without being informed in writing of her alleged misconduct nor given an opportunity to explain her conduct held the action of the mills was otherwise than in accordance with the standing order and amounted to an illegal change.[3]

For full discussion see the comments under standing order No. 22

So also if an operative is dismissed for an alleged misconduct not falling under standing order No. 21 settled for operatives, the dismissal is not in accordance with the standing orders and therefore would constitute an illegal change.

For full discussion see comments under standing order No. 21

Standing order No. 19 for operatives prescribes the procedure for discharge of an employee. If an employee has been alleged to be discharged but the termination of his services does not amount to a legal discharge

1. The Amalner Girni Kamgar Union Vs The Pratap Spinning and Weaving Manufacturing Co Ltd. Appn. No 49/1940 Bombay Labour Gazette (Dec, 1940) Vol 20. Page 207

2. Government Labour Officer, Bombay Vs. Ambika Silk Mills Co Ltd. Bombay Appn No 60/1940. Bombay Labour Gazette (Feb 1941) Vol 20. Page 427

3 The Govt Labour Officer, Bombay. Vs The Manager, Ambika Silk Mills. Ltd Appn No 60/1940 Bom Labour Gazette (Feb. 1941) Vol. 20 Page. 427.

under standing order No. 19, it amounts to an illegal dismissal and therefore it constitutes an illegal change provided of course that procedure for dismissal under standing order No. 22 is also not followed.[1]

SCHEDULE II : ITEM (4)

Rationalisation or other efficiency systems of Work:-

Under the Bombay Industrial Disputes Act the words were "Introduction of Rationalisation or other efficiency systems of work." The words "Introduction of" have been deleted in this Act.

Meaning of "Rationalisation"-

This word has not been defined in the Act. Every body connected with an industry speaks now-a-days of rationalisation but this expression is used in such a variety of meanings that the discussion about it tends to result in confusion. The Industrial Court has also found it difficult to find its exact connotation. The etymological meaning of rationalisation means any measure or method which is based on reason i. e. to say any reasoned process as opposed to a merely empirical traditional or haphazard process. The definitions of rationalisation have been attempted in various industrial countries. The Textile Labour Inquiry Committee appointed by the Bombay Government in its report (Vol. 2, Page 180) has discussed the different definitions of this word. The Committee explained the meaning of the word thus, "Rationalisation has a wider as well as narrower meaning. In its wider sense it means a reform in the various concerns in an industry taken together for the purpose of reducing waste and loss by concerted action. In its narrower sense it means a reform in a particular industrial unit for substituting uneconomic and inefficient practices by substituting and scientific methods. In one aspect of the latter case, rationalisation means improvement in labour productivity and efficiency and all reforms of this type are grouped together and have been called 'efficiency system' in Bombay. It has been contended that such efficiency schemes are different from rationalisation. We do not think that according to the latest comprehensive definition given by the International Labour Office efficiency scheme can be taken out of this sphere of rationalisation" (Vol. II page 183.)

Rationalisation:-

There are three decisions on this point under the Bombay Industrial Disputes Act and all of them have been delivered by Mr. Rajadhyaksh J. Member of the Industrial Court. He held that the exact meaning to be attached to the word rationalisation in item (4) of Schedule II is a matter of some doubt. Though by reducing a few hands and keeping the same number of machines working, a large amount of work may be taken from the remaining hands but item no. (4) Schedule II refers to the introduction of the system of rationalisation and not to sporadic occasional and temporary and comperatively insignificant changes effected in the strength of the employees engaged

[1] Noormahmed Allabax Vs Sarangpur Cotton Manufacturing Co. Ltd No. 2 Appn. No 55/1943 (Bombay Labour Gazette (Sept 1943) Vol 23 Page 39

in a particular department according to the needs of the department.'

Six workers were discharged for a number of days varying between 10 to 30, on account of 'working doubles'. By the system of working doubles is meant a system by which the work which was done by two is directed to be done by one and as result of which one worker is necessarily discharged. The question was whether this action constituted rationalisation or an introduction of an efficiency system of working. Out of 88 machines it was only on six machines and only for a few days, that one worker was asked to attend to two sides thereof. The introduction of a system necessarily connotes certain stability or general applicability. The discharge of a worker by directing one worker to attend to two sides of the machine in respect of a few machines and for a very short period would not amount to introduction of rationalisation whatever may be the motive of the management in taking the step. Held the action of the mills was not an introduction for rationalisation.[2]

In the same case the court held that, "If the management wants to try out an experiment for a few days before adopting a system as such, it would not amount to introduction of rationalisation.". But where the mills introduced a system of working doubles on 20 machines out of 30, in January 1941 and continued till 17th May 1941 when the necessity of working doubles disappeared owing to the discontinuance of night-shift, the court over-ruled the contention that it was a temporary or experimental measure. The Court observed, "I was afraid that these two dicisions of mine might perhaps leave a loop-hole by which a system of rationalisation may be introduced in the guise of a temporary or experimental measure. My fears in that regard have unfortunately proved to be true as the present application shows. By no stretch of imagination can the action of the mills be characterised as experimental or lacking in stability or general applicability. Out of 26 machines on which system of doubles could be worked 20 machines were brought under the new arrangement. The arrangement did not continue for a few days or weeks but for four months and it was discontinued only because the night-shift had to be stopped owing to riots and as a result the workers in the night-shift were brought back again to their original jobs.....The action of the mills amount to the introduction of system of rationalisation. As this was brought without going through the procees of conciliation it amounted to an illegal change."[3]

The working of a relay system means rationalisation of work for two hours where half the number of employees attend to the working of the whole department.[4]

1 The Textile Labour Association Ahmedabad Vs The Shri Ambika Mills Co Ltd Appn. No. 18/1940 Bombay Labour Gazette (Oct 1940) Vol. 20. Page. 142

2. Chaman Balchand Vs. The Manek Chowk and Ahmedabad Manufacturing Co. Ltd Appn No. 57/1940 Bombay Labour Gazette (Feb 1941.) Vol 20 Page, 429

3. The Textile Labour Association, Ahmedabad Vs Kaiser-I-Hind Mills Co. Ltd Appn. No 27/1941. Bombay Labour Gazette (Sept 1941) Vol 21. Page 41.

4 The Sarangpur Cotton Manufacturing Co. Ltd Vs. The Government Labour Officer Ahmedabad Appn. 25/1942 Bombay Labour Gazette (Aug 1942) Vol 21 Page 1189

SCHEDULE II : ITEM 5 :

Starting alteration or Discontinuance of shift-working otherwise than in accordance with the standing orders—

Schedule I of the Act which relates to the subject matter of the standing orders includes shift-working and Schedule II includes among other things the starting alteration or discontinuance of shift-working otherwise than in accordance with the standing orders. The latter provision necessarily implies that there must be standing orders in force at the time of starting or discontinuance of shifts. When no standing orders are in force there cannot be discontinuance of shifts, 'otherwise than in accordance with the standing orders'. This item in Schedule II is the counterpart of the item of shift-working in Schedule I, so that shift-working in accordance with the standing orders falls under Schedule I while starting alteration or discontinuance of shift-working otherwise than in accordance with the standing orders falls under Schedule II. Therefore in absence of any standing orders in operation at the material time, the discontinuance of night-shift working cannot fall under item No. 5 of Schedule II and would not therefore be an illegal change,[1]

Standing order No. 9 as settled for Bombay group of mills and Ahmedabad group regulates the shift-working. But the difference between standing order No. 7 as settled for Bombay group and as settled for Ahmedabad group is that mills in Bombay group are given power to transfer an operative from the day-shift to the night-shift but no such power was given under the standing orders settled for Ahmedabad and if an operative in the day-shift is unwilling to work in the night-shift, he cannot be compelled to do so and such a transfer would amount to an illegal change in Ahmedabad.[2]

So where operatives were transferred in Ahmedabad from day-shift to night-shift on pain of being dismissed from service, the change was otherwise than in accordance with the standing orders and constituted an illegal change.[4]

The opponent mills in Surat-where change-over of shifts is not permitted under the standing order-introduced on 1-9-41 a system of change-over by which day-shift workers were asked to exchange places with the night-shift workers. The day-shift workers objected to it and the mills gave a notice of change on 27th May 1942. The conciliation proceedings failed and ended on 23-7-42. The mills continued the system of change-over. Held the mills were entitled to continue the change after completion of the conciliation, but the action of the mills in instituting the system of change-over before that date was contrary to the provisions of Bombay Industrial Disputes

1 City Deputy Collector and Labour Officer A'bad, Vs The New Manekchowk Spinning Weaving and Co Ltd Appns. 1/40. 6/40. and 7/40. Bom. Govt. Gazette, Part. IV. C. Dt. 8-2-40. Page 156

2. Chaman Balchand and others. Vs. Manekchowk and A'bad Manufacturing Co. Ltd. Appn. No. 57/1940 Bombay Labour Gazette. (Feb. 1941). Vol 20. Page 429.

3 The Textile Labour Association Ahmedabad. Vs. Ahmedabad Kaiser-'-Hind Mills. Co. Ltd. Appn No 27/1941 Bombay Labour Gazette. (Sept 1941). Vol. 21. Page 41.

Act and amounted to an illegal change.[1]

But there is a recent award of the Industrial Court to the effect that for a period of one year from 15th February 1947 the mills in Ahmedabad shall be allowed to work three shifts if they want to; and in both cases of two shifts as well as three shifts, there is to be a system of change over at the end of each month by which the workers of the first shift will go over to the second shift and those of the second to the third and those of the third shift to the first in rotation.[2]

Transfer to a different khata:-

It is not open to a worker to refuse to work in a different khata unless the change involves an alteration in his status or decrease in his wages.[3] Nor is there a privilege of a worker to claim to work on a particular machine. Therefore the mills do not commit an illegal change or violate any standing order by asking a worker to work or not on a particular machine and as long as wages remain the same, there is no illegal change.[4] Under this Act the transfer of workers in the establishment and assignment of work fall under item (2) of Schedule II and any aggrieved worker may apply to the Labour Court under sections 42 (4) and 78 (1) (a) (III).

SCHEDULE II : ITEM 6 :

Withdrawal of recognition to unions of employees :

The words 'or granting' which occurred in the Bombay Industrial Disputes Act have been deleted in this Act.

SCHEDULE II : ITEM 7 :

Withdrawal of any customary concession or privilege or change in usage :

Custom and usage saved:-

'Although there is no section in the Bombay Industrial Disputes Act which expressly saves existing usages and customs in an industry, it does appear that the legislature intended to save such existing usages and customs. For instance item No. 7 of Schedule II refers to a change in usage which can only be effected by going through a process of conciliation. By implication therefore it must be taken that all usages whether in favour of employers or employees are saved. Acting therefore in consonance with such usage is making a change in the industrial matter.[5]

"Playing off" of the employees for the trade reasons although not embodied

1. Abderahim Subrati Vs The Surat Cotton Spinning and Weaving Mills Co Ltd Application No. 43/1944 Bombay Labour Gazette. (Nov.1944), Vol. 24 Page 194.

2. In the matter of an Industrial Dispute regarding change over of shifts between Mill owners' Ass. and The Textile Labour Association A'dad, Submission No. 9/1946. Bombay Govt. Gazette, Part. I (27th Feb. 1947). Page 757.

3. Syed Fidaally Kasamally Vs. The National Mills Co. Ltd. Appn. No. 43/1943, Bombay Labour Gazette. (Dec. 1943) Vol. 23. Page 268.

4. Bai Kamla Jivi Vs. The Shree Anand Cotton Mills Ltd, Appn. No. 77/1945 Bombay Labour Gazette (July 1946), Vol. 25 Page 844.

5. Sakharam Laxman and others Vs. The Khatau Makanji Spinning and Weaving Co. Ltd. Appn. No. 50/1941. Bombay Labour Gazette. (Sept. 1941) Vol. 21. Page 56.

in standing orders No. 16, 17, and 18 was proved to have been continued as a custom or usage in Bombay for the last 25 years but after 1929 in a precise and well defined way, and almost regarded as a part of the contract of employment ; and where the mills acted in consonance with the usage in playing off certain operatives, held there was no change at all; much less illegal change.[1]

There was a custom in Ahmedabad textile mills to grant a holiday on Ramzan Id and there was an agreement between the Textile Labour Association and the Mill Owners' Association to include Ramzan Id as a full holiday in the list of holidays. The management of the opponent mills did not grant holiday on the Ramzan Id day; held it was contrary to usage and custom and therefore amounted to an illegal change. The mills contended that none of the workers at that time working in the mills were muslims: therefore it was not necessary to observe a holiday on Id day. Held that it was immaterial. The importance of a holiday to an employee consists not always in the opportunity it provides in performing religious rites but in compulsory rest he gets by reason of the holiday. It was further contended that the workers by being present on that day had waived their right to observe it as a holiday : held that the willingness or unwillingness of the workers had no bearing. It may be that even though the workers considered themselves to be entitled to a holiday they had to attend the mills being afraid if they did not do so they might lose their wages for that day.[2]

According to the custom and usage in the mills where ever there was any shortage of work in the mills no operative was played off but whatever work was available was distributed among all the permanent workers. From 10th June 1943 however the management introduced the Pali system by which whenever there was any shortage of work a certain number of permanent workers were employed and others were played off. Held that introduction of Pali system contrary to the usage and custom of the departmert without following the procedure for effecting changes amounted to an illegal change.[3]

Where the relay system had been in vogue from 1935 onwards in the weaving department of the mills, it was held to be a custom or usage within the meaning of this item and notice of change is necessary if a change in the system is desired.[4]

According to custom and usage in the textile industry at Ahmedabad a person working doubles in the ring spinning department was entitled to 45 per cent. increase in wages, but certain employees working double were not paid the full 45 per cent. increment, held that it was change in custom and usage on the part of the employers referred to in item no. 7. Schedule II and as this change was effected without going through the process of conciliation it

2 Ibid

1 The Textile Labour Association Ahmedabad. Vs The National Mills. Co Ltd. Appn No 63/1940 Bombay Labour Gazette (April 1941) Vol. 20 Page 633

1. The Jalgaon Girni Kamgar Union Vs. The Khandesh Spinning and Weaving Mills Co. Ltd. Application No 84/1944 Bom. Labour Gazette (June. 1945). Vol. 24. Page 629.

2 The Sarangpur Cotton Manufacturing Co. Ltd. No. 2 Vs. The Government Labour Officer, Ahmedabad. Appn No. 28/1942 Bombay Labour Gazette. (August 1942), Vol. 21. Page 1189

constituted an illegal change.[1]

Where the employees wanted more cleaning time for their machines, held they wanted a change in custom or usage and the change they desired fell under item No. 7 of Schedule II.[2]

Occasionally asking the workers to work beyond the normal hours of work but within the limits of the Factories Act because of an extra holiday in the course of the week is not contrary to the custom and usage in the Textile Industry at Ahmedabad. The Court also made it clear that if work for extra hours is taken for every holiday that is given even within the limits prescribed for the factories, it may have to be considered in future whether such an action would not be contrary to the custom and usage.[3]

Customary concession or privilege:-

It may be customary for the management to get a loom repaired if it goes out of order but where such loom is not repaired it cannot be said that it was 'withdrawal of any customary concession or privilege.'[4]

If the loom gets out of order it is the business of the jobber on duty to see that it is repaired and there is no question of customary concession or usage.

Privilege:-

'Privilege' means something which cannot be demanded as of right and it is therefore not a duty on the part of the other party but a concession which is made without any legal obligation. Distribution of food stuffs at cheap rates from a mill is a privilege enjoyed by the operatives of the particular mill which opens the grain shop[5].

ITEM NO 8.

Introduction of new rules of discipline or alteration of existing rules and their interpretation except in so far as they are provided for in the standing orders applicable under this Act:

The Words "except in so far as they are provided for in the standing orders applicable under this Act" is an addition in this Act. They did not occur in the Bombay Industrial Disputes Act.

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1. The Textile Labour Association. Vs. The Ahmedabad Kaiser-I-Hind Mills Co. Ltd. Appn. No. 27/1941 Bombay Labour Gazette (Sept 1941). Vol. 21. Page 41.
2. The Standard Mills. Co Ltd. Vs. The Government Labour Officer Bombay and others. Appn. No. 25/1941 Bombay Labour Gazette (May. 1941). Vol. 20 Page 705
3. The Textile Labour Association Ahmedabad Vs. The Ahmedabad Cotton Manufacturing Co. Ltd. Appns. No 4/1941 and 8/1941 Bombay Labour Gazette (April 1941). Vol. 20, Page 629.
4. Khalil Muddi Vs. The Laxmi Silk Mills. Ltd. Appn. No. 54/1940, Bombay Labour Gazette (Feb. 1941) Vol. 20. Page 426.
5. The Standard Mills Co. Ltd Vs. The Government Labour Officer. Bombay and others. Appn. No. 7/1943. Bombay Labour Gazette. (April 1943) Vol. 22. Page 528.

SCHEDULE II : ITEM 9 :

Wages including the period and mode of payment:-

The words in item 9 of the Schedule II of the Bombay Industrial Disputes Act were 'wages and total weekly hours of work'. That item has now been split up. Item (9) refers to "wages including the period and mode of payment" while the item (10) refers to "hours of work and rest intervals."

Wages:-

Wages have been defined in section 3 (39) of this Act. The word was not defined under the Bombay Industrial Disputes Act.

The scheme of the Bombay Industrial Disputes Act (of this Act as well) is that there shall be no change affecting the wages of the workers without going through the conciliation proceedings.[1]

So non-payment of wages is an illegal change.[2]

Reduction of Wages:-

When in fact the rate of the wages of piece workers had been lowered, the fact that even under reduced rates of wages a worker in fact gets more by reason of his turning out more work is immaterial and if the reduction in the rate of wages is effected without giving a notice of change it amounts to an illegal change.[3]

Reduction of earnings on account of stoppage of the relay service falls under item (9) of Schedule II of the Bombay Industrial Disputes Act and therefore stoppage of relay system without a notice of change would be illegal.[4]

Under this Act even the stoppage of the relay system without any reduction in earning would fall under item (10) of Schedule II being a change in hours of work and rest intervals. The notice of change therefore would be necessary. But where there was reduction in the earnings of an employee on account of the neglect of the management to repair a machine held it was not a case of change with regard to wages.[5]

Change made in wage-rate:-

A change made in the wage-rate before the Bombay Industrial Disputes Act came into force, although the reduced wages were actually paid after the Act came into operation, does not come under item (9) of Schedule II of the Act and as such would not amount to an illegal change.[6]

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1 The Textile Labour Association Ahmedabad. Vs. The Shri Ambika Mills Co Ltd. No. 2 Appn. No. 8/1940 Bombay Labour Gazette. (Oct. 1940). Vol. 20. P 139.

2. Hiralal Asharam Vs. The Hathising manufacturing Co Ltd. Appns. No 8/1943 and 28/1943. Bombay Labour Gazette. (Dec. 1943.) Vol. 23 Page. 263

3. The Textile Labour Association Ahmedabad. Vs. Shree Ambica Mills Co. Ltd. No. 2. Appn. No. 8/1940. Bombay Labour Gazette. (Oct. 1940). Vol. 20. Page 139.

4. City Deputy Collector and Labour Officer Vs National Mills. Co. Ltd. Appn. No. 4/1939. Bombay Labour Gazette. Part IV. C. Dated 8th February 1940 Page 160.

5. Khalil Muddi Vs. The Laxmi Silk Mills. Appn No. 54/1940 Bombay Labour Gazette. (Feb. 1941). Vol 20. Page 426.

6. City Deputy Collector and Labour Officer. Ahmedabad Vs. Ahmedabad Laxmi Cotton Mills. Ltd Ahmedabad Appn. 2/39 Bombay Government Gazette. Part. IV C. Dated 8th February 1940. Page 159.

Demand of unclaimed wages:-

Where the demand of the operatives was that the unclaimed wages should be paid to them on a particular day instead of on the day fixed by the management according to standing order No. 8 ; it was held that the workers' demand would not constitute a .request for a change in the standing order as such; it would none the less amount to asking for a change in an industrial matter because it relates to the payment of wages. That being so a notice under section 28 (2) of the Bombay Industrial Disputes Act was necessary.[1]

Dearness allowance: Bouns: Other allowances :

Dearness allowance and bonus are expressly included in the definition of wages given in section 3 (39) of this Act. Even under the Bombay Industrial Disputes Act in which the term 'wages' was not defined, dearness allowance was held to be included in wages.[2]

It was held that bonus though an exgratia payment was included in the word 'reward' and was an industrial matter.[3]

But now by virtue of the definition of wages both bonus and dearness allowance are ' wages. ' So any change in respect thereof would be a change in respect of 'wages,' a matter specified in item No. (9) Schedule II. But it must be remembered that change contemplated by the Act is a change which would lead to an industrial dispute if not agreed to. Thus a grant of dearness allowance by an employer of his own free will is though a change in wages is not a change within the meaning of this Act. For it is always open to the employee not to accept it if he is minded and therefore the grant of dearness allowance would not lead to an industrial dispute and so no notice of change would be necessary for the grant of dearness allowance or increase in wages.[4]

So also where the management grants without there being any agreement, settlement or award and of its own free will bonus subject to a condition that those on the muster-roll on a particular date were entitled to it, held that the bonus being an exgratia payment, the grant of it subject to any condition is not a circumstance affecting adversly the condition of employees as it obtained before the grant and therefore such a condition does not require any notice to be given and is not an illegal change.[5]

Also grant of exgratia payment to some trusted workers not regulated by

1. The Mill Owners' Association Bombay Vs. The Government Labour. Officer, Bombay and others. Appn. No. 5/1940. Bombay Labour Gezette. (April. 1940.) Vol. 19. Page 693.

2. The Textile Labour Association Ahmedabad. Vs. The Shree Nagar Weaving and Manufacturing Co Ltd. Appn. No. 10/1941 and 32/1941 Bombay Labour Gazette. (Sept 1941) Vol. 21, Page 35.

The Government Labour Officer, Ahmedabad Vs. The Anant Mills. Co Ltd. Appn. No. 33/1941 Bom Labour Gazette (Oct 1941) Vol 21. Page 153.

3. The Textile Labour Association Ahmedabad Vs. The Ahmedabad Mill Owners' Association. Reference No. 1/1945. Bombay Labour Gazette (Oct. 1945) Vol. 25. Page 117.

4. Pundlic Mukund and others Vs. The Mill Owners' Association Bombay. Appn No. 4/1940. Bombay Labour Gazette. (April. 1940) Vol. 19. Page 690.

5. Sahdeo Gangaram Savant Vs. The New Pralhad Mills Ltd Appn. No 87/1944. Bombay Labour Gazette. (June. 1946) Vol. 25. Page 760

any rules and depending merely upon the volition of employers who may or may not pay it for a particular month would not be a 'change' within the meaning of the Act.'

Where the applicant contended that the mills committed an illegal change by not giving him Sukhadi and extra bonus, the court held that the staff of the mills was not entitled to these things as of right and it depended entirely on the sweet will of the management. The member of the staff who had not the good will of the management could not get them and therefore there was no illegal change in not paying the same to him.[2]

The ratio decidendi of these cases is that when the employer grants dearness allowance, bonus or any other allowance exgratia, of his own sweet will, without there being any agreement, settlement or award in respect of the grant thereof, then the payment or nonpayment thereof is not 'change' within the meaning of the term in the Act. But if such grant is in pursuance of an agreement, settlement or award then the employer is bound by the terms thereof and cannot make a change therein in contravention of the terms of such agreement etc. Thus non-payment of dearness allowance in contravention of terms of an award is an illegal change.[3]

Wages earned.-

According to an agreement between the employer and Representative Union bonus was to be calculated on "wages earned". The applicants' case was that a special war time allowance which was paid under another agreement to them at the rate of Rs. 2/-per hapta of 12 days for working the relay system must be included in computing the bonus. The workers contended that in the relay system each weaver had to mind four looms instead of usual two looms for two hours and therefore this was intensified work and must be deemed wages earned and therefore the mills committed an illegal change in not including this allowance in computing bonus. The Court held that, "The relay system does not necessarily imply intensified work but it is a case of divided work. Each weaver is normally supposed to put in his best and when he is called upon to mind four looms his best cannot be improved upon. This best which used to be given to two looms is divided between four looms. Therefore this must be deemed to be an extra emolument and not 'wages earned.' Therefore it must be excluded from consideration at the time of

1. Sakharam Jayaram Vs. The Khatau Makanji Spinning and Weaving Mills. Co. Ltd. Appn No. 158/1943 Bombay Labour Gazette (June 1944) Vos. 24. Page 322.

2 Dharmsi Huthusing Vs. The Ahmedabad Laxmi Cotton Mills. Co. Ltd. Appn. No. 162/1943 Bom. L. G (Oct 1944) Vol 24 Page 123

3. The Textile Labour Association, Ahmedabad Vs. The Shree Nagar Weaving and Manufacturing Co Ltd. No 10/1941 and 32/1941 Bombay Labour Gazette. (Sept 1944) Vol. 21 Page 35

The Government Labour Officer, Ahmedabad. V The Anant Mills. Co. Ltd. Appns No. 33/1941 and 42/1941 Bombay Labour Gazette. (Oct. 1941) Vol. 21. Page 153.

The Textile Labour Association Ahmedabad Vs. The Ahmedabad Mill Owners' Association. Submission No. 1/1945. Bom. L. G (Oct. 1945.) Vol. 25. Page 107.

calculating bonus"[1]

It is respectfully submitted that this decision seems to be incorrect for when a man minds four looms instead of two there is intensified work and he is put to more labour and strain. The decision however may be supported in the special terms of the agreement regarding bonus.

SCHEDULE II : ITEM 10.

Hours of work and rest-intervals :

Under the latter part of item (9) of Schedule II of the Bombay Industrial Disputes Act the words were, "total weekly hours of work" and therefore it was held under that Act that there was nothing which precluded the management from fixing the daily hours of work on any particular day in such a way that the total weekly hours were the same of course subject to the provisions of the Factory Act.[2]

Under this Act the law is changed and the words are, "hours of work and rest-intervals." So it is not possible for the management to change the daily hours of work or even to change the rest-intervals without giving notice of change under Section 42.

Sub-section 3 - Such change.-

The words used here are 'such change'. The words must refer to a change described in sub-section (1) of Section 73 of the Bombay Industrial Disputes Act (corresponding to sub-section (1) and (2) of section 46 of this Act.)[4]

So the change in contravention of the terms of an award etc. would amount to an illegal change only if it is a change referred to in sub-section (1) and (2) i. e. it must be a change in standing orders or with respect to an industrial matter sepcified in Schedule II. So where dearness allowance was not paid in contravention of the terms of an award, it was held that the dearness allowance is included in wages, and is an industrial matter specified in item (9) of Schedule II and non-payment thereof is therefore 'such change' within the meaning of this sub-section and therefore amounts to an illegal change.[5]

In contravention of registered settlement.-

Non-payment of dearness allowance on due date in contravention of a registered settlement constitutes an illegal change.[3]

Where there was a registered settlement regarding the periodical change-over of shifts, but certain night-shift workers were not transferred to day-shift owing to the defective eye sights of their opposite numbers in the day-shift;

1 Masumbhai Gulamrasul Vs The Monogram Mills Co Ltd. Appn. No 31/1944. Bombay Labour Gazette (May 1945) Vol 24 Page 553.

2. The Ahmedabad Cotton Manufacturing Co. Ltd. Vs The Textile Labour Association, Ahmedabad. Appn. No. 4/1940 and 8/1940 Bombay Labour Gazette. (April. 1941) Vol 20. Page 629

3 The Textile Labour Association Ahmedabad. Vs The Shrinagar Weaving and Manufacturing Co. Ltd Appn. No 10/1941 and 32/1941. Bombay Labour Gazette (Sept. 1941) Vol 21 Page 35

4. Ibid

5. Josephine Martine and antoher Vs Ramlal Silk Mills Appn. No. 1/1943. Bombay Labour Gazette (May. 1943) Vol. 22 Page 599

held that it was a breach of the settlement as the settlement did not mention anything about operatives with defective eye sights being entitled to continue in day-shift and therefore the act of the mills constituted an illegal change.[1]

So also where it was provided in the registered settlement to re-employ certain doffers when their machines restarted it was held to be an illegal change not to re-employ them when the machines re-started. "It is no defence to say that their employment is not necessary because the machines are started on fine instead of course count"[2]

There was a registered settlement that the posts of bobbin carriers and coolies in the weaving department shall not be reduced but the mills company reduced one bobbin carrier. In an application to declare it to be an illegal change it was contended by the management that the person reduced belonged to weft department and his name was entered into the muster roll for weft department and therefore there was no breach of the settlement, held that in view of the admission of the mills in their written statement that weft room belonged to weaving department held that the reduced worker belonged to the weaving department and therefore his reduction was in contravention of the terms of the registered settlement and constituted an illegal change.[3]

Where there was a registered settlement that the management will introduce such change as regards humidification etc. as may be possible and feasible but in spite of reasonable attempts of the company humidification plant was not obtained, but the mills made other changes to give effect to the terms of the settlement, held there was no illegal change.[4]

Implicit Terms:—

Where the settlement provided that the wages should be increased in such a way that the average earning of a weaver for 26 working days would amount to Rs. 37/- on the basis of 68 per. cent efficiency, the operatives contended that the mills committed contravention of the terms of this settlement in as much as they failed to supply good and adequate materials and to maintain the looms in the working order so that it was impossible for the workers to reach 68 per cent. efficiency. The mills contended that this contention did not arise out of the settlement and therefore there was no contravention of the terms of the settlement. The Court refused to accede to the contention of the mills and held that it was an implicit term of the settlement that other things should remain constant, and it would be illegal change if the workers could show that the conditions have worsened after the

1. Suleman Abdulla and others Vs. The Indian Manufacturing Co Ltd. Appn. No. 19/1942. Bombay Labour Gazette (Sept 1942) Vol 22 Page 45.

2 The Textile Labour Association Ahmedabad. Vs. The Shri Ambica Mills Ltd Appn. No 1/1940. Bombay Labour Gazette. (March, 1940) Vol 19 Page 590.

3 Narayan Yashvant Donde Vs. The Coorla Spinning and Weaving Co. Ltd. Appn. No 55/1941 Bombay Labour Gazette. (Jan 1942) Vol 21. Page 515

4 The Amalner Girni Kamgar Union Vs. The Pratap Spinning Weaving and Manufacturing Mills Co Ltd Appn. No. 41/1944 Bombay Labour Gazette, (Jan. 1944) Vol 23. Page 310.

date of settlement.[1]

Vague Settlements:—

No breach can be held proved of a settlement the terms of which cannot be definitely ascertained. The declaration of an illegal change is a penal provision under the Act and the opponent cannot be penalised on the allegation of a condition about which the parties do not seem to have been of one mind. Where the employer agreed by a registered settlement to restore the dearness allowance when the present stocks in excess of normal stocks were exhausted, held the words 'normal' stocks is too vague and indefinite to be made foundation of an application for an illegal change.[2]

Where the settlement provided that management will have due regard to seniority, efficiency and regulating of attendance in making promotions, held the management was the proper judge in deciding efficiency in absence of any test of efficiency laid down in the settlement and therefore if the management makes any promotion, it will not amount to an illegal change.[3]

The vague agreements of this type would provoke disputes rather than prevent them and it would be most difficult for the court to decide which of the two operatives is more efficient".[4]

Modification of a Settlement or a Registered Agreement:—

If there is a settlement the parties can by mutual agreement or settlement modify it. In order to bring about this modification the parties may come to a private agreement or one party may proceed by giving a notice of change. These latter proceedings may result in an agreement before the conciliation starts or in a settlement after the conciliation begins and the previous settlement would be deemed to be modified by the latter settlement. If no settlement is reached and the conciliation proceedings fail, then the original settlement will subsist, and no change in contravention thereof can be made. The only course for a party is to terminate the settlement under section 116 (1). Thus there was a settlement between the employer and the employees that 15 out of them would work double sides, the management wanted to increase the number to 25. On the failure of the conciliation proceeding for that change the management effected the change and increased the number of double siders to 25. Held that on the failure of the conciliation proceedings to increase the number of double siders to 25, the original settlement must be deemed to be subsisting and the increase in number of double siders being in contravention of that settlement amounted to an illegal change.[5]

1. Vithoba Shivram Vs The Digvijaya Spinning and Weaving Co Ltd. Appn No. 218/1943, Bombay Labour Gazette (Nov 1944) Vol. 24. Page 182.

2. Bayobai Deepaji Vs The Ambica Silk Mills. Co. Ltd. Appn No. 6/1941. Bombay Labour Gazette. (May 1941) Vol, 20 Page 701.

3. The Amalner Girni Kamgar Union Vs. The Pratap Spinning and Weaving and Manufacturing Co Ltd Appl. No 60/1941 Bom. Labour Gazette. Vol 21. P. 718.

4 Ibid

5. The Jalgaon Girni Kamdar Union Vs. The Khandesh Spinning and Weaving Co. Ltd Appn. No 81/1944 Bombay Labour Gazette. (July. 1946) Vol. 25. Page 852.

Where there was a settlement about wages, the mills wanted an increase in hours of work. The operatives refused to take part in the proceedings unless the wages were increased. The conciliator said he could not go into the question of wages unless the settlement relating to wages was first terminated and reported failure of the conciliation proceedings. The mills thereupon increased the number of hours; held it was no illegal change and the conciliator was right.[1]

In Contravention of the Terms of an Award.

Non-payment of dearness allowance in contravention of the terms of an award is an illegal change.[2]

The failure to pay the dearness allowance within the time mentioned in the award would also be a contravention of the term of the award and would amount to an illegal change.[3]

When the award is silent as to the time when the dearness allowance should be paid it must be paid within a reasonable time after it becomes due. The reasonable time cannot be defined with precision but period of one month would not be unreasonable. Non-payment within such time is an illegal change.[4]

Even if it is with-held under a mis-apprehension and subsequently paid it would be a breach of the terms of the award and would amount to a technical illegal change.[5]

Non-payment of dearness allowance in due time is an illegal change.[6]

Non-payment of the dearness allowance under an award would amount to an illegal change even if there is a special agreement with the emloyee that he will not demand it. For in the case of an award no change could be introduced by an employer even with the consent of the employee by virtue of section 77 (2) of the Bombay Industrial Disputes Act (corresponding to section 116 of this Act.)[7]

1 Narayan Krishna Shetty Vs The Jam Manufacturing Co Ltd Mill No 1 Appn No 6/1945 Bombay Labour Gazette (August 1946) Vol. 25 Page 934

2 The Textile Labour Association Ahmedabad Vs The Shrinagar Weaving and Manufacturing Co Ltd. Appn No. 8/1941 and 32/1941. Bombay Labour Gazette (Sept. 1941) Vol. 21 Page 35

3 Shripat Lahanu Vs Khandesh Spinning and Weaving Mills. Co Ltd. Appn No. 22/1942 Bombay Labour Gazette (Aug 1943) Vol 21 Page 1186.

Josephine Martin Vs Ramlal Silk Mills Appn. No 1/1943 Bom I G. (May. 1943) Vol 22 Page. 599.

4. The Textile Labour Association Ahmedabad Vs. Mareklal Harilal Sping. and Manufacturing Co Ltd Appn No 12/1941 Bombay Labour Gazette. (April 1941) Vol 20. Page 636

5. The Amalner Girni Kamgar Union Vs. The Pratap Spinning and Weaving and Manufacturing Co Ltd Appn. No 5/1942. Bom Labour Gazette (July 1942) Vol 21. Page 1115.

6. Mohan Vasaram Vs The Sarangpur Cotton Manufacturing Co. Ltd Appn. No. 91/1944 Bombay Labour Gazette (June 1945) Vol 24. Page 615

7. The Government Labour Officer, Ahmedabad Vs The Anant Mills Co. Ltd Appn. No 33/1941 (Oct 1941) Vol 20. Page 153.

Hirachand Velsi Vs. The Gujarat Ginning and Manufacturing Co Ltd., Appn No. 39/1944. Bombay Labour Gazette. (Jan 1946) Vol. 25, Page 343

Nor can the rights under the award be waived by an employee. Therefore if the employer does not pay the dearness allowance payable under an award, he none the less, commits an illegal change even if the right to dearness allowance is waived by the employee.[1]

But if there is no binding award failure to carry out its terms would not amount to an illegal change.[2]

In contravention of registered agreement:-

Where there was a registered agreement that the management should not work certain old ring frames except in case of a break down of a machine and the management worked the ring frames without there being a break down held it was a breach of the agreement and amounted to an illegal change.[3]

Where the mills company was bound to pay bonus by virtue of a registered agreement but did not pay it, held that the non-payment thereof amounted to an illegal change. In view of the agreement, it was the duty of the mills to pay as it became due.[4]

Sub-section 5 :-

This sub-section is new and its terms are very wide, in fact much wider than those used in sub-section 3. The use of the word 'any' shows that agreement, settlement or award may be with regard to any industrial matter and need not be limited to the matter specified in Schedule II and failure to carry out the terms of any settlement etc, would be an illegal change. Under sub-section (3) the change in contravention of the terms of a registered agreement etc. which is prohibited is a change in respect of an industrial matter specified in Schedule II. Under that sub-section a change in industrial matters not specified in Schedule II even though in contravention of the terms of a registered agreement etc. is not illegal change. Under this sub-section failure to carry out the terms of any settlement, agreement or award is an illegal change.

Employer to make change etc within certain time

47. An employer required under the terms of any decision or order of a Labour Court or the Industrial Court to carry out a change or withdraw an illegal

1. The Amalner Girni Kamgar Union Vs The Pratap Spinning Weaving and Manufacturing Co Ltd. Appn. No 5/1942 Bombay Labour Gazette. (July 1942) Vol 21 Page 1118

2. The Textile Labour Association Ahmedabad. Vs. The Shri Ambika Mills Co. Ltd Appn No 17/1940 Bombay Labour Gazette (Nov 1940) Vol. 20 Page 201.

3. Mannusing Motising Vs. The Khandesh Spinning and Weaving Mills. Co. Ltd Appn No 37/1941. Bombay Labour Gazette (Aug. 1941) Vol 20. Page 1019.

4. Hirachand Velsi Vs. The Gujarat Ginning and Manufacturing Co Ltd. Appn No. 39/1945 Bombay Labour Gazette. (Jan. 1946) Vol. 25 Page 341

Hirachand Asharam Vs. The Hathising Manufacturing Co. Ltd Appn No 8/1943 and 23/1943 Bombay Labour Gazette (Dec 1943) Vol. 23. Page 263

Babu Nathu Vs The Silver Cotton Mills Co. Ltd Appn No 108/1943. Bombay Labour Gazette (Oct. 1944) Vol. 24 Page 117

Karsansing Tikaram and others Vs The Rajnangar Spinning and Weaving and Manufacturing Co Ltd. Appn. No. 27/1943 Bombay Labour Gazette (Sept. 1943) Vol 23 Page 50.

change, shall comply with such requirement within such time as the Court giving or making the decision or order prescribed and where no time is prescribed by it, within forty-eight hours of the giving or making of the decision or order.

COMMENTS.

This sub-section is totally new. Under Section 78 (1) (c) the Labour Court and under Section 84 (I) (a) the Industrial Court in appeal are empowered to require any employer to withdraw an illegal change or to carry out any change which is a matter in issue. This section prescribes the time limit within which the employer must carry out the change. Failure to carry out the required change would be punishable under section 106. If the Labour Court does not prescribe the time within which the change should be carried out it must be done within 48 hours and if the employer fails to carry out such change within 48 hours, he would be guilty under section 106.

Under the Bombay Industrial Disputes Act, the Industrial Court had no power similar to those given under section 78 (1) (A) (c) to require the employer to carry out or withdraw any change. All that the Industrial Court could do was to declare a change illegal for which the employer would be liable to be punished for illegal change, or continuance of the same.

CHAPTER IX.

Joint Committees.

"Provision is made for setting up Joint Committees of representatives of employers and employees in various occupations and undertakings in an industry. This is a device for establishing direct and continuous touch between the representatives of employers and workers and for securing speedy consideration and disposal of the difficulties which arise from day to day in employer employee relations. This is a familiar arrangement in United Kingdom and in several other countries and its adoption has been recommended by Royal Commission on Indian Labour." (Statement of Objects and Reasons).

This Chapter and the provisions thereunder are totally new.

Constitution of Joint Committees

48 (1) A Joint Committee may be constituted for an undertaking or occupation with the consent of the employer and the registered union for the industry for the local area.

Provided that no Joint Committee shall be so constituted in respect of an undertaking or occupation where there is no representative union, unless not less than fifteen per cent. of the employees are members of a registered union.

(2) On application made in this behalf by the employer or the Union to the Registrar, a Joint Committee shall be entered in a list of Joint Committees maintained by him, and thereupon all the provisions of this Act shall apply to the Joint Committee.

(3) A Joint Committee shall stand dissolved-

(a) whenever the condition specified in the proviso to sub-clause (1) ceases to be complied with;

(b) on expiry of the period of a three months' notice in that behalf being given by the employer to the union, or by the union to the employer.

COMMENTS.

A Joint Committee may be set up for an undertaking as a whole or an occupation thereof in cases where (1) there is a Representative Union or (2) in the absence of a Representative Union in those undertakings and occupations which have at least 15 per cent. of the employees as members of the Registered Union which would be either a Qualified or a Primary Union.

Such a Joint Committee can be set up only with the consent of the employer and the registered union and may be dissolved by three months' notice. This shows that the Joint Committee is a voluntary machinery.

Composition of Joint Committee

49. (1) A Joint Committee shall consist of such number of members as may be prescribed; half the number shall in the prescribed manner be nominated by the union and the other half appointed by the employer concerned.

(2) A chairman shall be appointed in accordance with rules made in this behalf. He shall perform his duties in the prescribed manner.

For the manner of nomination of members by the union under sub-section (1), the appointment of the chairman and the manner in which he shall perform his duties under sub-section (2) of section 49, see rules.

Proceedings of Joint Committee

50. (1) A representative of the registered union may attend any meeting of the Joint Committee. to advise the members representing the employees

(2) The proceedings of the Joint Committee shall be conducted in the manner prescribed.

(3) The proceedings shall be recorded in a minute book.

Note that the decision of the Joint Committee does not bind the employer or the union. The employer or the union may endorse or reject the decision. For the manner of conducting proceedings of a Joint Committee see rules.

Proposal for change

51. (1) Any member of a Joint Committee may move proposal regarding any change other than a change in any standing order or regarding any other matter affecting the relations between the employer and the employees in the undertaking or occupation, as the case may be, for which the Committee is constituted:

Provided that no such proposal shall be moved for a change in respect of any industrial matter if such change could not for the time being be made under this Act.

(2) The decision of the Joint Committee regarding every change proposed under the provisions of sub-section (1) together with all necessary particulars regarding such change shall within forty-eight hours be communicated to the registered union and the employer, as well as the Labour Officer and the Commissioner of Labour.

Special intimation for change and special application to Labour Court.

52. (1) Where an agreement is arrived at between the employer and the union regarding any change proposed in the Joint Committee under sub-section (1) of section 51, a memorandum of such agreement signed by them shall be forwarded by the employer in the prescribed manner to the Registrar and the Labour Officer and all the provisions of this Act shall apply to such agreement as they would apply in respect of an agreement under sub-section (1) of section 44.

(2) If within seven days from the receipt of a decision under sub-section (2) of Section 51, the employer or the union sends an intimation (herein-after called special intimation) in the prescribed form to the Conciliator for the industry for the local area stating that the change proposed in the Joint Committee, being a change in respect of a matter not specified in Schedule I or III, or such change with specified alterations, should be made, and that no agreement in respect thereof has been arrived at between the union and the employer, the Conciliator shall forthwith enter the case as an industrial dispute in the register kept under section 55, and the provisions of this Act shall apply to it as if a statement were submitted under section 54.

(3) If within seven days from the receipt of a decision under sub-section (2) of section 51 regarding a matter specified in clause (a) of paragraph A of sub-section (1) of section 78 the employer or union sends a special application in respect of such matter to the Labour Court having jurisdiction, the Labour Court shall forthwith proceed to decide the dispute under the provisions of Chapter XII.

(4) A copy of every special intimation sent under sub-section (2) shall be forwarded to the Chief Conciliator, the Conciliator for the industry for the local area concerned, the Registrar, the Labour Officer and such other person as may be prescribed.

COMMENTS.

The effect of section 52 is that notice of change under section 42 would be dispensed with in respect of a change moved in the Joint Committee. If the employer and the union reach an agreement the memorandum of agreement shall be registered and such an agreement shall be as good as an agreement reached after a notice of change. Where the parties do not reach an agreement and the change is one in respect of a matter not specified in Schedule I or III, either the employer or the union may send within seven days of the receipt of the decision of the Joint Committee, a special intimation to the Conciliator that such change or such change with a specified alteration should be made. The Conciliator shall thereupon proceed with the conciliation

proceedings under Chapter X. If the change is as regards a matter specified in clause (a) of the paragraph (A) of section 78 (1) the employer or the union may make a special application to the Labour Court.

For the manner in which the memorandum of agreement shall be forwarded under sub-section (1), the form in which a special intimation shall be forwarded under sub-section (2) and other persons prescribed in subsection 4 see rules.

Decision of respective representatives binding on union and employer.

53. (1) The union may authorise such proportion, (hereinafter called the authorised proportion), not being less than three-fourth of the members representing the employees on the Joint Committee, to accept or reject on its behalf any proposal or class of proposals moved in the Committee.

(2) The employer may authorise a proportion of the members representing him on the Committee to accept or reject on his behalf any proposal or class of proposals moved in the Committee.

(3) For a period of two months after a decision of the Committee, no notice of change under section 42, or special intimation or application under section 52 shall be given or made–

(a) where the union acts under sub-section (1), by the employees concerned or the union, contrary to the decision of the authorised proportion accepting a proposal in respect of which it is authorised; and

(b) where the employer acts under sub-section (2), by the employer, contrary to the decision of the authorised proportion of his representatives.

(4) The union whenever it acts under sub-section (1) and the employer whenever he acts under sub-section (2), shall communicate the fact to the Chief Conciliator, the Conciliator for the industry for the local area concerned and the Registrar.

COMMENTS.

The sub-section (1) and (2) of this section provide for an authorised proportion of the members representing the employer or employees on the Committee to accept on his or their behalf any proposal or class of proposals moved in the Committee by either of them.

If the employer or the employees concerned or the union acts contrary to the decision of his or its authorised proportion accepting a proposal in respect of which it is authorised, then such party is debarred for a period of 2 months from giving any notice of change as provided by section 42 or special intimation or application under section 51 which they are entitled to give under the Act. This indirectly supplies the sanction for inducing the

parties to act in accordance with the decision of its authorised proportion and makes it binding in this sense.

But such a decision of the authorised proportion is not binding in the same way as registered agreement would be binding. For such a decision is not a full fledged agreement and would mature into an agreement only when the parties to the memorandum sign the agreement and get it registered with the Registrar under section 51.

CHAPTER. X.

Conciliation proceedings

Under the scheme of the Act conciliation proceedings are compulsory in the sense that an employee or employer who has given notice of a change under section 42 (1) or section 42 (2) respectively, must, if he desires the change, initiate and go through the conciliation proceedings as laid down under this chapter. Of course none of the parties are bound to agree and come to a settlement. They may not arrive at a settlement. What the Act requires is that after the parties have failed to come to an agreement inter se a responsible Government official-the conciliator-should endeavour to bring about the settlement of the dispute and only after he has failed and conciliation proceedings have ended that the parties should be at liberty to take any course they please.[1] i. e. the employer may effect the change[2] or may declare a lock-out to enforce the change or the employees may commence a strike to resist the change which the employer tries to effect or to enforce the change they want. Any change made[4] or lock-out declared[4] or strike commenced[5] before it, would be illegal and punishable under the Act.

Report of dispute to be sent to Registrar, Chief Conciliator and Conciliator

54. (1) If any proposed change in respect of which notice is given under section 42, or an intimation or special notice is given under section 43 is objected to by the employer or the employee, as the case may be, the party who gave such notice, intimation or special notice shall, if he still desires that the change should be effected, forward to the Registrar, the Chief Conciliator and the Conciliator for the local area for the industry concerned a full statement of the case in the prescribed form within fifteen days from the date of service of such notice, intimation or special notice on the other party or within one week of the expiry of the period fixed by both the parties under sub-section (1) of section 44 for arriving at an agreement.

Explanation -For the purposes of this sub-section a change shall be deemed to be objected to by the employer or employee, as the case may be, if within seven days from the date of service of such notice, intimation or special notice or within the period fixed by both the parties under sub section (1) of section 44 for arriving

1. Pandurang Hari Vs The New City of Bombay Manufacturing Co Ltd. Appn No 81 1945 Bomay Labour Gazette (April 1946) Vol. 25 Page 601

2 Pundlik Mukund Vs. The Mill Owners' Association Bombay, Appn No. 4/1940. Bombay Labour Gazette (April 1940) Vol. 19. Page 690

3 Section 46. (2).

4 Section 98 (2)

5 Section 97. 1. (c)

at an agreement a memorandum of agreement has not been forwarded to the Ragistrar under the said sub-section.

(2) Where a notification is issued under sub-section (5) of section 43 in respect of such change, any employer or employee in the industry may within seven days from the date of publication of such notification forward such statement to the said officers.

Legislative changes :-

The notable change is that the period in which the statement must be forwarded has been reduced from 21 days to 15 days. In the explanation the period is reduced from 15 days in the Bombay Industrial Disputes Act to 7 days. Sub-section (2) is new. It is a consequential addition necessitated by the addition of sub-section (5) of section 43. For the form of the statement see forms.

Commencement of conciliation proceeding

55. On receipt of the statement of the case under section 54 the Conciliator shall, except in a case in which by reason of the provisions of section 64 a conciliation proceeding cannot be commenced, forthwith enter the industrial dispute in the register kept for the purpose and thereupon the conciliation proceeding shall be deemed to have commenced from the date of such receipt.

Legislative Changes :-

This section corresponds to section 35 of the Bombay Industrial Disputes Act. The words "except in a case in which by reason of the provisions of section 64 a conciliation proceeding cannot be commenced" are new.

Conciliation proceeding

56. (1) The Conciliator shall hold the conciliation proceeding in the prescribed manner.

(2) It shall be the duty of the Conciliator to endeavour to bring about the settlement of the industrial dispute and for this purpose the Conciliator shall enquire into the dispute and all matters affecting the merits thereof and may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute and may adjourn the conciliation proceeding for any period sufficient in his opinion to allow the parties to arrive at a settlement or for any other reason.

COMMENTS.

This section corresponds to section 36 of the Bombay Industrial Disputes Act. Rules prescribe the manner in which proceedings are to be held. Note that all that the Conciliator can do is to endeavour to bring about a settlement. He has no power to force the parties to agree.

Power of Chief Conciliator to intervene

57. (1) It shall be lawful for the Chief Conciliator to intervene or to direct any Conciliator to intervene at any stage in any conciliation proceeding held by another Conciliator, and thereafter the Chief Conciliator or the Conciliator so directed shall hold the conciliation proceeding with or without the assistance of the Conciliator.

(2) The Chief Conciliator may from time to time issue such directions as he deems fit to any Conciliator at any stage of a conciliation proceeding.

Legislative changes:-

Section 57 corresponds to section 37 of the Bombay Industrial Disputes Act. Sub-section 2 is new.

Settlement and report

58. (1) If a settlement of an industrial dispute is arrived at in a conciliation proceeding, a memorandum of such settlement shall be drawn up in the prescribed from by the Conciliator and signed by the employer and the representative of employees. The Conciliator shall send a report of the proceeding along with a copy of the memorandum of settlement to the Registrar and the Chief Conciliator. The Registrar shall record such settlement in the register of agreements and shall then publish it in the prescribed manner. The change, if any, agreed to by such settlement shall come into operation from the date agreed upon in such settlement and where no such date is agreed upon from the date on which it is recorded in the register.

(2) If no such settlement is arrived at, the Conciliator shall, as soon as possible after the close of the proceeding before him, send a full report to the Chief Conciliator stating the steps taken by him for ascertaining the facts and circumstances relating to the dispute and the reasons on account of which, in his opinion, a settlement could not be arrived at :

Provided that where such Conciliator is the Chief Conciliator such report shall be forwarded by him to the Provincial Government.

(3) The Chief Conciliator shall forward the report submitted to him under sub-section (2) to the Provincial Government with such remarks as he deems fit.

(4) The Provincial Government shall publish the report of the Conciliator or Chief Conciliator forwarded to it under the proviso to

sub-section (2) or under Sub-section (3) except in cases in which the dispute is referred to a Board, or the parties to the dispute enter into a submission in respect of it.

(5) Before the close of the proceeding before him the Conciliator shall ascertain from the parties whether they are willing to submit the dispute to arbitration.

(6) (a) Notwithstanding anything contained in the foregoing sub-sections, if at any stage of a conciliation proceeding the parties agree in writing to submit the dispute to arbitration, the agreement shall be deemed to be a submission within the meaning of section 66.

(b) Where the agreement provides for arbitration either by a Labour Court or by the Industrial Court, the Conciliator shall forthwith refer the dispute to the Labour Court or the Industrial Court, as the case may be.

COMMENTS

This section corresponds to section 38 of the Bombay Industrial Disputes Act and lays down what should be done when a settlement is arrived at and when a settlement is not arrived at.

Sub-sections (5) and (6) (a) and (b) of this section are new. Sub-section (5) imposes on the Conciliator the duty to ask the parties if they are willing to refer the dispute to arbitration. Sub-section (6) lays down that if the parties agree to refer the dispute to arbitration, the agreement is to be considered a submission within the meaning of section 66. Sub-section 6 (b) makes it obligatory on the Conciliator to refer the dispute to the Labour Court or the Industrial Court in case where the agreement provides for arbitration by tha Labour Court or the Industrial Court.

The memorandum of settlement must be in the form prescribed. Such a memorandum is to be published in the official Gazette.

For termination of a settlement see section 116.

Reference to Board

59. (1) The Provincial Government may at any time, and where either prior to the commencement of a proceeding before the Conciliator or after his failure to bring about a settlement, the parties agree, shall refer the dispute to a Board and thereupon conciliation proceedings before the Board shall be deemed to have commenced from the date of such reference.

(2) On such reference being made, the board shall give notice in the prescribed manner to the parties to the dispute to appear before it at such time and place as may be specified in the notice. A copy of such notice shall be sent to the Labour Officer.

(3) On the date specified in the notice or on such other date as may be fixed by the Board, the Board shall hold the conciliation proceeding. It shall be the duty of the Board to endeavour to bring about a settlement of the industrial disupte and the provisions of sections 55, 56 and 58 shall, so far as may be, apply to the proceeding before the Board.

Legislative changes :—

This section corresponds to section 39 of the Bombay Industrial Disputes Act. The words, "During the pendency of any proceedings under the foregoing provisions of the Act" appearing in the beginning of sub-section (1) have been substituted by the words "at any time." Thus under this Act the Provincial Government's power to refer a dispute to a Board is increased.

Scope of the Section.

This section provides that Provincial Government may at any time refer the dispute to a Board of Conciliation and shall be bound to refer the dispute to the Board if the parties agree to do so before the conciliation proceedings have commenced or after they have failed The Board's power and functions are equivalant to that of the Conciliator i. e. to endeavour to bring about a settlement.

Procedure and powers of Conciliator and Board

60. (1) A Conciliator or a Board, as the case may be, shall subject to the provisions of this Act, follow in a conciliation proceeding such procedure as may be prescribed.

(2) The proceedings before a Conciliator shall be held *in camera* and any proceedings before a Board may be held in public or *in camera* as the Board may decide.

(3) If a party to an indstrial dispute or a witness or any other person giving any information or producing any decument in a conciliation proceeding makes a request in writing to the Conciliator or the Board, as the case may be, that such information or the contents of such document be treated as confidential, the Conciliator or the Board shall direct that such information or document be treated as confidential :

Provided that the Conciliator or Board may permit the information or the contents of the document to be disclosed to the other party.

(4) Save as provided in sub-section (3), a Conciliator or any member of a Board or any person present at or concerned in the conciliation proceeding shall not disclose any information or the con-

tents of any document in respect of which a request has been made under sub-section (3) without the consent in writing of the party making the request under the said sub-section.

(5) Nothing in this section shall apply to the disclosure of any information or the contents of any document for the purpose of a prosecution under this Act or under any other law for the time being in force.

This section corresponds to section 40 of the Bombay Industrial Disputes Act. The procedure in respect of conciliation proceedings is prescribed by rules. Sub-section (2) is new.

Reference to Industrial Court by Conciliator or Board.

61. A Conciliator or a Board may refer any question of law arising before him or it in any conciliation proceeding, to the Industrial Court for decision. Any order passed by the Conciliator or the Board in such proceeding shall be in accordance with such decision.

This section is new and by it a Conciliator or a Board has been given power to refer a matter of law to the Industrial Court for decision.

Time limit for stages of conciliation proceeding.

62. (1) The Provincial Government shall by general or special order notified in the *Official Gazette* fix a time limit for the completion of each stage of the conciliation proceedings provided for under this Chapter:

Provided that the total period fixed for completion of all stages of a conciliation proceeding shall not exceed one month from the date on which the dispute is entered by the Conciliator in the register under section 55 or is referred to a Board under section 59:

Provided further that the Provincial Government may extend the said period of one month by a further period of a fortnight at a time but not exceeding in any case two months in the aggregate.

(2) Notwithstanding anything contained in sub-section (1), the parties to any industrial dispute may in any case agree to extend the period fixed for the completion of any stage of a conciliation proceeding by any further period and such further period shall be excluded in computing the period of time limit referred to in the said sub-section.

Legislative changes:-

This section corresponds to section 41 of the Bombay Industrial Disputes Act. The only change is that the total period fixed for completing the conciliation proceeding is reduced from two to one month.

The first proviso to sub-section (1) of section 62 clearly says that the total period of time limit fixed for all stages of conciliation proceedings shall

not exceed one month and the second proviso makes it further clear that the Government may extend the said period of one month by a further period of a fortnight at a time not exceeding in any case two months in the aggregate so that if the time is extended the total period for conciliation proceedings cannot exceed three months except that it may be open to the parties to agree mutually that the said period may be extended by any further period and that further period shall be excluded in computing the period of time fixed by the statute. Under the Bombay Industrial Disputes Act the total period was four months.[1]

Completion of conciliation proceeding.

63. A conciliation proceeding shall be deemed to have been completed—

(i) when a memorandum of the settlement arrived at in such proceeding is signed by the parties under sub-section (1) of section 58, or

(ii) when the parties agree in writing to submit the dispute to arbitration, or

(iii) if no settlement is arrived at, when the report of the Conciliator or the Board is published by the Provincial Government, or

(iv) when the time limit fixed for the completion of such proceeding under section 62 has expired.

Legislative Changes:—

This section corresponds to section 42 of the Bombay Industrial Disputes Act and is substantially the same with some additions and alterations. In clause (i) the words under the old Act were, "when a settlement is arrived at". The change here is merely a change in language. Clause (ii) is new. On account of this addition, the conciliation proceedings are deemed to be completed if the parties agree in writing to submit the dispute to arbitration.

Scope Of The Section:-

This section is very important for only after the conciliation proceedings are completed whether successfully or unsuccessfully that the employer will be at liberty to make a change[2] of which he has given the notice under section 42 (1) or may declare a lock-out[3] in respect thereof and the employees will be at liberty to resort to a strike to enforce the change regarding which they have given the notice.[4] Any change made by the employer or lock-out declared by him or strike commenced by the employees before the completion of the conciliation proceedings would be illegal. Also any change made,[5] lock

1. Section 41, Bombay Industrial Disputes Act. The Edward Textiles Ltd. Vs. The Government Labour Officer. Appn. No. 43/1946. Bombay Labour Gazette. (Aug. 1946) Vol. 25. Page 931.
2. Section. 46.
3. Section. 98.
4. Section. 97.
5. Section. 46. (2).

out declared[1] or strike commenced[2] 2 months after the completion of the conciliation proceedings would be illegal. This section lays down when the conciliation proceedings shall be deemed to be completed.

Under the scheme of the Act after the completion of the conciliation proceeding it is open to the workers to resort to a strike and it is also open to the employers to declare a lock-out within two months after the completion of such proceedings.[3]

Time Limit Fixed.

"It is true that the words used in section 42 of the B. I. D. Act (corresponding to section 63 of the present Act) are 'time limit fixed' and it is urged by the petitioners that the word 'fixed' means fixed by an order of Government. But where there is no order as in the present case the word 'Fixed' means fixed according to the section and as I construe section 41 (present section 62) the time limit fixed in that section in absence of any general or special order is the period of two months (one month under the act).

When it is stated in section 42 (corresponding to section 63) that the conciliation proceedings shall be deemed to have been completed when the time limit fixed for the completion of such proceedings under section 41 has expired it would in my opinion follow that where no time limit has been initially fixed at all and where there is no mutual agreement between the parties extending the time, the conciliation proceedings must be deemed to be completed at the end of two (one under this Act) months after they begin. It may be that if no settlement is arrived at, the conciliator's report may be published after the period of two months is over but it cannot be said in that case that the conciliation proceedings are completed when the conciliator's report is published. It is not stated in section 42 that the conciliation proceedings shall be deemed to have been completed when the conciliator's report is published or when the time limit fixed for completion of the proceedings has expired which ever is later. In the absence of such words it would follow that the conciliation proceedings are supposed to be completed at the end of two months after they began" (one month under this Act).

Thus where the conciliation proceedings began on 23rd February and failed on 22nd April and on 23rd April the operatives went on strike even though the report of the conciliator was not published held the conciliation proceedings were completed at the end of two months and the strike was not illegal.[4]

64. No conciliation proceeding in respect of an industrial dispute shall—

Conciliation proceedings not to be commenced or continued in certain cases.

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1 Section. 98 (2).

2. Section. 97. (2).

3. Pandurang Hari Vs. The New City of Bombay Manufacturing Co. Ltd. Appn. No 110/1945. Bombay Labour Gazette. (April. 1946) Vol. 25. Page 601

4. The Edward Textiles Ltd. Vs. The Government Labour Officer, Appn. No. 43/1946. Bombay Labour Gazette. (May. 1946) Vol. 25. Page 931.

(a) be commenced if—

(i) the representative of employees directly affected by the dispute is a registered union which is a party to a submission relating to such dispute or a dispute relating to an industrial matter similar to that regarding which the dispute has arisen;

(ii) it has been referred to arbitration under the provisions of section 72 and 73;

(iii) by reason of a direction issued under sub-section (2) of section 114 the employers and employees concerned are in respect of the dispute bound by a registered agreement, settlement, submission or award;

(b) be continued after the date on which—

(i) a submission relating to such dispute is entered into by the employer and employees concerned under section 58 and 66;

(ii) the dispute is referred to arbitration under section 72 or 73; or

(iii) the direction referred to in sub-clause (iii) of clause (a) is issued.

COMMENTS.

This section is new. The conciliation proceedings shall not be commenced or continued under the circumstances mentioned in it.

Conciliation proceeding discontinued deemed to be completed.

65. A conciliation proceeding which is discontinued under clause (b) of section 64 shall be deemed to have been completed on the date referred to in the said clause, and the provisions of section 58 with regard to the submission, forwarding and publication of reports shall apply to such conciliation proceeding.

CHAPTER XI.

Arbitration.

This chapter provides for reference of industrial disputes to arbitration. It makes provision for voluntary and compulsory arbitrations. The parties may voluntarily and of their free will submit any industrial dispute to arbitration. It is not obligatory on the parties to refer the dispute to arbitration unlike conciliation proceedings which are obligatory. But sections 72 and 73 empowers the provincial Government to refer any industrial dispute to arbitration of the Industrial Court in the circumstances specified therein. That is compulsory arbitration. The award of the arbitrator both in voluntary and compulsory arbitrations is binding upon the parties.[1]

Once the dispute is referred to arbitration voluntarily by the parties or compulsorily by the Provincial Government, no change can be made,[2] no lock-out can be declared[3], and no strike can be commenced,[4] till the award comes into operation. And after the award comes into operation no change can be made,[5] no lock-out can be declared[6] and no strike can be commenced in contravention of the award.[7]

Submission.

66. (1) Any employer and a Representative Union or any other registered union which is a representative of employees may, by a written agreement, agree to submit any present or future industrial dispute or class of such disputes to the arbitration of any person whether such arbitrator is named in such agreement or not. Such agreement shall be called a submission.

(2) Such submission may provide that the dispute shall be referred to the arbitration of a Labour Court or the Industrial Court.

(3) A copy of every such submission shall be sent to the Registrar who shall register it in the register to be maintained for the purpose and shall publish it in such manner as may be prescribed.

Legislative changes:-

This section corresponds to section 43 of the Bombay Industrial Disputes Act. For the word "Registered Union" in sub-section (1) of section 43 of the Bombay Industrial Disputes Act the words "Representative Union or any other registered union which is a representative of employee" have been substituted. Under that Act it was held that any registered union could enter into an agreement with an employer to submit any industrial dispute to arbitration. It was not

1. S. 114 (1).
2. S. 46 (2)
3. S. 98 (a)
4. S. 97 (a)
5. S. 46 (3).
6. S. 98 (b).
7. S. 97 (1).

necessary that such union should 'be a representative of the employees.'[1]

The law is changed and the registered union which is representative of the employees can only enter into an agreement for reference to arbitration.

Scope of the section:-

This section permits any employer and a Representative Union or any Primary or Qualified Union which is a representative of the employees to enter into an agreement to refer any present or future disputes to private arbitration or to the arbitration of a Labour Court or the Industrial Court. Such an agreement is to be called a submission and the section provides for the registration of all such submissions. In absence of an agreement to the contrary every submission shall be irrevccable provided however that any submission to refer future disputes may be revoked by either party after giving six months' notice to the other party and provides further that before the expiry of the said months the parties may agree to continue the submission for such further period as may be agreed upon by them. The proceedings in arbitration under this chapter are to be in accordance with the provisions of the Arbitration Act of 1940, in so far as they are applicable and the award is to be made after hearing the parties.

Submission can be only of an industrial dispute:-

The submission to arbitration can be only of an industrial dispute and if the dispute is not an industrial dispute, it would be outside the jurisdiction of the Court to give an award on it. Thus where the dispute relating to dearness allowance was submitted to the arbitration of the Industrial Court it was contended that the demand for the dearness allowance was not an industrial matter and therefore the Industrial Court had no jurisdiction to make an order in respect thereof. The Court however held that industrial matter has been defined as, "any matter relating to work, pay, wages etc." and the demand for dearness allowance is a demand relating to work, pay or wages and therefore is an industrial matter and therefore the Court had jurisdiction to decide the matter.[2]

Similarly it was contended that the dispute regarding bonus is not an industrial dispute as grant of bonus is not an industrial matter and therefore the Court had no jurisdiction to entertain the dispute. The Court said, "The first question is whether this Court has jurisdiction to entertain this dispute. Under Section 28 (2) of the Act (corresponding to section 42 of this Act) an employee desiring any change in respect of an industrial matter is entitled to give a notice of change and under section 43 (1) (corresponding to section 66 of this Act) any employer and a registered union may agree by a written agreement to submit any industrial dispute to the arbitration of this Court or the Provincial Government may refer it to this Court under section 49 A (corresponding to section 73 of this Act) as in the present case. An

1. The Government Labour Officer. Ahmedabad Vs. The Anant Mills Co Ltd. Appn No. 33/1941. Bombay Labour Gazette (Oct. 1941) Vol. 21. Page 153

2. The Textile Labour Association Ahmedabad Vs. The Ahmedabad Mill Owners' Association Submission No. 1/45 Bombay Labour Gazette. (Oct. 1945) Vol. 25. Page 107.

industrial dispute is defined in section 3 (13) (corresponding to section 3 (17) of this Act) as any matter relating to pay, wages, reward, hours, privileges, rights or duties of employers or employees or the mode, terms and conditions of employment or non-employment. It is urged on behalf of the Mill Owners' Association that bonus which is a purely gratuitous payment by an employer is not included in this definition.....In our opinion bonus is included in the term 'reward' ".....If the workers say that in a certain year the employers have made handsome profits and that the employers can therefore afford to pay them something more than the stipulated wages, they are asking for the additional payment as a reward for work already done by them which has resulted in such high profits. Such additional payment is not a pure gift because a gift may have no relation to any work done or to be done by the donee but it is a reward in as much as it is asked as an extra payment for work already done. It is true it cannot be enforced in a court of law because it is not a legal right. But it does not follow that it cannot become a subject matter of an industrial dispute between the employers and the workers if the latter demand such payment as reward in the form of a bonus. It can therefore become an industrial matter and thus be the subject matter of an industrial dispute. In that event the whole machinery under the Bombay Industrial Disputes Act comes into operation. It is because there may be demands arising out of the relationship of the employer and the workers which either party can make on the other and which cannot be enforced in a court of law but the settlement of which is desirable for the smooth working of the industry, that the Bombay Industrial Disputes Act is enacted for the purpose of settling such disputes in the Industrial Courts.....We are therefore of the opinion that the demand for bonus is an industrial matter and this Court has jurisdiction to adjudicate on that demand[1]....."

Binding effect of an award:-

An award is binding upon the parties to it under section 114. When a Representative Union is a party to an award, all the employees in the industry in the local area shall be bound by the awad, whether they are members of the Representative Union or not. Even the persons who are not employed in the industry at the time of making an award, but who are subsequently employed will also be bound dy the award, and will be entitled to the benefits thereof.[2]

Any registered union other than a Representative Union can enter into a submission only if it is a representative of employees [section 66 (1).] Under Section 30 (2) a Primary or a Qualified union can be a representative only if the majority of the employees directly affected are its members or if it has been authorised by the employees concerned [section 30 (iii)]. Where it becomes representative by virtue of section 30 (iii) all the employees would be bound

1. The Textile Labour Association, Ahmedabad Vs. The A'bad Mill Owners' Association. Ref. No. 1/1945. Bombay Labour Gazette. (Oct. 1945) Vol 25. Page 122.

2. The Government Labour Officer Ahmedabad Vs. The Anant Mills. Co. Ltd. Appn. No. 33/1941. Bombay Labour Gazette (Oct. 1941) Vol. 20. Page 153.

and where it is a representative by virtue of section 30 (ii) all the employees directly affected would be bound whether they are its members or not.

For further comments see section 114.

Contracting out:-

An award cannot be changed or modified even by the mutual consent of the parties, and if an employer attempts to do so even with the consent of the other party such an attempt would not only be a change but an illegal change. Although contracting out is not expressly prohibited by a specific section in the Act, the implications are that at least in the case of an award no change could be introduced by an employer even with the consent of the employee,[1] nor can the right conferred on an employee be waived by him.[2]

Thus non-payment of dearness allowance to the workers in contravention of the terms of an award and in pursuance of a specific agreement between the employee and the Mills Company contrary to the terms of the award is an illegal change.[3]

Termination Of An Award.

Section 116 provides when and how an award can be terminated.

See section 116 and comments thereon.

The Court can allow parties to withdraw a submission.[4]

Contravention of the Terms of an Award.

If an employer makes any change in contravention of the terms of an award or fails to carry out the terms of an award he commits an illegal change[5] and is punishable under section 107. A lock-out in contravention of the terms of an award is illegal[6] and is punishable under section 102. So also a strike commenced in contravention of the term of an award by an employee is illegal,[7] and is punishable under section 103.

Interpretation Of Submission and Awards: Reasonable Construction:—

In a case where the dearness allowance granted under the award was not paid the Court observed, "The award itself says that the dearness allowance shall be paid from the 1st of February 1940, but it does not lay down on what date that dearness allowance was to be paid and therefore the question arises whether withholding or postponement of the payment of the dearness allowance would constitute a change in contravention of the terms of the award. In construing the terms of an award as in construing the terms of a statute, reasonable interpretation must be put as regards matters on which the award

1. The Government Labour Officer, Ahmedabad. Vs The Anant Mills Co. Ltd Appn. No. 33/1941. Bombay Labour Gazette. (Oct. 1941) Vol. 20. Page 153

2. Amalner Girni Kamgar Union Vs. The Pratap Spinning and Manufacturing Co. Ltd. (July. 1942) Vol. 21. Page 1118

3 Mithi Ratan Vs. The Bhalakia Mills Co. Ltd. Appn. No. 111/43 Bombay Labour Gazette. (July. 1944) Vol. 23. Page 695.

4. The Textile Labour Association Ahmedabad Vs The Aryoda Ginning and Manufacturing Co. Ltd Submission No 2/1942. Bombay Government Gazette. Part I. Page 2188.

5. Section. 46 (3). Section. 46 (5).

6. Section. 98 (h)

7. Section 97. (i).

or the statute is silent. Therefore in interpreting the award, it must be presumed that the Industrial Court intended that the dearness allowance should be paid within reasonable time after the date when it became due.....The reasonable time cannot be defined with any precision, but I am of the opinion that a period of one month would not be unreasonable.'

Interpretation According To The Circumstances.

A submission was made by the Textile Labour Association Ahmedabad and the Ahmedabad Mill Owners' Association regarding the question of dearness allowance to be granted to the workers and the Industrial Court made an award granting it to the workers. The parties disagreed as to the exact meaning of the word "workers" used in the submission and the award. So the matter came up before the Industrial Court. The Labour Association contended that the word 'worker' was used in the same sense as the term "employee" as defined in the B. I. D. Act. The Mill Owners's Association contended that the word "worker" was used in the same sense as the term "worker" in the Factories Act. The Court said, "In our opinion we cannot decide the point by referring to the definition of the word 'employee' as appearing in the Bombay Industrial Disputes Act or to the definition of the word "worker" as appearing in the Factories Act for construing the term "worker" appearing in the terms of the submission. In our opinion the terms of the submission must be considered in the light of the circumstances giving rise to the dispute. We think that the submission was made with respect to persons who are employed by the mills in connection with the textile industry, for the payment of remuneration to whom, the mills hold themselves responsible, whose cost of living was affected by the rise in prices of food stuffs and to whom the grant of dearness allowance would come as an appreciable relief."[2]

This interpretation of the word "worker" has been of a great practical importance in Ahmedabad, a great centre of textile industry. Numerous cases came before the Industrial Court for decision whether particular employees are "workers" within the meaning of the award as interpreted above.

The Court held that clerical and superior staff whose pay does not exceed Rs. 75 per month would be entitled to the dearness allowance. So also the part-time workers, badlies and patiwala, watch and ward men, supervisors, jobbers and mukadams,[3] water man[4] and a gardener in the mills[5] whom though they may not be working directly in connection with machines, the rise in cost of living affects as much as the other workers, would be entitled to the dearness allowance under the award.

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1. The Textile Labour Association Ahmedabad. Vs. The Manekdal Harilal Spinning and Manufacturing Co Ltd. Appn No. 12/1941 Bombay Labour Gazette. (April. 1941) Vol. 20. Page 636

2. The Textile Labour Association Ahmedabad. Vs. The Ahmedabad Mill Owners' Association. Appn. No 19/1940 Bombay Labour Gazette. (Oct 1940) Vol. 20 Page 148

3. Ibid

4. Krishnaram Vasanthbhai Vs The Vijaya Mills Co. Ltd Appn. No. 101/1945. Bombay Labour Gazette (July. 1946) Vol. 25. Page 847.

5. Jivan Kalidas Vs. The Vijaya Mills Co. Appn. No. 100/1945. Bombay Labour Gazette (July. 1946) Vol. 25. Page 846

The import of the word "worker" as occurring in the award is not limited by the word permanent or temporary nor limited only to classes or categories enumerated in the notification dated 12th June 1939 issued by the Registrar. So temporary workers were held to be entitled to dearness allowance under the award.[1]

Where the average pay of the applicants for the majority of calendar months did not exceed Rs. 75/- per month, during the period of their service, held they would be entitled to the dearness allowance under the award.[2]

Canteen staff.

Where the mills ran a canteen, held that, "The conditions laid down above are satisfied in the case of canteen workers. These employees in the hotel which is maintained by the opponent are essentially employed in connection with the textile industry. Although the hotel is run on welfare basis and the mill may not stand to profit thereby it does not cease to be a hotel run in connection with the textile industry. Mill canteen staff also forms an occupation, and therefore the mill canteen staff is entitled to the benefit of the dearness allowance under the award."[3]

But it was held that the contractors' employees are not entitled to the dearness allowance for the mills are not responsible for their ordinary remuneration. The responsibility for paying the dearness allowance therefore cannot be fastened on them.[4]

But where dhobighat workers were not engaged on contract basis they were held to be entitled to the dearness allowance under the award, the fact that they were engaged on daily wage being irrelevent.[5]

Working condition :-

In the same submission the question of dearness allowance was to be fixed having regard to the working condition of the *industry*. Where one of the mills bound by submission contended that its financial condition was not such as to justify any grant of dearness allowance, it was held, "Having regard to the terms of submission it is not a factor to be taken into account. The submission implies that we have not to take into consideration the financial condition of each individual unit but we have only to consider the general working condition of the *industry* in Ahmedabad as a whole. In our opinion therefore there is no justification differentiating the case of these mills from all the other mills in Ahmedabad" The Industrial Court held that the allowance should be granted to the workers of these mills on the same scale as mentioned

1. Velaji Zaver Vs. The Sarangpur Cotton Manufacturing Co Ltd. Appns. Co. 132/1943 to 140/1943. Bombay Labour Gazette. (March. 1944) Vol. 23. Page 448.

2. Yashvant Ramji and others Vs. The Silver Cotton Mills Co. Ltd. Appn. No. 76/1945. Bombay Govt. Gazette Part I. (Dec. 1946) Page. 3713.

3. The Government Labour Officer Vs. The Silver Cotton Mills. Co. Ltd. Appn. No. 24/1942. Bombay Labour Gazette. (Aug. 1942) Vol. 21. Page 1187.

4. Appn. No. 19/40, Supra.

5. The Textile Labour Association Ahmedabad. Vs. The New Swadeshi Mills. Co. Ltd, Appn. No. 30/1942. Bombay Labour Gazette, (Sept. 1942) Vol. 22. Page 48.

in the award.[1]

For the manner of publication of a submission under sub-section (3) of section 66 see rules.

67. Every submission shall in the absence of any provision to the contrary contained therein be irrevocable :

Submission when revocable.

Provided that a submission to refer future disputes to arbitration may at any time be revoked by any of the parties to such submission by giving the other party six months' notice in writing:

Provided further that before the expiry of the said period of six months the parties may agree to continue the submission for such further period as may be agreed upon between them.

This section reproduces verbatim section 44 of the Bombay Industrial Disputes Act.

Withdrawal of a submission.

But the court has power to allow parties to withdraw a submission.[2]

68. The proceedings in arbitration under this Chapter shall be in accordance with the provisions of the Arbitration Act, 1940, in so far as they are applicable, and the powers which are exercisable by a Civil Court under the said provisions shall he exercisable by a Labour Court and the Industrial Court.

Proceedings in arbitration.

X of 1940.

Legislative changes:–

This section corresponds to section 45 of the Bombay Industrial Disputes Act.

For the words, "Schedule II in the Code of Civil Procedure Code 1908", the words "Arbitration Act 1940" have been substituted and the words "Labour Court" have been added.

69. The arbitrator may refer any question of law arising before him in any proceeding under this Act to the Industrial Court for its decision. Any award made by the arbitrator shall be in accordance with such decision.

Special case to be stated to Industrial Court.

Legislative changes:–

This section corresponds to section 47 of the Bombay Industrial Disputes Act, with slight verbal changes.

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1. The Textile Labour Association Vs The Shri Ambica Mills, Ltd. No. 1 and 2. Appns. No. 55/1940. 56/1940. Bombay Labour Gazette. (Jan. 1941) Vol. 20. Page 351.

2. The Textile Labour Association Vs. The Aryodaya Ginning and Manufacturing Co. Ltd. Sub. No. 2/1942. Bombay Government Gazette. Part I. dated 23rd September 1943. Page 2188.

70. The arbitrator shall, after hearing the parties concerned, make an award which shall be signed by him.

Award by arbitrator.

After hearing the parties

This section corresponds to section 48 of the Bombay Industrial Disputes Act.

It makes it imperative that the arbitrator or the Industrial Court where the dispute is referred to it for arbitration, shall make an award after hearing the parties concerned. Where the opponent mills company was not heard, the award made by the Industrial Court was held to be not binding upon the mills company and therefore it was held that they did not commit any illegal change by failing to act in accordance with the award.[1]

The position in such a case would be that the award is not binding but the submission would remain in force and would be heard and adjudicated upon.[2]

71. Notwithstanding anything contained in this Chapter, if no provision has been made in any submission for the appointment of an arbitrator or where by reason of any circumstance no arbitrator is appointed, such dispute shall be referred to the arbitration of a Labour Court or the Industrial Court, as the Provincial Government may determine.

Dispute to be referred to Labour Court or Industrial Court if no arbitrator appointed

This section corresponds to section 49 of the Bombay Industrial Disputes Act. This section lays down that if no provision has been made in any submission for the appointment of an arbitrator or where by reason of the act of the parties or any circumstances the appointment of an arbitrator is not possible, such dispute shall be referred to the Industrial Court or the Labour Court as the Provincial Government may determine.

72 (1) Notwithstanding anything hereinbefore contained the Provincial Government may, at any time on the report of the Labour Officer or on its own motion, refer any industrial dispute between employees and employees to the arbitration of a Labour Court or the Industrial Court.

Disputes between employees and employees may be referred by Provincial Government to arbitration of Labour Court or Industrial Court.

(2) The provisions of this Chapter with such modifications as may be prescribed shall apply to such arbitration.

(3) The employers of such employees shall in the prescribed manner be made parties to such arbitration.

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1. The Textile Labour Association Ahmedabad. Vs. The Shri Ambica Mills. Ltd. Appn. No. 17/1940, Bombay Labour Gazette, (Nov. 1940) Vol. 20. Page 201.
2. Ibid.

Section 72 is new.

It empowers the Provincial Government to refer an industrial dispute between employees and employees to the arbitration of the Industrial Court or the Labour Court.

It is a provision for compulsory arbitration between employees and employees. The next section provides for compulsory arbitration between employers and employees

For the modifications to be prescribed under sub-section (2) and the manner of making the employers parties to arbitration under sub-section (3) of section 72, see rules.

Provincial Government may refer industrial dispute to Industrial Court for arbitration.

73. Notwithstanding anything contained in this Act, the Provincial Government may, at any time, refer an industrial dispute to the arbitration of the Industrial Court, if on a report made by the Labour Officer or otherwise it is satisfied that-

(1) by reason of the continuance of the dispute-

(a) a serious outbreak of disorder or a breach of the public peace is likely to occur; or

(b) serious or prolonged hardship to a large section of the community is likely to be caused; or

(c) the industry concerned is likely to be seriously affected or the prospects and scope for employment therein curtailed; or

(2) the dispute is not likely to be settled by other means; or

(3) it is necessary in the public interest to do so.

Legislative Changes.

This section corresponds to section 49, A of the Bombay Inudstrial Disputes Act which was inserted into that Act by Bombay Act No. X of 1941. The words, "if on a report made by the Labour Officer or otherwise" are new. Clauses (2) and (3) are new and they give a wider field for exercise of Governmental discretion to refer industrial disputes to arbitration.

"Such a course has been rendered necessary by frequent calls on Government during recent years from employers as well as employees for compulsory adjudication of disputes."[1]

Scope Of The Section.

This is one of the most controversial sections in the Act. It empowers the Provincial Government in the circumstances specified therein to refer any

1. Statement of Objects and Reasons.

industrial dispute to arbitration of the Industrial Court whether the parties are willing or not. It, in effect, provides for compulsory arbitration of disputes irrespective of the consent of parties. Compulsory arbitration of disputes is a contradiction in terms. For the term arbitration connotes voluntarily agreeing to be bound by the decision of a third person in whom the disputants have confidence.

The objections seem to be that firstly the workers are compelled against their will to have the dispute arbitrated upon. Secondly the arbitrator is not of their own choice. Thirdly there are no accepted rules or standards for deciding the disputes and the Industrial Court will be guided only by its ideas of what is just and fair which would vary with the different judges who may not be free from class bias and fourthly once the award is made the workers cannot go on strike, even if the award is unacceptable to them.

The argument in support of it is that, "In England and United States, labour, owing to its organised strength, can bring to bear sufficient pressure on the employers to secure a fair deal in a particular set of circumstances. For it, external intervention can therefore have very little attraction. Labour in India has on the other hand failed to forge such sanctions and it is often reduced to a stage of helplessness, unless the Government goes to its succour. Compulsory arbitration in a state which is controlled by vested interests and is administered to keep intact the privileges and presumption of the capitalist class would spell the perpetuation of an unjust 'status quo.' But where a Government pledges itself to the elimination of all sources of exploitation and to ensuring rising standard of living for masses, the whole out-look changes and it would be nothing short of crime to hamper the activities of such Government by interruptions of processes of production when means are provided for the settlement of disputes by impratial tribunals."[1]

THE COURT NOT TO SEE SUFFICIENCY OF REASONS :

The court's jurisdiction to depend upon industrial dispute :

"When a reference under this section is made to this Court, its jurisdiction to entertain it, does not depend on whether the Government had sufficient reasons to be so satisfied or whether a demand leading to the dispute had been made by only some workers or whether the procedure for making demand had been followed. It is not the function of this court to inquire why a demand by some workers had led the Government to treat it as a dispute between all the employees on the one hand and all the employers on the other. The demands may be made by some workers but if the Government thinks that they are of such a nature that it seriously affects the whole industry. e. g. standardisation of wages, it is for the Government to consider whether in view of its serious consequences the dispute should be decided as a whole for peaceful working of the industry and avoidance of hardships to the community .....We are not concerned with the sufficiency or otherwise of the reasons which satisfied the Government to refer the dispute to us.....The body which brings the demands to the notice of the Government may not be authorised

1. Mr. Gulsarilal Nanda, Minister of Labour, Government of Bombay.

under the Act but if the Government is satisfied that the demands have led to a dispute it can act under this section. The fact that the workers would not be represented by any authorised union may lead the Government to take action if the circumstances require. We agree with the Advocate General that no formal demand and refusal is necessary before the Government can take action under this Section" A union acting on behalf of some employees had given a notice of demands about standardization of wages, dearness allowance, rise in basic wages, to the Mill Owners' Association, Bombay regarding the above matters. The Association took no notice of these demands presumably because the Union had no status under the Act. A strike notice was to be given by some of the workers if the employers did not entertain the proposals for amicable settlement or arbitration. Therefore, the Government intervened, issued a Press Note followed by a Notification referring the said matters to the arbitration of the Industrial Court treating it as a dispute between all the employees of the cotton textile mills in Bombay and all the employers in Bombay. The contention was that there was no industrial dispute as no employer had considered and rejected the demands. It was over-rulled and it was held on on the facts that an industrial dispute had arisen. That it is not the function of Industrial Court to see the reasons which led the Government to treat the dispute as a general dispute or which satisfied them that the Mill Owners' Association was not willing to accede to the workers' demands. All that the Court has to see is whether on the materials before it, the dispute which has arisen according to the Government, relates to an industrial matter or not. On that point there is no doubt that the demands are industrial matters.[1]

At any time.

The words 'at any time' mean that the reference can be made at any stage of the dispute. This section is an emergency measure and it therefore provides for a reference to compulsory arbitration without following the general procedure laid down in the Act for a voluntary arbitration.[2]

74. (1) The arbitrator, Labour Court or Industrial Court as the case may be, shall forward copies of the award made by him or it to the parties, the Commissioner of Labour and the Registrar.

Notice of award to parties.

(2) On receipt of such award, the Registrar shall enter it in the register kept for the purpose and shall publish it in such manner as may be prescribed

This section corresponds to section 50 of the Bombay Industrial Disputes Act. Changes are that under that Act, the notice of award was to be given to the parties, while under this Act a copy of the award is to be forwarded to the parties, the Commissioner of Labour and the Registrar and under this

1. In the matter of the arbitration between the Mill Owners' Association Bombay and the employees in the cotton textile mills. Reference No. 1/1946 Bombay Labour Gazette. (August 1946) Vol. 25. Page 926.

2. Ibid.

Act it is to be published in the manner prescribed. Under the old Act it was to be published in the Official Gazette.

Date on which award shall come into operation

75. The award shall come into operation on the date specified in the award or where no such date is specified therein on the date on which it is published under Section 74.

This section corresponds to section 51 of the Bombay Industrial Disputes Act. The change is that under this Act the award is to come in force on the date on which it is published. Under the Bombay Industrial Disputes Act, it came into force on the date on which it was registered.

Completion of Arbitration proceeding.

76. The arbitration proceeding shall be deemed to have been completed when the award is published under section 74.

This section corresponds to section 52 of the Bombay Industrial Disputes Act.

CHAPTER XII.

Labour Courts.

"The Provisions relating to Labour Courts are an innovation so far as this country is concerned. An analysis of strikes and lock-outs occurring over a series of years has revealed the fact that a large proportion of stoppages arises out of disputes involving no substantial issues. Delay in the redress of grievances of workers with regard to these matters and one sided exercise of discretion in dealing with them creates a large volume of discontent and bitterness which lead to frequent disturbances of the peace of the industry and cause serious loss of production and workers' earnings.

The conciliation procedure in the Act of 1938 has not been found to be quite suitable for dealing with disputes of this character, both because of the length of time which the proceedings take and the lack of finality at the end of the proceedings. A remedy for this will be found in the Labour Court which will be instituted under the new Act to ensure impartial and relatively quick decision regarding illegal changes, illegal strikes and lock-outs and the complaints that either side may bring up. (Statement of Objects and Reasons.)

Territorial jurisdiction

77. The territorial jurisdiction of Labour Courts shall extend to the local areas for which they are constituted.

Powers of Labour Court.

78. (1) A Labour Court shall have power to--

A. decide

(a) disputes regarding--

(i) the propriety or legality of an order passed by an employer under the standing orders.

(ii) the application and interpretation of standing orders;

(iii) any change made by an employer or desired by an employee in respect of an industrial matter specified in Schedule III and matters arising out of such change;

(b) industrial disputes--

(i) referred to it under section 71 or 72;

(ii) in respect of which it is appointed as the arbitrator by a submission;

(c) whether a strike, lock-out, or any change is illegal under this Act;

B. try offences punishable under this Act and where the payment of compensation on conviction for an offence is provided for, determine the compensation and order its payment;

C. require any employer to—

(a) withdraw any change which is held by it to be illegal, or

(b) carry out any change provided such change is a matter in issue in any proceeding before it under this Act.

(2) Every offence punishable under this Act shall be tried by the Labour Court within the local limits of whose jurisdiction it was committed.

Explanation.—A dispute falling under clause (a) of paragraph A of sub-section (1) shall be deemed to have arisen if within the period prescribed under the proviso to sub-section (4) of section 42, no agreement is arrived at in respect of an order, matter or change referred to in the said proviso.

COMMENTS.

The provision for the establishment of Labour Courts is new. Under this Act the Labour Courts are the courts of original jurisdiction and the Industrial Court is the superior Court of appeal, revision, and reference in respect of the industrial matters covered by the Act and they, in between themselves form the "Labour judiciary." No civil or criminal court can call into question their decision, order or award."[1]

The Labour Court's jurisdiction is fourfold.

It has the power to (1) decide matters arising of standing orders viz, the properity or legality of the orders passed under the standing orders and the application and interpretation of the standing orders and changes in respect of industrial matters specified in Schedule III.

(2) Arbitrate upon and decide disputes referred to its arbitration.

(3) Decide whether a strike, lock-out or a change is legal or not, and

(4) Try offences punishable under the Act.

But the Labour Courts have no jurisdiction to decide any matter which does not fall under the provisions of this section. Its jurisdiction in confined to matters enumerated in this section.

Under the Bombay Industrial Disputes Act where an application was made for a declaration that certain persons were not the duly elected representatives of the employees concerned, it was held that in view of the terms of section 55 and section 53 of the Bombay Industrial Disputes Act it was

1. Sections 86 and 95.

not competent to the Industrial Court to grant the declaration.[1]

Comparison with the old law.

Under the Bombay Industrial Disputes Act there were no Labour Courts. Under that Act the Industrial Court was invested with the power to perform some of the functions described in paragraph (A) of sub-section 78 (1). The Industrial Court used to decide whether a strike, lock-out or change is illegal or not, under section 55 of the Bombay Industrial Disputes Act (which corresponds to section 79 (1) (A) (c) of this Act), arbitrate upon the submissions referred to it under sections 43 and 49 A of that Act and to decide the legality of orders passed under the standing orders in so far as they constituted an illegal change. There was no appeal from its decision. The offences under that Act were tried and punished by the ordinary criminal courts and the appeals and revisions from the orders passed by these courts were subject to the Criminal Procedure Code and the Industrial Court had nothing to do with them. Under this Act the trial and punishment of offences under the Act is left to the Labour Courts and the appeals therefrom lie to the Industrial Court. Thus the criminal jurisdiction under the Act has now been solely conferred upon and confined to the Labour Courts and the Industrial Court and ordinary criminal courts' jurisdiction has under this Act ceased The Industrial Court had under that Act no power similar to that conferred upon Labour Courts under paragraph (c) of sub-section (1) to require an employer to withdraw any illegal change or to carry out any change. Its powers were merely declaratory. Under this section the Labour Court has powers to require the employer to carry out a change or withdraw an illegal change.

S. 78 (1) (a) : Propriety :

"The Bombay Industrial Relations Bill goes much further and provides that an employee who feels aggrieved by the manner in which a standing order has been complied with would be entitled to approach the Labour Court, and the Court has power to decide regarding the *propriety* of any order of the management in such cases". (Mr. Gulzarilal Nanda, Minister of Labour, Government of Bombay.). So under this Act the Labour Court has powers to decide regarding the propriety of any order made by the management under the standing orders. Under the Bombay Industrial Disputes Act the Industrial Court held that if the procedure has been complied with the Court had no powers to investigate into the propriety of the order nor the sufficiency of the reasons. This Act goes much further.

Matters Covered By Schedule III :-

"The employee can also seek redress at the hands of the Labour Court in respect of grievances relating to employment, compensation for stoppages, equipment materials, health, safety, welfare amenetics etc. This function of the Court is found to be very welcome. Taking these matters out of the range of direct action and reserving them for judicial decisions is not being opposed, because it is very well realised that for the day to day complaints of the workers

1. Chaman Balchand Vs. The Manekchowk and the A'bad Manufacturing Co. Ltd. Appn No 57/1940. B. L. G. (Feb 1941) Vol. 20, Page 427.

the weapon of the strike affords very little help. In 90 cases out of 100, the workers would rather submit to inevitable hardships than court the loss and privations which the strikes entail. It is remembered that of all such strikes as actually occurred in respect of such matters very few had favourable outcome. The employers resent this new arrangement because it amounts to a total deprivation of their uncontrolled discretion in dealing with questions of this type." (Mr. Gulzarilal Nanda, Minister of Labour, Govt of Bombay.)

Criminal liability of a limited company

A limited company is a legal entity and quite capable of being an employer. In fact most of the private employers in the country are companies.[1]

Commencement of proceedings.

179. (1) Proceedings before a Labour Court in respect of disputes falling under clause (a) of paragraph A of sub section (1) of Section 78 shall be commenced on an application made by any of the parties to the dispute, a special application under sub-section (3) of section 52 or an application by the Labour Officer and proceedings in respect of a matter falling under clause (c) of the said paragraph A on an application made by any employer or employee directly affected or the Labour Officer.

(2) Every application under sub-section (1) shall be made in the prescribed form and manner.

(3) An application in respect of a dispute falling under clause (a) of paragraph A of sub-section (1) of Section 78 shall be made-

(a) if it is a dispute falling under sub-clause (i) or (ii) of the said clause, within three months of the arising of the dispute;

(b) if it is a dispute falling under sub-clause (iii) of the said clause, within three months of the employee concerned having last approached the employer under the proviso to sub-section (4) of section 42.

(4) An application in respect of a matter falling under clause (c) of paragraph A of sub-section (1) of section 78 shall be made within three months of the commencenment of the strike or lock-out or of the making of the illegal change, as the case may be.

Competency to make an application

This section is important. It lays down as to who can move the Labour Court by making an application to it. Any person other than those mentioned in the section is not entitled to make an application and the application made

[1] Cri. Ref. No. 49/1941 Per. Beaumont C. J. and Sen. J. (High Court Judgment).

by such a person will be dismissed.

As regards disputes falling under clause (a) of paragraph A of sub-section 78 (1), the application is to be made by any of the parties to the dispute or the Labour Officer. A special application may be made to it under Section 52 (3). But can a registered union which is a representative of the employees make an application to the Labour Court in respect of disputes falling under section (79) (1) (A) (a) ? Such a union is competent to make an application if it can be considered to be a "party" within the meaning of this sub-section. In proceedings in respect of matter falling under clause (c) of Section 79 (1). A, i. e. in respect of disputes whether a strike, lock-out or change is illegal, the application can be made by an employer, employee directly affected or Labour Officer. The application made by any other person will be incompetent and will be dismissed.

Employee directly affected:—

The application for declaring a change or lock-out to be illegal can be made by a Labour Officer or an employee directly affected. Where the Labour Officer is not the applicant, the person applying must be an employee, and he must be directly affected. Unless these conditions are fulfilled, he is not competent to move the Labour Court. The word employee has been defined in section 3 (13) of the Act. Unless section 55 of the Bombay Industrial Disputes Act an employee concerned could make an application for declaration that a lock-out or a change is illegal. Under this section for the words "employee concerned" the words "employee directly affected" are substituted. The effect of the change seems to make law more stringent. For the words "directly affected" are rather narrower than the words "concerned." However the following decisions of the Industrial Court under section 55 of the B. I. D. Act would be good law in the cases falling under sub-clause (c) of paragraph A of section 78 (1) of this Act.

1. The applicant must be an employee within the meaning of the definition of the term in section 3 (13): otherwise the application will not lie. The applicant was discharged by the mills after 14 days notice. He applied to the Industrial Court praying that the mills had not filled up the post falling vacant by his discharge and therefore they have committed an illegal change by causing a reduction of a permanent character in the number of persons employed. Held that the applicant was not an employee and therefore he had no 'locus standi' to make an application. The Court observed, "On the question of discharge there is no doubt that nothing is illegal. That point has been conceded by the learned counsel on behalf of the applicant. He however alleges that no body else was appointed in his place and that therefore there was a reduction amounting to an illegal change. In my opinion however the applicant is not entitled to take up this point at all. Under, section 55 of the Bombay Industrial Disputes Act 1938, the application for illegal change is to be made either by an employee concerned or representative of the employees or the Labour Officer. The petitioner cannot be regarded as an employee concerned, because after his valid discharge from the mills within the meaning of the definition of the term in section 3 (10) [Sec. 3 (13) under this Act]

he ceases to be an employee of the Mills. Under that definition an employee means any person employed to do any skilled or unskilled, manual or clerical work and includes an employee discharged on account of any dispute relating to a change in respect of which a notice is given under section 28 of the Act. As the employee in the present case was not discharged in respect of any change for which notice had to be given, he does not come within the definition. After his discharge therefore he ceases to be an employee and he has no 'locus standi,' to make this application. If at all, any reduction is effected by the mill, the only person who could make an application is the Government Labour Officer"[1]

Where an employee who was properly discharged made an application alleging that the mills committed an illegal change by appointing on a large scale extra hands as "temporary" for work of a permanent character, the Court held that the applicant having been properly discharged was not entitled to file the application for an illegal change.[2]

Similarly where an employee who was validly discharged made an application praying that the grant of bonus by the Company subject to certain restrictions was an illegal change, held that as the applicant was not the employee of the mill on the date of the application and therefore he was not an employee and therefore he had no 'locus standi' after his discharge to make an application. The words, "and includes an employee discharged on account of any dispute relating to a change in respect of which notice is given under section 28" clearly show that all persons discharged for other reasons are excluded from the meaning of the term employee"[3]

Where an operative who had been validly discharged by 14 days' notice applied after his discharge for a declaration that the mills committed an illegal change in as much as they had not paid him during his service the dearness allowance payable under the award of the Industrial Court, held that under section 55 of the Act the application could be made by the employee concerned, a representative of the employee concerned or a Labour Officer. The service of the applicant had been terminated on 12th November 1945. Clearly therefore from 13th November 1945 the applicant was no longer an employee of the mill company. Therefore after that date he had no 'locus standi' to make an application of this kind. Therefore the application having been made on 29th November 1945 could not lie and was dismissed.[4]

11. Such applicant, even though an employee, must be directly affected.

1. Ganpat Rambhau Gayekwar Vs. The New Pralhad Mills Ltd Appn No. 16/1941. Bombay Labour Gazette. (July 1941) Vol 20. Page 935.

2 Govind Gangaram Gayekwar Vs The Khatau Makanji Spinning and Weaving Co Ltd. Appn No 23/1944. Bombay Labour Gazette. (April 1945) Vol 24 Page 491.

3. Sivadeo Ganpat Savant Vs. The New Pralhad Mill Ltd. Appn No. 87/1944 Bombay Labour Gazette. (June 1946). Vol. 25. Page 760.

4. Dahyabhai Kalidas Vs. The Vijaya Mills. Co. Ltd Appn. No. 114/1945. Bombay Labour Gazette (July. 1946) Vol. 25 Page 848.

Natwarlal Sankalchand Vs. The Vijaya Mills Co Ltd Appn. No. 113/45. Bombay Labour Gazette. (July 1946) Vol 25. Page 859

Yashwant Ramji Vs The Silver Cotton Mills Co Ltd. Appn. No. 76/1946 Bombay Labour Gazette. Part I (19th. Dec 1946,) Page 3713.

The applicants who were permanent employees alleged that certain other persons who should be treated as permanent operatives in view of the work done by them have been treated as temporary operatives and therefore the mills have committed an illegal change. The Court held that under section 55 of the Bombay Industrial Disputes Act, the Industrial Court may declare any change illegal on the application of the employee concerned or a representative of the employees concerned or the Labour Officer. The application was made neither by the representative of the employees nor by the Labour Officer. The employees concerned were the persons who have been treated as temporary operatives and they had not applied, therefore the application made by the applicants was not maintainable.[1]

III. The applicant is an employee directly affected. He has a right to commence proceedings for declaring an illegal change, but the declaration would be only in respect of the employee and not in respect of the General Body of workers.

Thus where there was a registered settlement between the mills and General Body of workers who were represented by five elected representatives, some of the workers made an application for a declaration that the mills have committed an illegal change by contravening the terms of the settlement. It was contended on behalf of the mills that as the contract was with the General Body of the workers, the application could be made only by the General Body through elected representatives, or a representative union or the Labour Officer and that it was not open to the individual workers to make an application. Held over-ruling the contention that, "It was not necessary that the application should be made on behalf of the general body of the workers. Under section 55 of the Bombay Industrial Disputes Act an application may be made to the Industrial Court by an employer, an employee concerned, or a representative of the employees concerned or the Labour Officer for a decision whether any change made is illegal. This section gives the right to any employee concerned to file an application for the purpose of having a declaration that any change is illegal. The words used are "employee concerned" which in our opinion in the present case mean employee concerned in the observance of the term of the settlement. It is undoubtedly true that it would have been open to a representative of the employees or the Labour Officer to file such an application as the present one in which case the declaration would have been given in favour of the general body of workers if the contention urged on their behalf was upheld by this court. But that does not mean that an employee concerned in the observance of the terms of the settlement is not entitled to file an application when section 55 of the Act in express term authorises him to do so. It is true that when an application has been made by an individual employee, it would enable a declaration to be given only in respect of that employee and not in respect of the general body of workers. The application is therefore maintainable at the

1. Sakharam Jayaram Vs The Khatau Makanji Spinning and Weaving Mills Co Ltd Appn 158/1943 (Jan 1943), Bombay Labour Gazette Vol. 23, Page 322

instance of the present applicants."[1]

Note:—Under Section 55 of the Bombay Industrial Disputes Act which corresponds to paragraph A clause 1 (c) of section 79, beside others a representative of employees also could make an application to the Industrial Court. as mentioned in the ruling quoted above but under this Act. proceeding in respect of matters falling under clause (c) of paragraph A of sub-section 78 an application to the Labour Court can be made by an employer, employee directly affected or the Labour Officer. There is no mention of representative concerned in this section. Section 33 provides for representation of employees before the Industrial and Labour Courts in proceedings mentioned in it.

Withdrawal of an application :-

It was held under the Bombay Industrial Disputes Act that if a person who has made an application for declaring a strike to be an illegal and wants to withdraw, there should be no objection whatever in allowing him to withdraw. For the application is merely for a declaration and if the applicant does not want that declaration it is open for him to withdraw the application.[2]

It was held in that case that where the mills company gave an assurance to the worker that if they abandoned the strike and resume work the application would be withdrawn, the application would not be tenable.[3]

But the same Judge who decided the above application stated in other case that, "I am surprised that argument is made that opponents Nos. 2 to 7 resumed work because of an understanding alleged to have been given to them by the manager of the mills that he would not proceed against them under the Bombay Industrial Disputes Act in case they went back to work. I do not see how such an understanding can alter the merits of the case."[4]

Dismissal for want of prosecution

An application for declaration that a strike is an illegal one would be dismissed for want of prosecution if no body remains present on behalf of the Mills even though the opponents admi tthe strike. However it would be open to them to make a fresh application on the same facts.[5]

Compromise of applications

Under the Bombay Industrial Disputes Act, if the parties come to an agreement in respect of the subject-matter of the application for declaration

1 Vithoba Shivram Vs. The Digvijaya Spinning and Weaving Co. Ltd Appn. No. 218/1940. Bombay Labour Gazette (Nov 1944) Vol 24. Page 182.

2 The Broach Fine Counts Spinning and Weaving Co Ltd Vs The Government Labour Officer, A'bad and others Application No. 20/1943 Bombay Labour Gazette. (Sept. 1943) Vol. 23 Page 25.

3. Ibid.

4. The Broach Fine Count Spinning and Weaving Co. Ltd Vs The Government Labour Officer Appn. No. 219/1943 Bombay Labour Gazette (March 1945) Vol. 24. Page 410.

5 The Broach Fine Counts Spinning and Weaving Co. Ltd. Vs The Government Labour Officer A'bad. Appn No 52/1942 Bombay Labour Gazette (March. 1943) Vol. 22. Page 457.

Sitaram Megbram Vs. The Bharat Suryodaya Mills Co Ltd. Appn No 220/1943 Bombay Labour Gazette (March 1945) Vol. 24. Page 412.

under section 55 of the Act, the application would be disposed of.[1]

Exparte Application :

If no written statement is filed by opponent nor any appearance is put in even at the time of hearing on the broad principle that the statements not denied should be taken as having been admitted the Court would decide to act on the applications duly verified and allow them.[2]

RES JUDICATA : Fresh Application by another set of workers of the same mill on the same subject-matter :

Some of the workers of the mill made an application for declaration that the mills committed an illegal change by not including the special war-time allowance in calculating bonus. The application was dismissed. Then other workers of the same mills made an application for illegal change. The Court held that, "A fresh application by a different set of workers who are dis-satisfied with the orders of this Court on precisely the same subject matter which was the basis of similar applications which were filed by another set of workers belonging to the same department is clearly not maintainable. The hearing of this application would be tantamount to re-opening the matters already decided by this very court after hearing the parties' learned Advocates for which I am afraid there is no provision anywhere in the Bombay Industrial Disputes Act."[3]

Summoning of parties and procedure at inquiry.

80. (1) On receipt of an application under section 79 the Labour Court shall summon all parties affected by the dispute to appear, and shall hold an inquiry.

(2) In inquiry under sub-section (1) the Judge presiding over the Labour Court shall himself, as such inquiry proceeds, record a minute of the proceedings in his own hand, embracing the material averments made by the parties affected and the material parts of the evidence. The decision shall be signed by him and shall set forth the grounds on which it is based.

Reference to Industrial Court by Labour Court.

81. A Labour Court may refer any question of law arising in any proceeding before it to the Industrial Court for decision. Any order passed by the Labour Court in such proceeding shall be in accordance with such

1. Satar Bhimji Dharamshi Vs. The Bharat Suryodaya Mills Co Ltd. Appn No 11/1944. Bombay Labour Gazette (March. 1945) Vol 24. Page 415

The Textile Labour Association, Ahmedabad, Vs. The Ahmedabad Laxmi Cotton Mills Co, Ltd. Appn. No. 161/1943. Bombay Labour Gazette. (Oct. 1944) Vol 24. Page 91

Nana Jiva Vs. The Maneklal Harilal Spinning and Manufacturing Co. Ltd Appn No. 22/1944. Bombay Labour Gazette. (Feb. 1945) Vol. 24. Page 356.

2. Hiralal Ashara, Vs. The Hathising Manufacturing Co. Ltd. Appn No 8/43 and 28/43 Bombay Labour Gazette. (Dec. 1943) Vol 23 Page 263

3. Gulam Rasul Mahomed Vs. The Monogram Mills. Co Ltd. Appn. No. 73/1945 Bombay Labour Gazette. (July 1946) Vol. 25. Page 858.

decision.

Cognizance of offences

82. No Labour Court shall take cognizance of any offence except on a complaint by the person affected of facts constituting such offence or on a report in writing by the Labour Officer.

COMMENTS.

This section lays down that only the person affected can file a complaint in respect of an offence under the Act. A complaint by any other person will not be entertained. Of course the Labour Officer can make a report on which the court will take cognizance of an offence. Under Section 78 (1) an application for deciding a strike, lock-out or change is to be made. It should be made besides others by an employee directly affected, while a complaint as regards an offence is to be made by the person affected. Is the difference in language intentional ? From the language it seems that an employee though indirectly affected may make a complaint in respect of an offence under the Act including the offence of committing an illegal change or lock-out. For though indirectly affected he is a person affected, but he cannot make an application for deciding whether change or lock-out is illegal

OFFENCES UNDER THE ACT: Withdrawal, dismissal and composition;-

Under section 83 of this Act, the provisions of the Code of Criminal Procedure apply to trial of offences under it except in so far as special provisions are made under this Act. Section 5 (2) of the Criminal Procedure Code is to the same effect. Under this Act the only provisions are sections 82, 83 and 84. Section 82 deals with competency to make a complaint and section 83 lays down the procedure to be followed. Section 84 provides for appeals against the orders and decisions of the Labour Court. So in all other matters the provision of the Code of Criminal Procedure apply by virtue of section 5 (2) thereof. Under Schedule II of the Criminal Procedure Code which would apply to this Act the offences under this Act will be bailable, not compoundable, and as none of the offences is punishable with an imprisonment exceeding six months, they will be triable as summons cases. So under section 248 of the Code the complaint can be withdrawn with the permission of the Court. Also the complaints would be dismissed for default under section 247 of the Code. In short the offences under this Act would be bailable, not compoundable, not cognisable, triable as a summons case and triable as a summary trial in which an appeal lies.

Powers and procedure of Labour Courts in trials.

83. In respect of offences punishable under this Act, a Labour Court shall have all the powers under the Code of Criminal Procedure, 1898, of a Presidency Magistrate in Greater Bombay and a Magistrate of the First Class elsewhere, and in the trial of every such offence shall follow the procedure laid down in Chapter XXII of the said Code for a summary trial in which an appeal lies; and the rest of the provisions of the said code shall, so far as may be, apply to such trial,

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Appeals.

84. (1) Notwithstanding anything contained in section 83 an appeal shall lie to the Industrial Court—

(a) against a decision of a Labour Court in respect of a matter falling under clause (a) or (c) of paragraph A of sub-section (1) of section 78, except to the extent to which it determines whether a strike or lockout was illegal or not, or a decision of such Court under paragraph C of sub-section (1) of the said section;

(b) against a conviction by a Labour Court by the person convicted;

(c) against an acquittal by a Labour Court in its special jurisdiction, by the Provincial Government;

(d) for enhancement of a sentence awarded by a Labour Court in its special jurisdiction, by the Provincial Government.

(2) Every appeal shall be made within thirty days from the date of the decision, conviction, acquittal or sentence, as the case may be:

Provided that the Industrial Court may for sufficient reasons allow an appeal after the expiry of the said period.

Special Jurisdiction:–

Under the bill as originally drafted the jurisdiction of a Labour Court to try offences was termed special jurisdiction, but later on this nomenclature was dropped. The words 'special jurisdiction' seems to have remained in clauses (c) and (d) of sub-section (1) of this section through inadvertence. The words 'special jurisdiction' therefore mean criminal jurisdiction.

Industrial Court to exercise superintendence over Labour Courts.

85. The Industrial Court shall have superintendence over all Labour Courts and may—

(a) call for returns;

(b) make and issue general rules and prescribe forms for regulating the practice and procedure of such Courts in matters not expressly provided for by this Act and in particular, for securing the expeditious disposal of cases;

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such Courts;

(d) settle a table of fees payable for process issued by a

Labour Court or the Industrial Court.

Decision, etc., of Labour Court not to be called in question

86. Except as otherwise provided by this Act, no decision, award or order of a Labour Court shall be called in question in any proceeding in any civil or criminal Court

CHAPTER XIII.

Court of Industrial Arbitration.

87. It shall be the duty of the Industrial Court—

Duties of Industrial Court.

(a) (i) to decide appeals under section 20 or 44 from orders passed by the Registrar;

(ii) to decide appeals from the decision of the Comissioner of Labour under section 36 and 39 and revision applications under section 37 regarding standing orders;

(iii) to decide disputes referred to it under sub-section (6) of section 58;

(iv) to decide all matters which may be referred to it by a Conciliator or a Board under Section 61 or by an arbitrator under section 69;

(v) to decide industrial disputes referred to it in accordance with submissions registered under section 66 which provide for such reference to the Industrial Court;

(vi) to decide industrial disputes referred to it under section 71, 72 or 73;

(vii) to decide matters referred to it under section 90;

(viii) to decide questions relating to the interpretation of this Act or rules made thereunder and standing orders referred to it under section 91;

(ix) to decide references made to it under section 99;

(x) to decide such other matters as may be referred to it under this Act or the rules made thereunder;

(b) to decide appeals made under section 84 from a decision of a Labour Court.

Legislative changes :-

This section corresponds to section 53 of the Bombay Industrial Disputes Act and there have been substantial alterations, additions and ommissions.

Under this Act the Industrial Court is the Supreme Court of appeal, revision and reference and arbitration in matters covered by the Act. The original work it performed under the Bombay Industrial Disputes Act by way

of hearing and desposing of applications for declaring whether a strike, change or lock-out is illegal or not, have now been transferred to the Labour Courts.

Under the Bombay Industrial Act the offences under the Act were tried and punished by the ordinary criminal Courts and the appeals and revisions lay under the Criminal Procedure Code to the superior criminal courts. Under this Act the Labour Court tries the offences under the Act and appeal lies to the Industrial Court. Under section 89 (2) the Industrial Court has all the powers of the High Court of Bombay under the Code of Criminal Procedure in respect of offences punishable under the Act.

Powers of Industrial Court

88. (1) The Industrial Court in appeal may confirm, modify, add to or rescind any decision or order appealed against and may pass such orders therein as it may deem fit.

(2) In respect of offences punishable under this Act, the Industrial Court shall have all the powers of the High Court of Judicature at Bombay under the Code of Criminal Procedure, 1898.

V of 1898

(3) A copy of the orders passed by the Industrial Court shall be sent to the Labour Court.

Cancellation of registration of union

89 If in any proceeding the Industrial Court finds that any union was registered by reason of a mistake, misrepresentation or fraud, or that a registered union has contravened any of the provisions of this Act, the Industrial Court may direct that the registration of such union shall be cancelled.

Legislative changes :-

This section corresponds to section 54 of the Bombay Industrial Disputes Act.

Reference on point of law

90. (1) A civil or criminal Court may refer any matter or any issue in any suit, criminal prosecution or other legal proceeding before it relating to an industrial dispute to the Industrial Court for its decision. Any order passed by such Court in such suit, prosecution or legal proceeding shall be in accordance with such decision.

(2) The Provincial Government may refer to the Industrial Court any point of law arising in any proceedings held under this Act. The Industrial Court shall not decide any such reference save in open Court and with the concurrence of a majority of the members of the Court present at the hearing of the reference.

Legislative Change:-

This section corresponds to section 56 of the Bombay Industrial Disputes Act. Under that Act only Civil Courts could refer any matter or issue to the

Industrial Court. Under this Act a Criminal Court is also empowered to refer an industrial dispute to the Industrial Court for its decision. Sub-section (2) is new.

Reference regarding interpretation of Act and Rules

91. The Commissioner of Labour may refer any question relating to the interpretation of this Act or the rules made under this Act to the Industrial Court for its decision.

This section is new and empowers the Commissioner of Labour to make a reference regarding the interpretation of the Act and rules to the Industrial Court.

Procedure before Industrial Court.

92. (1) The Industrial Court shall make regulations consistent with the provisions of this Act and the rules made thereunder regulating its procedure

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for the formation of Benches consisting of one or more of its members and the exercise by each such Bench of the jurisdiction and powers vested in it :

Provided that no Bench shall consist only of a member who has not been, and at the time of his appointment was not eligible for appointment as, a Judge of a High Court.

(3) Every regulation made under sub-section (1) or (2) shall be published in the *Official Gazette*.

(4) Every proceeding before the Industrial Court shall be deemed to be a judicial proceeding within the meaning of sections 192, 193 and 228 of the Indian Penal Code.

XLV of 1860.

(5) The Industrial Court shall have power to direct by whom the whole or any part of the costs of any proceeding before it shall be paid.

Provided that no such costs shall be directed to be paid for the services of any legal adviser engaged by any party.

This section may be read with advantage along with section 10. Read together these two sections give a clear picture of the composition and procedure of the Industrial Court.

Under section 24 of the Bombay Industrial Disputes Act, the Industrial Court was to consist of two or more members. It was contended that when the third member was absent, the Industrial Court was not competent to hear applications as a Full Bench. The Court held that so long as there are two members of the Industrial Court including the President, the Court is properly constituted. Even though there may be three members of the Court it is not necessary that the Full Bench must always consist of all three members when

reference is made by one member sitting singly.'

Execution of order as to costs.

93 An order made by the Industrial Court regarding the costs of a proceeding may be produced before the Court of the Civil Judge within the local limits of whose jurisdiction any person directed by such order to pay any sum of money has a place of residence or business or where such place is within the local limits of the ordinary civil jurisdiction of the High Court before the Court of Small Causes of Bombay, and such Court shall execute such order in the same manner and by the same procedure as if it were a decree for the payment of money made by itself in a suit.

This section corresponds to section 58 of the Bombay Industrial Disputes Act. For the words " Principal Court of original Jurisdiction " the words "the Court of the Civil Judge" has been substituted in this Act.

Parties on whom order of Industrial Court binding.

94. An order, decision or award of the Industrial Court shall be binding on --

(a) all parties to the industrial dispute who appeared or were represented before it;

(b) all parties who were summoned to appear as parties to the dispute whether they appeared or not, unless the Industrial Court is of opinion that they were improperly made parties;

(c) in the case of an employer who is a party to the proceeding before such Court in respect of the undertaking to which the dispute relates, his successors, heirs or assigns in respect of the undertaking to which the dispute relates; and

(d) in the case of a registered union which is a party to the proceeding before such Court, all persons represented by the union at the date of the award, as well as thereafter.

Legislative Changes :-

This section corresponds to section 59 of the Bombay Industrial Disputes Act. A very important change is made in sub-clause (d). Under the Bombay Industrial Disputes Act the order, decision or award of the Industrial Court was binding upon "all persons who were members of the union on the date of

1. The Gopal Mills Co. Ltd. Vs. The Government Labour Officer, Ahmedabad. Appn. No. 4/1944. Bombay Labour Gazette. (June 1945) Vol. 24. Page 626.

dispute or who became members of the union thereafter," and under this section it has been made binding on "all persons represented by the union at the date of the awards as well as thereafter." It may further be noted that the persons who are bound under clause (d) are "all persons represented by the union at the date of *award*." There are no such words 'as decision or order' in this sub-clause. It seems to be an inadvertent mistake. The words should be "at the date of award, decision or order." Section 115 also makes decision and orders of the Industrial Court as well as a Labour Court binding.

Order of Industrial Court not liable to appeal or review.

95. No order, decision or award of the Industrial Court shall be called in question in any civil or criminal Court.

High court's power to interfere with the decision of the Industrial court:-

The High Court of Bombay has held that if the Industrial Court had acted without jurisdiction or in excess of the legal authority, the High Court would have the power to interfere with its decision by the issue of a writ of certiorari in spite of section 60 of the Bombay Industrial Disputes Act (corresponding to section 95 of the present Act). But if the Industrial Court has power to decide a question it cannot be said to have acted without jurisdiction or in excess of its jurisdiction merely because it has decided wrongly.[1] Thus where the Industrial Court decides that the non-payment of dearness allowance to night shift workers in contravention of the terms of an award amounted to an illegal change, an application for a writ of certiorari was made to the Bombay High Court. The High Court held that it was not a question of jurisdiction. "The Industrial Court had jurisdiction to decide whether the change was an illegal one. If the Industrial Court had decided that the operatives were not entitled to the dearness allowance and non-payment thereof did not amount to an illegal change, it could not be contended that it had exercised a jurisdiction not vested in it by law or had acted in excess of jurisdiction. The position is not altered merely because it decided otherwise and held that the change was illegal. Assuming the contention of the mills to be correct, all that can be said is that the Industrial Court having power to decide that question has decided it wrongly. But that would not be an illegal exercise of jurisdiction or a decision in excess of its jurisdiction."[2]

Officer to appear in proceeding before Industrial Court.

96. The Provincial Government may direct any officer to appear in any proceeding before the Industrial Court by giving notice to such Court and on such notice being given such officer shall be entitled to appear in such proceeding.

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1. The Kalyan Mills Co. Ltd. Vs. Government Labour Officer at Ahmedabad. Civil Appl. No. 1019 of 1941. Bombay Labour Gazette (March 1944) Vol 23, Page 453. Per High Court of Bombay.
2. Ibid

CHAPTER. XIV.

Illegal Strikes and Lock-outs.

Illegal strikes.

97. (1) A strike shall be illegal if it is commenced or continued—

(a) in cases where it relates to an industrial matter specified in Schedule III or regulated by any standing order for the time being in force;

(b) without giving notice in accordance with the provisions of section 42;

(c) only for the reason that the employer has not carried out the provisions of any standing order or has made an illegal change;

(d) in cases where notice of the change is given in accordance with the provisions of section 42 and where no agreement in regard to such change is arrived at, before the statement of the case referred to in section 54 is received by the Conciliator for the industry concerned for the local area;

(e) in cases where conciliation proceedings in regard to the industrial dispute to which the strike relates have commenced, before the completion of such proceedings;

(f) in cases where a special intimation has been sent under sub-section (2) of section 52 to the Conciliator, before the receipt of the intimation by the person to whom it is to be given;

(g) in cases where a submission relating to such dispute or such type of disputes is registered under section 66, before such submission is lawfully revoked;

(h) in cases where an industrial dispute has been referred to the arbitration of a Labour Court or the Industrial Court under sub-section (6) of section 58 or under section 71, or of the Industrial Court under section 72 or 73, before the date on which the arbitration proceedings are completed, or the date on which the

award of the Labour or Industrial Court, as the case may be, comes into operation, whichever is later ;

(i) in contravention of the terms of a registered agreement, or a settlement or award.

(2) In cases where a conciliation proceeding in regard to any industrial dispute has been completed, a strike relating to such dispute shall be illegal if it is commenced at any time after the expiry of two months after the completion of such proceeding.

(3) Notwithstanding anything contained in sub-sections (1) and (2), if fourteen clear days notice of a strike not falling under clause (a), (g), (h), or (i) of sub-section (1) was given to the employer and the Labour Officer, and the strike was not commenced either before the expiry of the period of notice or after six weeks from the date of its expiry, the employees who resume work within forty-eight hours of a Labour Court or the Industrial Court declaring such strike to be illegal shall incur no penalty under this Act in respect of such strike:

Provided that nothing in sub-section (3) shall apply to any strike which has within the period of notice been declared under section 99 to be illegal.

Legislative changes :

This section corresponds to section 62 of the Bombay Industrial Disputes Act. The clauses (a) and (f) of sub-section (1) are new. The other clauses are substantially the same. Sub-section (3) is new.

STRIKE :-

Strike has been defined in section 3 (36) of the Act. It is not every cessation of work that is a strike under the Act. A cessation of work would be a strike only if it comes under the definition of 'strike'. Nor is every strike illegal. Only those strikes which are commenced or continued in circumstances specified in sub-sections (1) and (2) of section 97 would be illegal. Therefore in order to prove that a strike was an illegal one it must be proved that the cessation of work was a strike within the meaning of the definition of the term in section 3 (36) and also that it was commenced or continued under any of the circumstances specified in sub-sections (1) and (2) of section 97.

Under the definition as given in section 3 (36) "strike" means "a total or partial cessation of work by the employees in an industry acting in combination or a concerted refusal or a refusal under a common understanding of the employees to continue to work or to accept work, where such cessation or refusal is in consequence of an industrial dispute"

Ingredients of an illegal strike :

Therefore in order to prove an illegal strike it has to be proved that (i) there was a total or partial cessation of work by the employees in an industry or refusal to continue to work or to accept work, (ii) the cessation of work must be by the employees acting in combination or the refusal to continue to work or accept work must be concerted or under a common understanding of employees, (iii) such cessation or refusal is in consequence of an industrial dispute as defined in section 3 (17) and (iv) the strike was commenced or continued under any of the circumstances specified in sub-sections (1) and (2) of Section 97.

In order to hold an employee to be guilty of continuing or commencing an illegal strike every one of these ingredients must be proved.

Partial or total cessation.

The cessation of work even for a short time would amount to a strike if it is connected with an industrial matter.[1]

Where the workers stopped the work and approached the authorities to represent their case during working hours, held that it amounted to a strike within the meaning of this definition. If the workers had any grievance they could have represented their case to the management or the Government Labour Officer after the working hours instead of stopping work during working hours.[2]

The expressions "partial cessation of work" and "concerted refusal to continue to work" must mean refusal by the employees to do work in accordance with the hours fixed for work or in accordance with the custom or usage of the industry. Where the hours fixed for first relay were 7 A. M. to 11 A M. and from 12 noon to 5 P. M. and for the second relay from 7 A. M. to 12-30 P. M. and from 1-30 P. M. to 5 P. M., all the workers stopped work between 11 A. M. to 1 P. M; held that the concerted refusal to work in accordance with the hours fixed amounted to a strike within the meaning of the definition.[3]

The mills increased the daily hours of work from 9 to 10 as they were legally entitled to and fixed the time from 7 A. M. to 6 P. M. with recess from 12 noon to 1 P. M. The old hours of work were 7-30 A. M. to 5-30 P. M. One hundred and one workers resented this increase of hours and on the day the new arrangement came into force they came to work at 7-30 A. M. and went out in a body at 5-30 P. M. i. e. according to old timings instead of working up to 6 P. M; it was held that this was partial cessation of work by the employees acting in combination and the cessation of work was in consequence of an industrial dispute. For the dispute being as regards question of hours of work, which is an industrial matter it was an industrial dispute and therefore the

1. Mahadev Vishnu and others Vs The Victoria Mills. Co. Ltd. No. 2. Application No. 23/1943. Bombay Labour Gazette. (Nov. 1943) Vol. 23. Page 197.

2. The Raghuvanshi Mills. Ltd Vs The Government Labour Officer, Appn. No. 9/1942 (July. 1942) Vol 21. Page 1122.

3 ' The Sarangpur Cotton Manufacturing Co. Ltd. Vs The Government Labour Officer, Ahmedabad. Appns. No. 28/1942 and 29/1942. Bom. Labour Gazette (August. 1942) Vol. 21 Page 1189.

action of the workers amounted to a strike and as no notice of change was given by the workers it amounted to an illegal change.[1]

Where the employees refused to work in the 10th hour of the shift on 2nd May of 1945 and for several days thereafter, their demand being the reduction of hours of work from 10 to 9, held that the strike was illegal, as no notice of change was given.[2]

The operatives in the grey and colour winding department stopped creeling work contending that it was not part of their legitimate work and they were not bound to do. Held that the stoppage of creeling work amounted to an illegal strike.

If the opponents thought that creeling was not part of their work it was not open to them to stop that work. The only course open to them was to resort to conciliation proceedings.[3]

A concerted refused to work, by refusing to go to work at all would amount to a strike. It is not necessary that in order that there may be a cessation of work, the work ought to be started and stopped. If the employees do not attend the mill and thereby bring about the stoppage of work, they would be bringing about cessation of work.[4]

Under a common understanding

It is necessary that the cessation of work must be by the employees acting in combination or that their refusal to work was concerted under a common understanding.

In the under-noted case the workers had admittedly struck work, but it was contended that there was no concerted action on their part and therefore the cessation of work did not amount to a strike. The principal witness for the workers stated that he himself stopped the work in protest and the other workers followed without any concerted action on their part. The court held, "It is impossible to believe that each one of the workers stopped work one after the other without any concerted action on their part. Admittedly the stoppage of work was meant as a protest and there could not have been almost simultaneous stoppage of work unless the workers had resolved through their leader that they must stop the work on that morning. Therefore the stoppage was due to concerted action on the part of the opponent employees."[5]

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1. The Ahmedabad Cotton Manufacturing Co. Ltd. Vs. The Textile Labour Association Ahmedabad. Appns. No 4/1941. and 8/1941. Bombay Labour Gazette (April. 1941) Vol. 20. Page 629.

2 The Kamla Mills Ltd. Vs. The Government Labour Officer and others. Appn. No 61/1945. Bombay Labour Gazette (April. 1946) Vol. 25 Page 598.

3. The Gopal Mills. Co. Ltd. Vs. The Government Labour Officer, Ahmedabad. Appn. No. 3/1945. Bombay Labour Gazette. (Jan. 1946) Vol. 25 Page 334

4 The Ahmedabad Kaiser-I-Hind Mills. Co. Ltd. Vs. The Textile Labour Association. Ahmedabad. Appn. 71/1945. Bombay Labour Gazette. (Feb. 1946) Vol. 25. Page 426.

5 The Swadeshi Mills. Co. Ltd Vs. The Government Labour Officer and others Appn. No. 57/1941. Bombay Labour Gazette. (Dec. 1941) Vol. 20. Page 382.

Similarly when 221 workers struck work for an increase in wages it was contended that the cessation of work was not concerted and there was no prior concertation among them. The Court over-ruled the contention holding that it was not likely that that the idea of downing the tools came spontaneously to each of the 221 employees independently and at the same time.[1]

Where about 200 workers left the mills at the close of a meeting, held that this could not have been the case unless there was a concerted action, because of the dissatisfaction that the workers were not likely to get their demand of 2 annas as dearness allowance.[2]

Where out of 3500 workers about 200 workers wanted that the muslim workers should not be employed, while the rest were in favour of amicably settling between them and the muslim workers and the workers did not go on work for two days as they were holding discussions regarding allowing the muslim workers to work and also through fear that the 200 workers who were against muslim employees working in the mills might create a scene, held that though there was a cessation of work, it was not due to the common understanding of hindu workers except a comperatively small group of about 200 workers and it therefore did not come within the definition of strike.

"There is no doubt that about 200 workers were trying to force the remaining workers not to allow the muslims to work but there is no evidence to show who they were and no declaration can be granted in the absence of their names being ascertained."[3]

Where Such Cessation or Refusal is in Consequence of an Industrial Dispute :

In order that cessation of work may amount to 'strike' it must be in consequence of an industrial dispute. If it could reasonably be attributed to other reasons it would not be a strike within the meaning of the definition of the term.[4]

The employees of the mill company demanded a holiday on 4th December as they wanted to celebrate the same as a 'Foundation Day'. The mills company refused the demand and kept the mills working on that day. None the less the employees of the spinning department struck work on the 4th. Thereupon the mills company applied to declare it to be an illegal strike. Held that it was not a 'strike'. The Court said, "The cessation of work on the 4th was directly traceable to their (employees') desire to observe 4th December as Foundation Day as requested by them originally. If the preliminary request on part of the workers and the refusal on the part of the applicants had not

1. The Ruby Mills. Ltd. Vs The Government Labour Officer and others Appn No. 228/1943. Bombay Labour Gazette. (April. 1944) Vol. 23. Page 503.

2. The Raja Bahadur Motilal Poona Mills. Ltd. Vs. Mohamed Sharif and others. Appn. No. 29/1941. Bombay Labour Gazette. (June. 1941) Vol. 20. Page 822

3. The Bombay Dyeing and Manufacturing Co. Ltd Vs. The Government Labour Officer and others. Appn. No. 64/1946. Bombay Government Gazette. Part I (6th March. 1947,) Page 814.

4. The Manekchowk and Ahmedabad Manufacturing Co. Ltd. No. 1. Vs. The Textile Labour Association and others. Appns. No. 2/1941 and 3/1941. Bombay Labour Gazette. (April. 1941) Vol. 20, Page 626.

been there and the workers had absented from work on the 4th December, for the purpose of observing the Foundation Day, it could hardly have been contended that the cessation of work was in consequence of an industrial dispute; and I cannot see why a polite request on the part of workers and the regretted inability on the part of the applicants, to grant it, should make any difference. The essence of the matter is whether the cessation of the work was *in consequence* of an industrial dispute. If it could be reasonably attributed to other cause it would not be a strike within the meaning of section 3 (36) of the Act (corresponding to section 3 (35) of the present Act.) In the present case the cessation of work on 4th December can in my opinion be reasonably attributed to the expressed desire of the workers to observe that day as the Foundation Day. It cannot necessarily be regarded as a cessation of work in consequence of an industrial dispute. That being so it cannot be regarded as a strike".[1]

Also where the workers absented themselves to take part in the municipal elections held that the reason for refusing to work viz., "because they wanted to take part in the municipal election" was not an industrial matter and therefore it did not amount to a strike within the definition of the term.[2]

The indispensable condition of a strike is that cessation of work must not only relate to an industrial dispute but must be in consequence of such dispute. This was very ably explained in the judgment of the Industrial Court in the following case: The workers demanded a holiday on 26th January 1944 for observing 'Independence Day'. The mills did not grant the holiday. Nonethe-less the workers did not turn up for work. In the application of the mills for declaring it to be an illegal strike, the court observed, "In order that cessation of work must amount to strike, such cessation must not only relate to an industrial dispute, but must be in consequence of such dispute. When the workers wished to observe a particular day as a holiday on some ground or other and refused to turn up on that particular day it cannot be said that the cessation of work was in consequence of an industrial dispute. Supposing the workers demanded increase in wages or reinstatement of a dismissed worker and stopped working on their demand being not conceded this would clearly be a strike because the refusal of the demand was the direct cause of cessation of work which was therefore in consequence of an industrial dispute. But where the workers in a body demand a holiday for any purpose not connected with an industrial dispute or intimate their desire to the employers and state further that they will not attend on that day even if the holiday was not granted, it can hardly be said that their cessation of work is in consequence of their demand being turned down. It is only an adherence to their already expressed desire to have a holiday and is not the direct result of a refusal to grant a holidy"[3]

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1. The Manekchowk and Ahmedabad Manufacturing Co. Ltd. No. 1. Vs The Textile Labour Association, Ahmedabad. Appn. No 31/1941 Bombay Labour Gazette. (April, 1941) Vol 20. Page 626

2. The Pratap Spinning Weaving and Manufacturing Co Ltd. Vs- The Amalner Girni Kamgar Union. Appn. No. 27/1942. Bombay Labour Gazette. (Dec. 1942) Vol. 22 Page 252.

3. The Gopal Mills, Co. Ltd. Vs. The Government Labour Officer Ahmedabad and others. Appn No 4/1944. Bombay Labour Gazette. (June. 1945) Vol. 24. Page 626

It was held in the following cases that there was no strike where certain workers remained absent on a particular working day even though the authorities had refused to grant holiday on that day,[1] or where certain non-muslim workers absented themselven on 'Oras' day even though their request for a holiday was turned down,[2] or certain workers absented themselves on the second day of Ramzan Id.[3]

However the Industrial Court held the cessation of work to be an illegal strike in the under-noted case where the employees struck work as they wanted rest on the 4th March immediately after the two holidays for Holi on 2nd and 3rd which were fixed at their own desire.[4]

So also when the mills lawfully converted the 15th which was normally a working day into a holiday and kept the mills open on the 17th, a Sunday, a scheduled holiday, but the operatives remained absent contending that they were entitled to remain absent on 17th, held that it was an illegal strike.[5]

Absence from work without assigning reasons :

If the workers in a body stay away from working on any day without giving reasons for doing so and it cannot be proved that such abstention was due to any industrial dispute it would not come under the definition of strike because such abstention was not in consequence of an industrial dispute. The words "in consequence of an industrial dispute" were advisedly put in the definition. "If the workers stay away from work for any reason not connected with an industrial dispute, they do so at their own risk of losing a day's wages and bring themselves within the possibility of discharge from employment; but they cannot be punished for resorting to an illegal strike. They cannot be dismissed for misconduct because under the standing orders, going on strike is not a misconduct, unless it is against the provisions of the Act."[6]

But in another decision the court held that the cessation of work must be presumed to be in consequence of an industrial dispute.

"If the workers did resort to cessation of work, the management would not be in a position to say as to whether it was in consequence of an industrial dispute unless the workers tell the management the reason for going on strike.

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1. The Ahmedabad Sarangpur Mills Co. Ltd. Vs The Textile Labour Association Ahmedabad. Appn. No. 34/1944 Bombay Labour Gazette. (Dec. 1945) Vo 25. Page 267.

2. The Ahmedabad Kaiser-I-Hind Mills Co. Ltd. Vs The Textile Labour Association Ahmedabad. Appn. No. 36/1944 Bombay Labour Gazette (Dec 1945) Vol 25 Page 268.

3. The Ahmedabad. Kaiser-I-Hind Mills Co. Ltd Vs The Textile Labour Association Ahmedabad Appn. No. 109/1944 Bombay Labour Gazette. (Dec 1945) Vol. 25, Page 272.

4. The Khandesh Spinning and Weaving Co Ltd. Vs The Government Labour officer. Jalgaon and others. Appn. No. 23/1942 Bombay Labour Gazette (July. 1942) Vol. 21. Page 1127.

5. The Ahmedabad Kaiser-I-Hind Mills. Co. Ltd. Appn. No 71/1945 Bombay Labour Gazette (Feb. 1946) Vol 25. Page 426.

6 The Gopal Mills Co. Ltd. Vs. The Government Labour Officer and others. Appn. No. 4/1944 Bombay Labour Gazette. (June 1945) Vol. 24 Page 626.

Where therefore the cessation of work is admitted but the management is not told the reasons for doing so it would be impossible for the management to prove the reasons for doing so; it would be indeed impossible for the management to prove that the cessation was in consequence of an industrial dispute. In such cases it would be for the workers to prove that though there was cessation of work it was not in consequence of an industrial dispute but for some other reason.

If therefore the workers admit that they ceased doing work but did not prove for what reasons they did so, the burden does not lie upon the management to prove that the strike was resorted to in respect of an industrial matter; but the burden of proving that it was not a strike on the ground that it was not resorted to in consequence of an industrial dispute, lies upon the workers. If the burden of proof were on the management in such circumstances it would be quite easy for workers to resort to cessation of work even though their grievance related to an industrial matter without disclosing that reason to the management or anybody else and thereby prevent that cessation of work from being a strike as defined by the Act. I think therefore, that where total or partial cessation of work is admitted, as it is in the present case, the burden of proof that it was not in respect of an industrial matter lies on the workers and unless that burden is discharged the cessation or refusal would be presumed to be in consequence of an industrial dispute and thus amount to a strike".[1]

This decision seems to be in conflict with the decision in application No.4/1944. Moreover if the strike is to be for enforcing a demand one cannot understand why the demand should be concealed. It must be disclosed to the employer in one or another way if they want it to be granted.

Industrial dispute :

But if the cessation of work is in consequence of an industrial dispute it amounts to strike. Industrial dispute is defined in section 3 (17) as any dispute between an employer and employees which is connected with an industrial matter. Industrial matter is defined in sub-section (18) of section 3 as any matter relating to employment, work, wages, hours of work, privileges, rights, duties of employers or employees or the mode, terms and conditions of employment.

For reinstatement :

Where the workers struck work as a protest against the discontinuance of the old weaving master and the appointment of a new weaving master, held the dispute was an industrial dispute and the cessation of work amounted to a strike.[2]

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1. Shanti Shripat and others Vs. The Ambika Silk Mills. Co. Ltd. Appn. No. 22/1943. Bombay Labour Gazette. (Nov. 1943) Vol. 23. Page 195.

2. The New China Mills. Ltd. Vs. The Government Labour Officer and others. Appn. No. 14/1940. Bombay Labour Gazette. (Sept. 1940) Vol. 20. Page 50.

Also in the following cases where work was struck on account of the discharge of two head jobbers,[1] on account of the dismissal of a head jobber,[2] for the reinstatement of a head jobber who was dismissed,[3] or as a protest against the discharge of two workers,[4] or for reinstatement of a discharged worker[5] or reinstatement of a dismissed worker,[6] or on account of the suspension of a jobber,[7] it was held in each case that it amounted to a strike and as no notice of change was given under section 28 (2) of the Bombay Industrial Disputes Act, each of them was an illegal strike. Under this Act employment, unemployment and reinstatement fall under Schedule III item (6) and therefore a strike in respect of them is totally prohibited under section 97 (1) (a) and each of the above strikes would be illegal under section 97 (1) (a). The proper procedure would be to apply to the Labour Courts for redress of grievances in these matters.

So also where the cessation of work for compelling the removal of the assistant spinning master[8] or for removal of a watchman who had given a push to a worker[9] it was held to be a strike and as no notice of change was given, it was held to be an illegal strike.

Wages :

Wages are an industrial matter under the definition of the term, under section 3 (18) and therefore if the work is stopped for an increase in wages, it is in consequence of an industrial dispute and therefore the cessation of work would amount to strkie.[10]

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1. New Pralhad Mills. Ltd. Vs. Employees of the Mills. Appn. No. 64/1940. Bombay Labour Gazette. (Feb. 1941) Vol. 20. Page 420.

2. The Victoria Mills. Co. Ltd. Vs. The Government Labour, Officer and others. Bombay Labour Gazette. Appn. No. 26/1941. (May 1941) Vol. 20. Page 704.

3. The Bradbury Mills. Co. Ltd. Vs. The Government Labour Officer and others. Appn. No. 60/1943 Bombay Labour Gazette. (Aug. 1943) Vol. 22, Page 831.

4. The Khandesh Spinning and Weaving Co. Ltd. Vs. The Government Labour Officer. Appn. No. 48/1941. Bombay Labour Gazette. (Sept. 1941) Vol 21, Page 52.

5. The Niranjan Mills. Ltd. Vs. The Government Labour Officer. Ahmedabad and others. Appn. No. 78/1943. Bombay Labour Gazette. (Dec. 1943) Vol. 23. Page 273.

The Standard Mills. Co. Ltd. Vs. The Government Labour Officer. Bombay and others. Appn. No. 1/1942 Bombay Labour Gazette. (March. 1942) Vol. 21. Page 723.

The Bombay Dyeing and Manufacturing Co. Ltd. Vs. The Government Labour Officer. Appn. No. 44/1946. Bombay Labour Gazette. (July. 1946) Vol. 25. Page 864.

6. The Jam Manufacturing Co. Ltd. Vs. The Government Labour Officer Bombay and others. Appn. No. 33/1944. Bombay Labour Gazette. (July 1944) Vol. 23. Page 711.

7. The Raghuvanshi Mills. Co. Ltd. Vs. The Government Labour Officer, Bombay. Appn. No. 7/1942. Bombay Labour Gazette. (July. 1942) Vol. 21. Page 1122,

8. The Hindustan Spinning and Weaving Mills. Co. Ltd. Vs. The Government Labour Officer. Bombay and others. Appn. No. 103/1945. Bombay Labour Gazette. (April. 1946) Vol. 25. Page 600.

9. The Seksaria Cotton Mills. Ltd. Vs. The Government Labour Officer. Bombay. Appn. No. 37/1946. Bombay Labour Gazette. (July. 1946) Vol. 25. Page 861.

10. Hattersley Mills. Vs. The Government Labour Officer. Bombay and others. Appn. No. 53/1941 Bombay Labour Gazette. (Dec. 1941) Vol. 21. Page 380.

The Dhunraj Mills. Ltd. Vs. The Government Labour Officer and others. Appn. No. 42/1942. Bombay Labour Gazette. (Jan. 1943) Vol. 22. Page 327.

Similarly cessation of work on the ground of low wages would amount to strike.[1]

Where the workers demanded that they should be paid on scale weights and not on nominal weights as was the practice, and struck work in a body when that demand was not granted, held that it amounted to a strike, for it was in connection with an industrial matter.[2]

In each of these cases as no notice of change was given, every one of the strikes was held to be illegal. The workers of the applicant mills intimated to the Government Labour Officer to take steps for an increase in their wages. Employees heard nothing from the Government Labour Officer for two months and therefore out of exasperation at the delay of that Officer they struck work. Held, the strike was in respect of an industrial matter viz. grievance about low wages. " It is not correct to say that in as much as the immediate grievance was about the delay by the Labour Officer in taking steps under the Act, the grievance about low wages was a remote and not proximate cause for the strike". Therefore the cessation of work was held to be a strike and as no notice was given, it was held to be an illegal one.[3]

The weavers of the applicant mills did not accept the pay tickets on the ground that their wages were low and came out from the weaving shed in a body and stopped work for two and half hours until Labour Officer persuaded them to resume work: held that the strike was an illegal one as no notice was given under section 28 (2).

Where in accordance with list of pay-days fixed under standing order no. 8, the unclaimed wages were payable each Thursday but the employees did not draw their unclaimed wages on a Thursday, the day fixed for payment of unclaimed wages but on the following Friday demanded the unclaimed wages. The mills refused to accede to that demand and therefore the employees struck work. Held that under standing order No. 8 they were entitled to the payment of unclaimed wages on Thursday and if they wanted payment on any other day that would constitute change in an industrial matter in as much as the payment of unclaimed wages was a matter relating to wages and therefore would fall under the definition of industrial matter. According to the workes even though under the standing order the management was bound to give unclaimed wages on Thursday they wanted their unclaimed wages, in this particular case, on a day other than the day fixed by the management in their

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1. The Kamla Mills. Ltd. Vs. The Government Labour Officer and others. Appn. No. 20/1942. Bombay Labour Gazette. (July. 1942) Vol. 21. Page 1126.

The Kamla Mills. Ltd. Vs. The Government Labour Officer Bombay. Appn. No. 132/45. Bombay Labour Gazette. (April. 1946) Vol. 25. Page 606.

2. The Laxmi Cotton Manufacturing Co. Ltd. Vs. The Government Labour Officer. Sholapur. Appn. No. 10/1940. Bombay Labour Gazette. (Sept. 1940) Page 457

3. The Swadeshi Mills, Co. Ltd. Vs. The Government Labour Officer and others. Appn. No. 57/1941. Bombay Labour Gazette. (Dec. 1941) Vol. 21. Page 382.

The Moon Mills. Ltd. Vs. The Government Labour Officer, Bombay and others. Appn. No. 119/1944. Bombay Labour Gazette. (Jan. 1945) Vol. 24. Page 290.

2. The New Pralhad Mills. Ltd. Vs. The employees in the weaving department. Appn. No. 1/1941. Bombay Labour Gazette. (Feb. 1941) Vol. 20. Page 421.

discretion. That being so the workers' demand would not constitute a request for a change in the standing order as such but it would none the less amount to asking for a change in an industrial matter. That being so a notice was necessary under section 28 (2) of the Bombay Industrial Disputes Act, and as no notice was given the strike was held to be illegal.[1]

Under this Act the strike would be illegal under section 97 (1) (a) being in respect of a matter regulated by the standing orders.

Dearness Allowance :

Cessation of work for dearness allowance amounts to strike and if no notice of change is given it is illegal.[2]

The strike for dearness allowance would be illegal if it is resorted to before the completion of conciliation proceedings[3] but the strike within two months after the completion of the concilaition proceedings would be perfectly legal.[4]

Bonus :

Cessation of work in pursuance of a demand for bonus which the management refused to grant is in consequence of an industrial dispute and amounts to strike.[5] So also where the employees struck work demanding bonus in one instalment instead of in two instalments as previously announced; held the demand related to an industrial matter and the cessation of work was a strike.[6]

In all these cases the strike was resorted to without giving notice as required by section 62 (1) (b) (corresponding to section 97 (1) (b) of the present Act) and therefore all of them were held to be illegal.

For Hours of Work :

The question of hours of work is an industrial matter and dispute about hours of work is an industrial dispute within the meaning of the term. Thus where the management increased the hours of work from 9 to 10 (which they

1. The Mill Owners' Association Bombay Vs. The Government Labour Officer and others. Appn. No. 5/1940. Bombay Labour Gazette. (April, 1940) Vol. 19. Page 693.

2. The Kamla Mills Ltd. Vs. The Government Labour Officer. Appn. No. 41/1944. Bombay Labour Gazette. (Aug. 1944) Vol. 23. Page 759.

Government Labour Officer and others. Appn. No. 9/1943. Bombay Labour Gazette. (Aug 1943) Vol. 22. Page 827.

3. The Raja Bahadur Motilal Poona Mills. Ltd., Vs. Mahamad Sharif and others. Appn. No. 29/1941. Bombay Labour Gazette. (June. 1941) Vol. 20. Page 822.

4. The Raja Bahadur Motilal Poona Mills. Ltd Vs. The Dattu Balvant Gokule. Appn. No. 31/1941. Bombay Labour Gazette. (June. 1941) Vol. 20. Page 827.

5. The Seksaria Cotton Mills. Ltd. Vs. The Government Labour Officer and others. Appn. 10/1942 Bombay Labour Gazette. (July, 1942) Vol. 21. Page 1123.

The New Keiser-I-Hind Spinning and Weaving and Manufacturing Mills Ltd. Vs. The Government Labour Officer and others. Appn. No. 25/1942. Bombay Labour Gazette (July, 1942) Vol. 21. Page 1129.

6. The Swadeshi Mills. Co. Ltd. Vs. The Government Labour Officer and others. Appn. No. 6/1943. Bombay Labour Gazette (April, 1943) Vol. 22. Page 527.

were legally entitled to) and fixed the time of work from 7 A. M. to 6 P. M. instead of from 7-30 A. M. to 5-30 P. M., some workers came up at 7-30 A. M. as usual and left work at 5-30 P. M. instead of working up to 6 P. M., held that the dispute was an industrial dispute as it related to hours of work which is an industrial matter. Also admittedly there was partial cessation of work and the cessation of work was in consequence of an industrial dispute and therefore the action of the workers did amount to strike as defined in the Act and as no notice of change was given, it was illegal under section 62 (1) (b) of the Bombay Industrial Disputes Act [present section 97 (1) (b)].[1]

So also where the workers went on strike as a protest against the increase of the hours of work from 9 to 10 (which the management was empowered by a Government notification) even though the management agreed to reduce the hours of work. Held that the employees resorted to strike without giving a notice of change and therefore their action amounted to an illegal strike.[2]

Even if the management is not entitled to increase the hours of work, yet the strike would be illegal for the action of the management would constitute an illegal change and the strike only on the ground of an illegal change by an employer is illegal.[3]

So also where the workers stopped the working of relay system according to which the hours of first relay were 7 A. M. to 11 A. M. and from 12 to 5 P. M. and for second relay from 7 A. M. to 11-30 A. M. and 1-30 P. M. to 5 P. M.; held that concerted refusal to work according to the hours fixed amounted to "strike" within the meaning of the definition of the word. Similarly there was rightly or wrongly rationalisation of work in that department for two hours when half the number of employees attended to the working of the whole department. Concerted refusal to act up to this custom or usage of the industry would also amount to a 'strike' and if the employees wanted a change a notice of change under section 28 (2) of the Bombay Industrial Disputes Act [the present s. 42 (2)] must be given.[4]

Work :

Where the demand was that all the Badlis should be given work held that the demand was an industrial matter and cessation of work in consequence

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1. The Textile Labour Association, Ahmedabad. Vs. The Ahmedabad Cotton Manufacturing Co. Ltd. Appn. No. 4/1941 and 8/1941. Bombay Labour Gazette. (April 1941) Vol. 20. Page 629.

Mahadev Vishnu Vs. The Victoria Mills. Ltd. Appns. No. 23/1943. Bombay Labour Gazette. (Nov. 1943) Vol. 23. Page 197.

2. The Century Spinning and Manufacturing Co. Ltd. Vs. The Government Labour Officer and others. Appn. No 59/1941 Bombay Labour Gazette. (Jan. 1942) Vol. 21. Page 519.

3. S. 97 (1) (e).

Jivansing Bhagvansing and others Vs. The Broach Fine Counts Spinning and Weaving Co. Ltd. Appn. No. 39/1942 Bombay Labour Gazette. (March 1943) Vol. 22. Page 451.

4. The Sarangpur Cotton manufacturing Co. Ltd. No. 2. Vs. The Government Labour Officer, Ahmedabad. Appn. No. 28/1942. Bombay Labour Gazette. (August 1942) Vol. 21. Page 1189.

The Ahmedabad Laxmi Cotton Mills. Co. Ltd. Vs. Gulam Hussain Gulamnabu and others. Appn. No. 29/1942. Bombay Labour Gazette. (Aug. 1942) Vol. 21. Page 1192.

of the management not granting it amounted to a strike and as no notice of change was given it was an illegal strike."[1]

Where the employees in the weaving department refused to work unless 30 single loom permanent weavers who were transferred to looms in pairs as a result of break-down of a weaving shed motor were given a guarantee that they will be provided with work daily, without giving notice, held the strike was illegal.[2]

Where the industrial dispute was that the weavers refused to work as a protest so long as the spinning department was not working, held that the strike was in respect of an industrial matter and was resorted to without giving any notice of change, was illegal.[3]

Refusal to give name of informants :—

Where the workers went on strike because the management refused to give the names of person who informed them of the intention of the workers to go on a strike, held that the refusal to give the names of such persons was an industrial matter and the strike was in consequence of an industrial dispute.[4]

Privilege :

Where the mills company supplied food grains to its employees at cheap rates the workers had grievances as regards the distribution of food stuff and therefore they resorted to strike without giving notice. Held that distribution of food stuff was a privilege enjoyed by the operatives and came within the definition of industrial matter. "It is also a matter pertaining to the relationship between the employees and employers within the meaning of the sub-section because it is as the employees of the mills that they would be entitled to the privilege of getting cheap food stuffs from the grain shop opened by the employer and therefore the cessation of work amounted to a strike."[5]

Strike under a misapprehension.

Where a strike is illegal, the fact that it was due to a misapprehension or misconception of the workers does not cure the illegality. Thus where the workers who went on a strike were under a misapprehension that they were entitled to, as increments of 1½ anna, whereas the mills had rightly offered an increment of 1 anna, held that the strike was illegal in as much as even if there

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1. The Laxmi Cotton Manufacturing Co. Ltd. Vs. The Government Labour Officer and others, Appns. No. 10/1940 and 11/1940. Bombay Labour Gazette. (Sept. 1940) Vol. 20. Page 45.

2. The Simplex Mills. Co, Ltd. Vs. The Government Labour Officer, Appn. No. 34/1946. Bombay Labour Gazette. (July. 1946) Vol. 25. Page 860.

3. The Jam Manufacturing Co. Ltd. No. 1. Vs. The Government Labour Officer, Bombay Appn. No. 17/1946, Bombay Labour Gazette. (July. 1946) Vol. 25. Page 862.

4. David Mills, Co. Ltd. Vs. The Government Labour Officer, Bombay and others. Appn. No. 42/1946. Bombay Government Gazette, Part. I (6th March. 1947) Page 812.

5. Standard Mills. Co. Ltd. Bombay Vs. The Goverament Labour Officer, Bombay and others, Appn. No. 7/1943. Bombay Labour Gazette. (April, 1943) Vol. 22. Page 528.

The Tata Mills, Ltd. Vs. The Government Labour Officer and other. Appn. No. 58/1943, (Aug. 1943) Vol. 22. Page 831.

was misconception in the minds of the workers that did not relieve them of of the obligation to give a notice of change if they wanted to go on strike.[1]

One of the reasons for strike, an industrial matter.

If the strike is resorted to for two reasons one of which relates to an industrial matter, the whole strike must be regarded as illegal if it is resorted to without giving a notice of change with respect to the industrial matter.[2]

Conduct and not the view :

"If an employee has struck work, then he cannot be heard to say that he was against the strike. For it is true that some, out of the workers might not have been in favour of the strike, but the question has to be determined not with reference to what their view of the strike was but with reference to their actual conduct. If this agreement on behalf of the employee was to prevail, every one of the workers might come and say that he himself was against the strike but that he refrained from coming to work, because other persons were striking work."[3]

Strike commenced or continued under one of the circumstances specified in sub-sections (1) and (2) of section 97 :

Finally it must be proved that the strike was commenced or continued under one of the circumstances specified in sub-section (1) and (2) of section 97.

Section 97 (1) (a).

This sub-section absolutely prohibits strike in respect of an industrial matter specified in Schedule III or regulated by a standing order. In such matter the remedy of the employees is to apply to the Labour Court and seek redress there. But they cannot go on strike for redress of their grievances in respect of these matters and if they do, they would be guilty of illegal strike and be punished therefor. The workers' right to resort to strike remains only in respect of industrial matters not specified in Schedule I or III and that too after the notice of change has been given and the conciliation proceedings have been completed.

Section 97 (1) (b): Notice of change.

Section 97 (1) (b) provides that a strike commenced or continued without giving a notice in accordance with the provisions of section 42 is illegal. Section 42 (2) which deals with the notice of change to be given by an employee desiring a change, lays down that notice must be given in respect of a change in industrial matters not specified in Schedule I and III. If the change desired is in respect of an industrial matter *not covered* by Schedule I and III,

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1. The Tata Mills Ltd. Vs. The Government Labour Officer and others. Appn. 97/1944. Bombay Labour Gazette. (Jan. 1945) Vol. 24. Page 287.

2. The Standard Mills Co. Ltd. Vs. The Government Labour Officer Bombay. Appn No 7/1943. Bombay Labour Gazette. (April. 1943) Vol. 22. Page 528.

3. Chudaji Ramji Waghmare Vs. The Tata Mills Co. Ltd. Appn. No. 148/1943. Bombay Labour Gazette. (Jan. 1944) Vol. 23. Page 318.

the notice of change is compulsory and a strike without giving such notice is illegal. If the matter falls under Schedule I or III no notice of change is necessary. So a strike in respect of such industrial matter would not be illegal under this sub-clause but would be illegal under sub-clause (a). For, sub-clause 1, (a) makes illegal strikes in respect of an industrial matter covered by Schedule III or falling under Schedule I, which is regulated by standing orders. Under the Bombay Industrial Disputes Act, notice of change was compulsory by an employee in respect of every industrial matter, and therefore a strike was illegal when no notice of change was given.[1] Under this Act in addition to finding that a particular cessation of work is a strike it is to be determined whether the industrial matter to which it relates comes under Schedule I or III or does not come under either of them, If it falls under Schedule III or is regulated by standing orders the strike is illegal under Section 98 (1) (a). If it does not fall under Schedule I and III then the strike is illegal if no notice of change is given.

Notice may have been given either by employees or employer:-

Once conciliation proceedings begun at the instance either of the employer or the employees, come to an end, it would be open for either of the parties to act either by going on strike or declaring a lock-out as the case may be on fulfilling the conditions laid down for it. If the employees start the conciliation proceedings it is not necessary for the employer to give a notice of change in the same proceedings and if the employer starts the proceedings it is not necessary for the employees to give a separate notice of their own will to the same subject matter if they want to go on strike. "Thus where it was continued that the lock-out was illegal as the notice of change was given by the employees and conciliation proceedings were initiated at their instance and not at the instance of the employer; held it was not necessary that the employer should have given a notice of change.[2]

But it has also been held, "Under the scheme of the Bombay Industrial Disputes Act it is clear that after the completion of the conciliation proceeding it is open to the workers to resort to a strike and it is also open to the employers to declare a lock-out within two months after the completion of such proceedings. It is therefore clear that just as the employees were justified in resorting to a strike after the completion of conciliation proceedings the employers were also justified in deciding a lock-out[3].

But in earlier case it was held that the workers cannot take advantage of the fact that the employer had given a notice of change as regards the proposed change. The notice contemplated in section 62 (1) (b) of the Bombay Industrial Disputes Act is the notice to be given by the workers who want to

1. The New China Mills Ltd. Vs. The Government Labour Officer and others. Appn. No. 14/1940. Bombay Labour Gazette. (Sept. 1940) Vol. 20. Page 50.

2. The Amalner Girni Kamgar Union Vs. The Pratap Spg., Wvg., & Mfg. Co. Ltd. Appn No. 131/1945. Bombay Labour Gazette (Sept. 1946) Vol. 26. Page 33.

3. Pandurang Hari Vs. New City of Bombay Manufacturing Co. Ltd. Appn No. 110/1945. Bombay Labour Gazette. (April. 1946) Vol. 25. Page 601.

go on a strike[1].

This decision which is in conflict with the two decisions noted above does not seem to be correct.

The notice of change must be given by the workers who go on a strike. A notice given by employees of the other concern of the same employer cannot be deemed to be notice given by them. Thus where Sir Shapurji Bharucha Mills Co. Ltd. owned a woollen mill and two cotton mills, the employees of the cotton mills gave a notice of change for dearness allowance pursuant to which conciliation proceedings were taken and completed. Thereafter the employees of the woollen mills went to strike for dearness allowance, without giving a notice of change; held that conciliation proceedings related to the dearness allowance to be given to the workers in the cotton mills and the fact that there was the same owner of the two mills does not make any difference and therefore the strike was illegal.[2]

A letter written but not in the form of the notice within the meaning of section 28 of the Bombay Industrial Disputes Act is not a statutory notice and therefore where only such a letter was written by some workers the strike was held to be illegal.[3]

The workers elected their representative for giving a notice of change for increase of wages, but before further proceedings were taken they resorted to strike. Held that the strike was illegal.[4]

Notice of change :

Notice of change must be given and the conciliation proceedings must be completed before the strike is commenced. Thus where after the strike on the ground of low wage rates was called off the notice of change was given and the conciliation proceedings were initiated: held that that does not make the strike legal.[5]

Section 97 (1) (c) :-

Section 62 (1) (c) of the Bombay Industrial Disputes Act (corresponding to Section 97 (1) (c) of the present Act) lays down that a strike shall be illegal if it is commenced or continued only for the reason that the employer has not carried out the provisions of any standing order or has made an illegal change.

To increase the number of working hours a day without a legal notice would normally amount to an illegal change. Therefore it is clear that what

1. The Tata Mills Ltd. Vs. The Government Labour Officer, Bombay. Application No. 117/1944 Bombay Labour Gazette. (Jan. 1945) Vol 24. Page 288.

2. The Sir Shapurji Bharucha Mills Ltd. Vs. The Government Labour Officer. Appn. No. 6/1940, Bombay Labour Gezette. (April 1940) Vol. 19. Page. 695.

3. The Indian Manufacturing Co. Ltd. Vs. The Govt Labour Officer and others. Appn No 26/1942 Bombay Labour Gazette. (Sept. 1942) Vol. 22. Page 47.

4. The Dhunraj Mills. Ltd. Vs. The Government Labour Officer. Appn No. 49/1941. Bombay Labour Gazette. (Sept. 1941) Vol. 21 Page 54.

5 The Seksaria Cotton Mills. Ltd. Vs. The Government Labour Officer and others. Application No. 10/1946. Bombay Labour Gazette, (April 1946) Vol. 25. Page 594

section 62 (1) (c) of the Bombay Industrial Disputes Act enacts is that a strike is illegal if it is commenced or continued only for the reason that the employer has increased the number of working hours a day without notice.[1]

In the above noted case the mills increased the hours of work for 9 to 10. The applicants refused to work for more than 9 hours. Held that the cessation of work was an illegal strike even if the act of management amounted to illegal change.

Where the workers struck work as a protest against the order of the management to attach strings to their looms for measuring yards produced by each weaver, held that the strike was illegal. If the workers were dissatisfied with that order it was open to them to apply for an illegal change by the management but were not justified in refusing to work on their looms because they were dissatisfied with the orders of the management.[2]

The employees stopped relay system. Held that even though the employees may not be bound to work the relay system, it was not open to them to stop that work and the only course available to them was to resort to conciliation proceeding; and if they failed to apply to the Industrial Court, that action of the employees amounted to an illegal strike.[3]

The opponent operatives went on a strike because they wanted to have more cleaning time for their machines. It was contended that there was an agreement for giving more time for cleaning the machines. Held that the strike was illegal. For if there was an agreement, then the management had continued a 'breach of that agreement' by not complying with it and thereby committed an illegal change; but the workers could not go on strike which they could do only after going through the formalities of the Act. If there was no agreement, they cannot go on strike without giving a notice.[4]

There was a practice in the opponent's mills that when an employee was absent another employee probably his neighbour was asked to mind two sides. The workers went on a strike as a protest against working the double, denying the practice. The Court held that assuming that the practice is not proved, it amounted at most to an illegal change. But that did not relieve the workers from giving a notice of change. Section 62 (1) (c) (corresponding to section 97 (1) (c) of this Act) provides that a strike is illegal, if it is commenced or continued only for the reason that the employer has committed an illegal change. The proper remedy for workers was to give a notice of change. The court held that the practice was proved and the strike without giving a

1. Jivansing Bhagvansing and others Vs. The Broach Fine Counts Spinning and Weaving Co. Ltd. Appn. No. 39/1942. Bom. Labour Gazette (March 1943) Vol. 22. Page 451.

2. The Appollo Mills Ltd. Vs. The Government Labour Officer and others. Appn. No. 8/1942. Bombay Labour Gazette (July 1942) Vol. 21. Page 1124.

3. The Gopal Mills Co. Ltd. Vs. The Government Labour Officer, Ahmedabad. Appn. No. 16/1945 Bombay Labour Gazette (March 1946) Vol. 25. Page 513.

4. The Standard Mills Co. Ltd. Vs. The Government Labour Officer. Appn. No. 25/1941. Bombay Labour Gazette. (May 1941) Vol. 20. Page 705.

notice of change was illegal.[1]

Section 97 (1) (e) :

Strike before the completion of conciliation proceedings would be illegal.[2]

Completion of conciliation proceedings :

Conciliation proceedings regarding the industrial dispute about the demand of workers for increase in wage rates etc., began on 23rd February 1946. On 22nd April 1946 they ended in failure. On 23rd April the workers resorted to a strike, before publication of the report of the conciliation in the Government Gazette. The mills contended that the strike was illegal as the conciliation proceedings can be deemed to be completed under section 42 of the Bombay Industrial Disputes Act (corresponding to section 63 of this Act), when the report of the conciliator is published and therefore as it was commenced before the publication of the conciliator's report, it commenced before the completion of conciliation proceedings and therefore was illegal. Held that the section 42 of the Bombay Industrial Disputes Act, among other things, provides that the conciliation proceedings must be deemed to be completed when the time-limit fixed for completion of the conciliation proceedings under section 41 (present section 62) has expired and section 41 provides the maximum period of two months for completion of the conciliation proceedings provided the time is not extended by the Provincial Government or by mutual consent and therefore there being no extention of time by Provincial Government or by mutual consent, the conciliation proceedings were completed at the end of two months i. e. on 22nd April even though the report of the conciliator was not published and therefore the strike on 23rd April after the conciliation proceedings completed was legal.[3]

Section 97, Sub-section (2) :

A strike commenced within two months of the completion of conciliation proceedings is perfectly legal, provided it is in respect of the demand which was the subject matter of conciliation proceedings.[4]

But if the strike is for getting demands other than those which formed the subject matter of conciliation proceedings it is illegal. The burden of proving that the strike becomes illegal because of the fresh demands of which no notice was given as required by law is on the applicant mills.[5]

On 15th December 1937 under section 28 (2) of the Bombay Industrial Disputes Act the Textile Labour Association as a representative union gave a

1. The Indian Maufacturing Co. Ltd. Vs. The Government Labour Officer. Appn. No. 46/1946. Bombay Government Gazette. Part. I. (26th December. 1946) Page 3751.

2. The Raja Bahadur Motilal Poona Mills, Ltd. Vs. Mohamad Sharif : Appn. No. 29/1941. Bombay Labour Gazette. (June. 1941) Vol. 20. Page 822.

3. The Edward Textiles Ltd. Appn. No. 43/1946. Bombay Labour Gazette. (Aug. 1946) Vol. 25. Page 931.

4. Raja Bahadur Motilal Poona Mills. Ltd. Vs. Dattu Balvant Gokhle and others. Appn. No. 36/1941. Bombay Labour Gazette. (June 1941) Vol. 20. Page 827.

5. Ibid.

notice of change to the Ahmedabad Mill Owners' Association demanding "a change in the scale of wages so as to neutralise completely the rise in the cost of living."

As no agreement was arrived at, a second notice dated 22nd December 1937 in form M under section 34 of the Act was given which prescribed *inter alia* a method of bringing about such neutralisation. On account of the second notice conciliation proceeding started on 22nd December and terminated on 2nd February 1940. On 10th February the report of the Special Conciliator was published in Bombay Government Gazette. Under section 42 of the Bombay Industrial Disputes Act, the proceedings would be deemed to be terminated on 10th February. In the meanwhile on the 16th January 1940 another Union, the Mill Kamdar Union alleging to be on behalf of textile workers of Ahmedabad sent a letter to the President of the Ahmedabad Mill Owners' Association asking for an immediate wage increase of 40 per cent. On 28th of January and 9th of February the Mill Kamdar Union issued leaflets asking the workers to go on strike if their demand of an immediate 40 per cent. rise in wages was not acceded to. On the 12th, most of the employees of 8 mills referred to in the application went on strike. Thereupon the Ahmedabad Mill Owners' Association filed an application for declaration of illegal strike against the Textile Labour Association and the Mill Kamdar Union and some of the workers of the 8 mills.

On these facts the Court held that it was not proved that the employees had resorted to strike for demand of 40 per cent. rise in their wages. For there was no evidence that the operatives who went on strike were members of the Mill Kamdar Union or they had authorised the same union to act as their agent or that the letter addressed by the Union was authorised by them.

The applicants contended that the demand in the second notice would mean a rise of 24 per cent. in wages and therefore the subject matter of the conciliation proceedings was the demand for 24 per cent. rise and it was argued that any demand for different percentage of rise or new extent of relief cannot be regarded as forming part of the demand in conciliation proceedings and must be deemend a fresh demand; and that the strike being for a rise of 40 per cent. in wages was for a fresh demand and therefore was illegal.

The Court over-ruled the contention and held that even assuming that the strike was in pursuance of a demand for 40 per cent. rise in wages as contended. The question before the Conciliator was not really the exact percentage demanded by way of rise in wages but what change was necessary in the wages to neutralise the effect of the rise in cost of living. That being so the demand for 40 per cent. rise was substantially included in the subject matter of the conciliation proceedings and as the employees were represented in these proceedings and the strike having been resorted to after the completion of the conciliation proceedings was legal.[1]

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1. The Ahmedabad Mill owners' Association. Vs. The Mill Kamdar Union, Ahmedabad and others. Appn. No. 3/1940. Bombay Labour Gazette. (April. 1940) Vol. 19. Page 686.

Time for filing the application for illegal strike :

The workers went on a strike and after resumption of work, the very same industrial dispute was referred to for conciliation and while the conciliation proceedings were pending the mill company filed an application for a declaration that the strike was illegal, five months after the strike was over and three months after the conciliation proceedings started. The court observed, "The filing of the application during the pendency of the conciliation proceedings would be prejudicial to the workers and it is very much desirable that no such application should be made when the dispute is before the conciliator after resumption of work. Otherwise the workers might regard it as a threat for enforcing conciliation. It is also desirable that though there is no time limit for filing such application, they should be filed immediately after strike has commenced or in any case soon after the strike is over."[1]

Effect of the assurance of the employer :

Where an assurance was given by the management that if the employees who had gone on strike were to resume work, the application filed by the mills for alleged illegal strike would be withdrawn and where the employees acting on the assurance called off the strike, held that the application was not tenable and therefore was dismissed.[2]

But the same learned Judge in application No. 219/1943 held that even if an understanding was given by the manager of the mills that he would not proceed against the workers under the Bombay Industrial Disputes Act in case they went back to work, it cannot alter the merits of the case. Hence the action of the workers amounted to an illegal strike.[3]

Resumption of work after an illegal strike :

If the workers resort to a strike which is illegal, then even if they willingly resume work immediately on the advice of the Government Labour Officer to do so, the strike remains an illegal strike.[4]

Sub-section 3 :

This sub-section is new and provides *locus penitentia* to those workers who after 14 clear days notice go on a strike not falling under clauses (a), (e), (g) and (h) of sub-section (1) of section 97 and who resume work within 48 hours of the decision of a Labour Court or the Industrial Court declaring such strike to be illegal ; such workers shall incur no penalty.

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1. The Acme Thread Co. Ltd. Vs. The Government Labour Officer. Appn. No. 47/1946. Bombay Govt. Gazette. Part. I. (24th Oct. 1946) Page 3166.
2. The Broach Fine Counts Spinning and Weaving Co. Ltd. Vs. The Government Labour Officer, Ahmedabad and others. Appn. No. 20/1943. Bombay Labour Gazette. (Sept. 1943) Vol. 23. Page 25.
3. The Broach Fine Counts Spinning and Weaving Co. Ltd. Vs. The Government Labour Officer and others. Appn. No. 219/1943 Bombay Labour Gazette. (March. 1945) Vol. 24. Page 410.
4. The Moon Mills. Ltd. Vs. The Government Labour Officer, Bombay and others. Appn. No. 119/1944. Bombay Govt. Gazette. (Jan. 1945) Vol. 24. Page 290.

98. (1) A lock-out shall be illegal if it is commenced or continued—

Illegal lock-outs.

(a) in cases where it relates to any industrial matter specified in Schedule III or regulated by any standing order for the time being in force;

(b) without giving notice in accordance with the provisions of section 42;

(c) in cases where notice of the change is given in accordance with the provisions of section 42 and where no agreement in regard to such change is arrived at, before the statement of the case referred to in section 54 is received by the Conciliator for the industry concerned for the local area;

(d) in cases where conciliation proceedings in respect of an industrial dispute to which a lock-out relates have commenced, before the completion of such proceedings;

(e) in cases where a special intimation has been sent under sub-section (2) of section 52 to the Conciliator, before the receipt of the intimation by the person to whom it is to be given;

(f) in cases where a submission relating to such dispute or such type of disputes is registered under section 66, before such submission is lawfully revoked;

(g) in cases where an industrial dispute has been referred to the arbitration of a Labour Court or the Industrial Court under sub-section (6) if section 58 or under section 71, or of the Industrial Court under section 72 or 73, before the date on which the arbitration proceeding is completed or the date on which the award of the Industrial Court comes into operation, whichever is later;

(h) in contravention of the terms of a registered agreement, or settlement or award.

(2) In cases where a conciliation proceeding in regard to any industrial dispute has been completed, a lock-out relating to such dispute shall be illegal if it is commenced at any time after the expiry of two months from the completion of such proceeding.

(3) Notwithstanding anything contained in sub-sections (1) and (2), if fourteen clear days' notice of a lock-out not falling under clause

(a), (f), (g) or (h) of sub-section (1) was given to the employees and the Labour Officer, and the lock-out was not commenced either before the expiry of the period of notice or after six weeks from the date of its expiry and the employer discontinues the lock-out within forty-eight hours of a Labour Court or the Industrial Court declaring such lock-out to be illegal, the employer shall incur no penalty under this Act in respect of such lock-out :

Provided that nothing in this sub-section shall apply to any lock-out which has within the period of notice been declared under section 99 to be illegal.

Section 98 : Legislative Changes :

This section corresponds to section 63 of the Bombay Industrial Disputes Act. Sub-clause (1) (a) is completely new. Sub-clauses (b), (c) and (d) of sub-section (1) are the same as sub-clauses (b), (c) and (d) of section 63 of the Bombay Industrial Disputes Act. Sub-clause (e) is new. Sub-clauses (f), (g) and (h) corresponds to (e), (ee) and (f) of section 63 (1) of the Bombay Industrial Disputes Act, respectively. Sub-section (2) of this section is similar to sub-section (2) of section 63 of that Act. Sub-section (3) is new.

Lock-out : Illegal lock-out : Penalty :

Section 3 (24) defines a 'lock-out'. This section specifies the circumstances in which a lock-out is illegal and section 102 prescribes the penalty for declaring an illegal lock-out.

Illegal lock-out :

From the definition of the term 'lock-out' and from the perusal of this section it is clear that to prove an illegal lock-out, the following four things must be proved:—

(1) There was closing of a place or part of a place of employment, by the employer or total or partial suspension of work by an employer or the total or partial refusal to employ persons employed by him;

(2) Such closing, suspension or refusal occurs in consequence of an industrial dispute ; and

(3) such closing, suspension or refusal in intended for the purpose of—

(a) compelling any of the employees, directly affected by such closing, suspension or refusal or any other employees of his, or

(b) aiding any other employer in compelling persons employed by him to accept any term or condition of or affecting employment; and

(4) the lock-out was commenced or continued under one of the circumstances specified in sub-sections (1) and (2) of section 98.

For the purpose of compelling the employees etc. :

Unless the exclusion of the employees has been intended for the purpose of compelling them to accept any condition of employment, the action of mill authorities would not amount to a lock-out. Thus where the mills legally increased the hours of work from 9 to 10 but some 101 workers came and left according to old timings the management refused them admission on the next day.'

The mills contended that they dismissed those workers in consequence of the strike. They were not prepared to take them even if they accepted new conditions of employment. The refusal to take them therefore was not for the purpose of compelling them to accept a term of employment and was not therefore a lock-out. The contention was upheld and it was held that the action of the mill did not amount to a lock-out. But as the dismissal was without following the procedure prescribed under standing orders, it was held to be an illegal change.[1]

In this case it was argued on behalf of the employees that the action of the mills would indirectly compel other workers to accept the new conditions of the employment. The court held that although that *may be* the effect, it would not be a lock-out as defined in the Bombay Industrial Disputes Act. For, under that Act the refusal to employ must be with a view to compel those *very persons* to accept a condition of employment. The law is now changed and under this Act a refusal to employ a person employed by him with the intention of compelling even other employees to accept any conditions of employment comes within the definition of a lock-out. Query; Would the refusal to employ in the above case be a lock-out under this Act ?

Under the definition of lock-out it must be intended for the purpose of compelling a worker to accept any term of employment. Thus the workers struck work for a few days for the removal of the spinning master, of-course after the conciliation proceedings terminated in failure, but after a few days they called off the strike and resumed work. The management refused work to certain ring leaders. Held that the management wanted to punish the leaders rather than to compel the workers to accept any term affecting employment. The applicants (workers), when they called off the strike and offered themselves for work along with other workers, it must be taken, unless it is proved to the contrary, that they had given up their demand and there would therefore be no question of compelling them to accept any term of employment. The refusal to employ them did not therefore amount to lock-out.[2]

Under the scheme of the Bombay Industrial Disputes Act, after the completion of the conciliation proceedings it is open to the workers to resort to a strike and it is also open to the employers to declare a lock-out within

1. The Ahmedabad Cotton Manufacturing Co. Ltd. Vs. The Government Labour Officer and others. Appn. No. 4/1941. Bombay Labour Gazette. (April. 1941) Vol. 29. Page 629.

2. Pandurang Hari Vs. The New City of Bombay Manufacturing Co. Ltd. Appn. No. 110/1945. Bombay Labour Gazette. (April, 1946) Vol 25. Page 601.

two months after the completion of such proceedings. Therefore just as the employees would be justified in resorting to a strike after the completion of the conciliation proceedings, the employers would also be justified in declaring a lock-out.[1]

Closing of a place of employment :

The workers went on a strike after the failure of the conciliation proceedings. The management issued a notice that if the workers do not resume work within three days i. e. by the morning of 28th November 1945, they will be refused employment. The workers resumed work on 28th. In an application to declare the action of the mills to be an illegal lock-out, it was held that a lock-out is defined as closing of place of employment or the total or partial refusal by the employer to continue to employ the persons employed by him. A lock-out does not take place on the day on which the intention to declare a lock-out on a future date is given. It begins on the day when there is either the closing of place or suspension of work or refusal to employ. As the employees had themselves come on the day on which the look-out had to take place and none of them was prevented from working; held that there was no lock-out. Also the condition that the workers should resume work within three days was not illegal. It was really an option given to the worker and not a threat.[2]

Reference to Industrial Court for declaration whether strike or lock-out is illegal.

99. (1) Provincial Government may make a reference to the Industrial Court for a declaration whether any proposed strike or lock-out of which a notice has been given would or would not be legal.

(2) No declaration shall be made under this section save in open Court.

This section is new and is intended to prevent illegal strikes and lock-outs by obtaining the decision of the Industrial Court on the legality or otherwise of a proposed strike or lock-out of which notice has been given

1. Ibid.
2. The Amalner Girni Kamgar Union Vs. The Pratap Spg. and Wvg. and Manufacturing Co Ltd. Appn. No. 131/1945. Bombay Labour Gazette. (Sept. 1946) Vol. 26. Page 33.

CHAPTER XV.

Courts of Enquiry.

Court of Enquiry: constitution, duties and powers of—

100. (1) The Provincial Government may constitute one or more Courts of Enquiry consisting of such number of persons as the Provincial Government may think fit.

(2) A Court of Enquiry shall inquire into such industrial matters, as may be referred to it by the Provincial Government, including any matter pertaining to conditions of work or relations between employers and employees in any industry, and any aspect of any industrial dispute.

(3) Every proceeding before a Court of Enquiry shall be deemed to be a judicial proceeding within the meaning of sections 192, 193 and 228 of the Indian Penal Code. XLV of 1860

This section is completely new.

"Provision is also made to enable Government to set up a Court of Enquiry, when this procedure is considered appropriate in a particular situation or dispute in an industry."[1]

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1. Statement of Objects and Reasons.

CHAPTER XVI.

Penalties.

This Chapter deals with the offences under the Act. Under the Bombay Industrial Disputes Act, the offences under the Act were tried by the ordinary criminal Courts But under this Act, a Labour Court tries these offences. Appeals and revisions against the decisions of the Labour Courts would lie to the Industrial Court.

Employer not to dismiss, reduce or punish an employee.

101. (1) No employer shall dismiss, discharge or reduce any employee or punish him in any other manner by reason of the circumstance that the employee—

(a) is an officer or member of a registered union or a union which has applied for being registered under this Act; or

(b) is entitled to the benefit of a registered agreement or a settlement, submission or award; or

(c) has appeared or intends to appear as a witness in, or has given any evidence or intends to give evidence in a proceeding under this Act; or

(d) is an officer or member of an organisation the object of which is to secure better industrial conditions; or

(e) is an officer or member of an organisation which is not declared unlawful; or

(f) is a representative of employees; or

(g) has gone on or joined a strike which has not been held by a Labour Court or the Industrial Court to be illegal under the provisions of this Act.

(2) No employer shall prevent any employee from returning to work after a strike, arising out of an industrial dispute relating to any matter specified in Schedule I, II or III, which has not been held by a Labour Court or the Industrial Court to be illegal unless—

(i) the employer has offered to refer the issues on which the employee has struck work to arbitration under this Act, and the employee has refused arbitration; or

(ii) the employee not having refused arbitration, has failed to offer to resume work within one month of a declara-

tion by the Provincial Government that the strike has ended.

(3) Whoever contravenes the provisions of sub-section (1) or (2) shall, on conviction, be punishable with fine which may extend to Rs. 5,000.

(4) The Court trying an offence under this section may direct that out of the fine recovered, such amount as it deems fit shall be paid to the employee concerned as compensation.

(5) In any prosecution under this section the burden of proving that the dismissal, discharge, reduction or punishment of an employee by an employer was not in contravention of the provisions of this section shall lie on the employer.

Legislative changes :

This section corresponds to section 64 of the Bombay Industrial Disputes Act with important changes. Sub-section (2) and (5) are new.

Under sub-section (1) the word "discharge" is added. In sub-clause 1 (b) the word "settlement" is added. In Sub-clause 1 (g) the words "which has not been held by a Labour Court or the Industrial Court to be illegal" have been substituted for the words "which is not illegal" appearing in sub-clause (1) (g) of section 64 of the Bombay Industrial Disputes Act. The penalty has been increased from Rs. 1000/-to Rs. 5000/-.

Discharge :

The word "discharge" has been added in sub-section (1). In the corresponding section of the Bombay Industrial Disputes Act it did not find place. But even under that Act it was held that a discharge may be a punishment and therefore if an employee is discharged by reason of any of the circumstances mentioned in section 64 (1), it would come under the words "punish him in any other manner".[1] The word 'discharge' has now been added to put the matter beyond any doubt whatsoever.

Punish in any other manner :

Even such petty acts as placing a day-worker continuously on the night-shift or transferring an operative on daily wages from a sixty inch loom to a forty inch loom so as to reduce his daily earnings may amount to punishment. Hence the wide expression "punish him in any other manner" is purposely used in section 64 (1) of the Act (corresponding to section 101 (1) of this Act) to cover all such cases where an employee is intended to be penalised. That section is evidently intended to correspond to section 8 (4) of the National Labour Relations Act 1935 of the U. S. A. which penalises such acts as

1. Mafatlal Gagalbhai and another Vs. The Emperor, Criminal Appeal No. 536/1944. Bombay High Court Judgment.

"unfair labour practice," and says, "It shall be an unfair labour practice for an employer to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under the Act". (Vide Ludwig Teller's Law governing Labour Disputes and Collective Bargaining, Vol. III. Page. 1788).

This shows that the real test is wilful discrimination and the same is intended by the use of the wide expression, "punish him in any manner" in section 64 (1) of the Bombay Industrial Disputes Act (corresponding to section 101 of this Act.)[1]

Real reason for discharge etc. can be proved :

Though the avowed reason for the discharge of a worker may not fall within any of the seven clauses of section 64 (1) of the Act (corresponding to section 101 (1) of this Act), it is open to the employee to show that it was not the real reason of his discharge and that he was really discharged by reason of some circumstance mentioned in one of these clauses. Thus where the reason given by the management in the discharge slip was "creating trouble" it was held that the complainant was entitled to show that, that was not the real reason and the real reason of his discharge was that "he intended to appear as a witness in a proceeding under the Act"[2]

S. 101 (1), (c) : Intends to appear as a witness :

The management applied to the Industrial Court for declaring a strike of the workers to be illegal. It was apprehended by the workers that the three operatives who were cited as opponents in the application might not probably contest the application and therefore they held meetings and passed a resolution that one Ganu and other four named workers should apply to get themselves added as opponents. The very next day Ganu and another worker named Savalram were discharged for "creating trouble". The Court held that the management must have come to know of this resolution, namely that Ganu and other four workers should apply to the Industrial Court to be joined as parties. But assuming that this was the immediate cause of their discharge, that reason does not come within clause (c) of section 64 (1) of the Act. To apply to be joined as a party does not mean to intend to be a witness or to give evidence. However the Court did not decide whether the reason fell within any other clause, since the complainant wanted to make it a test case and confine it to clause (c) only.[3]

Section 101 (1), (b):

The word "settlement" in sub-clause (b) in this sub-section has been an addition. It did not appear in the Bombay Industrial Disputes Act. So it was held that if a person is punished by reason of the circumstance that he is entitled to the benefit of a registered settlement, it did not come within the

1. Mafatlal Gagalbhai and another. Vs. The Emperor, Criminal Appeal No. 536/1944. Bombay High Court Judgment.
2. Ibid.
3. Supra.

purview of this sub-section and was not an offence.[1]

It was a lacuna in the old Act and it has been filled up by the addition of the word "settlement" in this sub-section.

Penalty for declaring illegal lock-out.

102. Any employer who has commenced a lock-out which a Labour Court holds or the Industrial Court has declared to be illegal shall, on conviction, be punishable with fine which may extend to Rs. 2,500 and, in the case of the lock-out being continued after the lapse of forty-eight hours after it has been held or declared to be illegal, with an additional fine which may extend to Rs. 5,000 for every day during which such lock-out continues after such conviction.

Legislative changes:

This section corresponds to section 65 of the Bombay Industrial Disputes Act. The changes are that for the words "which has been held by the Industrial Court to be illegal" the words "which the Labour Court holds or the Industrial Court has declared to be illegal" have been substituted. The maximum fine for continuing the lock-out after conviction has been increased from Rs. 200 to Rs. 5,000. Also for the words, "after conviction" the words "after the lapse of forty eight hours after it has been held to be illegal" are substituted.

Penalty for declaring or commencing illegal strike.

103. Subject to the provisions of sub-section (3) of section 97, any employee who has gone on strike or who joins a strike which a Labour Court holds or the Industrial Court has declared to be illegal shall, on conviction, be punishable with fine, which may extend to Rs. 10 and, in the case of his continuing on strike after the lapse of forty-eight hours after it is held or declared to be illegal with an additional fine which may extend to Re. 1 per day for every day during which the offence continues subject to a maximum of Rs. 50.

This section corresponds to section 66 of the Bombay Industrial Disputes Act. The changes effected are that the fine has been reduced from Rs. 25 to Rs. 10. So also has the daily fine been reduced. The other change is that for the words "which has been held by the Industrial Court to be illegal", the words "which a Labour Court holds or the Industrial Court has declared to be illegal" have been substituted. This removes an ambiguity and makes it clear beyond doubt that participation in a strike which is afterwards held to be illegal comes within this section and is punishable under it. The use of the words "which has been held to be illegal" gave occasion for the contention that the strike or the lock-out must have already been held to be illegal at the time when

1. The Textile Labour Association, Ahmedabad. Vs. The Shri Ambica Mills Ltd. No. 2. Appn No. 18/1940, Bombay Labour Gazette. (Oct. 1940) Vol. 20, Page 142.

the employee goes on the strike and therefore he would not be guilty if the strike is held to be illegal *afterwards*. This contention was over-ruled and it was held that the plain meaning of the section is that participation in a strike which is afterwards to be illegal is punishable. The intention of the legislature is to penalise those employees who go on strike without resorting to the provisions of the Act.[1]

Penalty for instigating, etc., illegal strikes and lock-outs.

104. Any person who instigates or incites others to take part in, or otherwise acts in furtherence of a lock-out for which an employer is punishable under section 102 or a strike for which any employee is punishable under section 103, shall,on conviction, be punishable with imprisionment of either description for a term which may extend to three months, or with fine or with both:

Provided that no person shall be punished under this section where the Court trying the offence is of opinion that in the circumstances of the case a reasonable doubt existed at the time of the commission of the offence about the legality of the strike or lock-out, as the case may be.

Explanation I.—For the purposes of this section, a person who contributes, collects or solicits funds for the purposes of any such strike or lock-out shall be deemed to act in furtherence thereof.

Explanation II.—A person shall be deemed to have committed an offence under this section if before an illegal strike or lock-out has commenced, he has instigated or incited others to take part in, or otherwise acted in furtherance of such strike or lock-out.

This section corresponds to section 67 of the Bombay Industrial Disputes Act. The words "a strike or look-out which has been held to be illegal by the Industrial Court whether such strike or lock-out has commenced or not" have been replaced by the words "a lock-out for which any employee is punishable or a strike for which any employee is punishable under section 153." Proviso and Explanation II are new.

Penalty for disclosing confidential information.

105. If a Conciliator, a member of a Board or a Labour Officer or any person present at or concerned in any conciliation proceeding wilfully discloses any information or the contents of any dcument in contravention of the provisions of this Act, he shall, on conviction, on a complaint made by the party who gave the information or produced the document in such proceeding be punishable, with fine which may extend

1. Statement of objects and reasons. Also—Khandubhai K. Desai and others, Vs. Emperor A. I. R. 1944. Bombay 122/46 Bombay L. R. 104. (Bombay High Court.)

to Rs. 1,000.

This section reproduces verbatim section 68 of the Bombay Industrial Disputes Act.

Penalty for illegal change.

106. (1) Any employer who makes an illegal change shall, on coviction, be punishable with fine which may extend to Rs. 5000.

(2) Any employer who contravenes the provisions of section 47 shall on conviction be punishable with imprisonment which may extend to three months, or for every day on which the contravention continues with fine which may extend to Rs. 5,000, or with both.

(3) The Court convicting any person under sub-section (1) or (2) may direct such person to pay such compensation as it may determine to any employee directly and adversely affected by the change in issue.

Legislative changes :

This section corresponds to section 69 (1) of the Bombay Industrial Disputes Act. The part of section 69 (1) which provided penalty for a continuing offence is deleted and instead of that the sub-section (2) in this section is added. Sub-section (3) providing for award of compensation is new.

Penalty for contravention f a standing order

107. Any employer who acts in contravention of a standing order settled under Chapter VII shall, on conviction, be punishable with fine which may extend to Rs. 500 and in the case of a continuing contravention of such standing order, with an additional fine which may extend to Rs. 125 per day for every day during which such contravention continues.

Legislative Change :

This section corresponds to section 69 (2 of the Bombay Industrial Disputes Act. The maximum fine for the first offence has been increased from Rs. 200 to Rs. 500 and for a continuing offence from Rs. 25 to Rs 125.

Penalty for obstructing person from carrying out duties.

108. Any person who wilfully refuses entry to a Labour Officer or such officer of an approved union as is authorised under section 25 to any place which he is entitled to enter, or fails to produce any document which he is required to produce, or fails to comply with any requisition or order issued to him by or under the provisions of this Act or the rules made thereunder shall, on conviction, be punishable with fine which may extend to Rs. 500.

This Section corresponds to section 70 of the Bombay Industrial Disputes Act. The words " such officer of an approved union as is authrised under section 25 " are new.

Penalties for offences not provided for elsewhere

109. Whoever contravenes any of the provisions of this Act or of any rule made thereunder shall, on conviction, if no other penalty is elsewhere provided by or under this Act for such contravention, be punishable with fine which may extend to Rs. 100 and, in the event of such person having been previously convicted of an offence under this Act or any rule made thereunder with fine which may extend to Rs. 200.

This section corresponds to section 71 of the Bombay Industrial Disputes Act.

Recovery of fines and compensation.

110. The amount of any fine imposed and any compensation directed by any Court to be paid under this Act shall be recoverable as arrears of land revenue.

This section is new and provides that the amount of fine and any compensation awarded by Court would be recoverable as arrears of land revenue.

CHAPTER XVII.

Record of Industrial Conditions.

Record of Industrial matters etc.

111. The Provincial Government may in respect of any industry—

(a) maintain in the prescribed manner a record of industrial matters covered by the Schedules;

(b) require any employer or employers generally to maintain and submit copies of a record in such form as may be prescribed of—

(i) data relating to plant, premises and manufacture,

(ii) other industrial transactions and dealings,

which in the opinion of the Provincial Government are likely to affect the matters specified in clause (a).

This information will prove helpful to the authorities in settling disputes and determining whether a certain change was illegal or not" (Statement of Objects and Reasons.)

The whole of this chapter is new. For the manner in which the record shall be maintained see rules.

Inquiry for verification of records.

112. (1) For the purpose of verifying the accuracy of any records maintained by an employer under the provisions of section 111, an officer authorised by the Provincial Government may, subject to the prescribed conditions hold an inquiry and may require any person to, and such person thereupon shall, produce any relevant record or document in his possession and may after reasonable notice, at any reasonable time enter any premises wherein he believes such record or document to be, and may ask any question necessary for verifying such records:

Provided that where such premises are not the usual business premises of a person, such officer shall not without the previous permission of the Provincial Government enter them under this sub-section.

(2) Any proceeding held by him for the purpose of obtaining information for such record shall be deemed to be a judicial proceeding within the meaning of section 192 of the Indian Penal Code.

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For the conditions to be prescribed under section 112 (1) see Rules.

CHAPTER XVIII.

Miscellaneous.

Modifications in Schedules.

113. The Provincial Government may, by notification in the *Official Gazette*, at any time, make any additions to or alterations in the industrial matters specified in Schedule I, II or III or may delete therefrom any such matter:

Provided that before making any such addition, alteration or deletion, a draft of such addition, alteration or deletion shall be published for the information of all persons likely to be affected thereby and the Provincial Government shall consider any objection or suggestion that may be received by it from any person with respect thereto.

This section corresponds to section 72 of the Bombay Industrial Disputes Act. The words 'Schedule III' have been added.

Agreement, etc., on whom binding.

114. (1) A registered agreement, or a settlement, submission or award shall be binding upon all persons who are parties thereto:

Provided that—

(a) in the case of an employer, who is a party to such agreement, settlement, submission or award, his successors in interest, heirs or assigns in respect of the undertaking as regards which the agreement, settlement, submission or award is made, and

(b) in the case of a registered union which is a party to such agreement, settlement, submission or award, all persons who were members of such union at the date of such agreement, settlement, submission or award or who become members of the union thereafter,

shall be bound by such agreement, settlement, submission or award.

(2) In cases in which a Representative Union is a party to a registered agreement, or a settlement, submission or award, the Provincial Government may, after giving the parties affected an opportunity of being heard, by notification in the *Official Gazette*

direct that such agreement, settlement, submission or award shall be binding upon such other employers and employees in such industry or occupation in that local area as may be specified in the notification:

Provided that before giving a direction under this section the Provincial Government may, in such cases as it deems fit, make a reference to the Industrial Court for its opinion.

(3) A registered agreement entered into by the representatives of the majority of the employees affected or deemed to be affected under section 43 by a change shall bind all the employees so affected or deemed to be affected.

Legislative changes :

This section corresponds to section 76 of the Bombay Industrial Disputes Act. The change is the addition of the word 'registered' in proviso (b) of sub-clause (1) before the word 'union.' Sub-section (3) is new.

Parties to a registered agreement etc :

"When a Representative Union is a party to a registered agreement etc., all the employees in the industry who were affected by the change must be taken to be represented by the Representative Union and must be deemed to be parties within the meaning of section 76 (1) of the Bombay Industrial Disputes Act (corresponding to section 114 (1) of this Act.) The whole scheme of the Act is that in the absence of growth of sound trade unions in the Province it is considered desirable that a 25 per cent. union (15 per cent. union under this Act) would be able to protect the interests of Labour in the centre where such union exists and therefore, it can represent the employees where any contemplated change would affect the interests of employees in general. It must therefore be taken that the Textile Labour Association (a representative union) represented at the time of submission as well as at the date of the award all the employees in the Industry who were affected by the change and they must be deemed to be parties to the award".[1]

Present and future employees bound by a registered agreement etc:-

"Where a representative union is a party to an award the award would be applicable to all the persons whom that representative union represents namely all present as well as future employees in the industry affected by the change. The term "employee" as defined in the Act means any person employed in the industry for doing certain kind of work therein specified and it includes a person discharged on account of a dispute relating to to a change. It is not restricted to persons employed in the industry at any particular time

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1. The Government Labour Officer, Ahmedabad Vs. The Anant Mills Co. Ltd. and others. Appn. No. 33/1941 and 42/1941. Bom. Labour Gazette. (Oct. 1941) Vol. 21, Page 153.

and in our opinion, the term "employees" should therefore include any person who is engaged in the industry at any time. The term "representative of employees" in section 3 sub-section (29) (corresponding to section 30 of this Act) would thus mean representative of the employees not at any particular time but of all persons who would be included in the definition of "employees". Where, therefore, a representative union becomes a "representative of employees" it becomes a representative of employees not simply at the time of the dispute but also of all persons who may be employed in the industry thereafter and who would also be likely be affected by the change" So the night-shift workers who were employed after the award granting dearness allowance were held entitled to the benefit of the award, i. e. grant of dearness allowance.[1]

Persons entitled to the benefit of a registered agreement, etc.:

"Section 76 of the Bombay Industrial Disputes Act refers to the binding nature of an award and although there is no specific section relating to persons who are entitled to take benefit of an award it must be taken that the Legislature intended that all those persons who are to be bound by the award must be persons who are entitled to receive its benefit. Section 76 (now section 114) therefore, in our opinion would apply to persons who are bound by the award as well as to those entitled to receive its benefit."[2]

Proviso (b) applies to non-representative unions:

"The substantive provision of section 76 (1) of the Bombay Industrial Disputes Act is that an award shall be binding upon all persons who are parties thereto. Therefore where a representative union is a party to it, it will apply to all present and future members in a centre although they may not be members of any union; but where the party is a union other than a representative union, it will apply to its own members only. Then comes proviso (b) to section 76 (1) of the Bombay Industrial Disputes Act which says that in the case of a union which is a party to a submission or an award, it will bind its present as well as future members. Although this proviso speaks of any union it will, in our opinion, apply only to those registered unions which are not representatives of employees because in the case of unions which are representatives of employees the award would apply to all employees in a centre under the substantive part of section 76 (1) of the Bombay Industrial Disputes Act. All that proviso (b) means therefore is that in the case of non-representative union the award will bind not only its present but also its future members."[3]

Section 114 (2): object:

"In the case where a representative union is a party to an award,

1. The Government Labour Officer Vs The Anant Mills Co. Ltd. Appn. No. 33/1941 and 42/1941, Bombay Labour Gazette. (Oct. 1941) Vol. 21 Page 153.
2. Ibid.
3. Ibid.

settlement etc., sub-section (2) expressly provides that in such a case the Provincial Government may, in certain cases direct that the award (also registered agreement, settlement or submission) to which it is a party shall be binding upon such other employers and employees as may be specified in the notification. This sub-section is presumably enacted for the purpose of including within the scope of the award (etc.,) not only the employees who were originally parties to the submission but all the other employers in a centre who did not join in the submission and the terms of the award may be made applicable to those other employers as well as their employees whether present or future. The intention is that if an award (submission etc.) is made between several employers and employees in a centre it should be made applicable, where a representative union is a party, to the whole of the industry in that centre. This provision is made only in the case where a representative union is a party to the award (registered agreement, settlement or submission)."[1]

A submission was filed by the Ahmedabad Mill Owners' Association and the Textile Labour Association, Ahmedabad as a representative union, by which the dispute about dearness allowance was referred to the arbitration of the Industrial Court. The Government by a notification made the said *submission* binding on the opponent mills (who were not members of the Ahmedabad Mill Owners' Association) under sub-section (2) of section 76 (corresponding to section 114 (2) of this Act). The Industrial Court gave its award but in the proceedings, the opponent mills were not represented, nor did they appear, nor were they summoned to appear. Held that the award was not binding upon the opponent mills. "For what had been made binding upon the opponents was not the award of the Industrial Court but the *submission* made by the Textile Labour Association and the Ahmedabad Mill Owners' Association in the matter of the dispute regarding dearness allowance. Under section 48, (corresponding to section 70 of this Act) the arbitrator shall, after hearing the parties concerned shall make his award which shall be signed by him. This section makes it imperative that the arbitrator, and as in the present case the Industrial Court, shall make an award after hearing the parties concerned. As in this case the opponents have not been heard, the award cannot be regarded as binding upon the opponent mills".[2]

The position would then be that the submission made binding upon the opponents still remains in force and must be heard and adjudicated upon.[3]

It was contended in the above case that before issuing notification making the submission binding upon the opponent mills the Provincial Government had given them an opportunity of being heard and therefore any award resulting from the submission would be binding upon the opponent mills. The contention was over-ruled. The Court observed, "The opportunity that was given by the Government was only, to show cause why submission should not be made

1. The Government Labour Officer Vs. The Anant Mills. Co. Ltd. Appn. No. 33/1941 and the Textile Labour Assocaition Vs. The Harivallabhdas Mulchand Mills Co. Ltd. Appn. No. 47/1941. Bombay Labour Gazette. (Oct. 41) Vol. 21 Page 153. (F. B.)

2. The Textile Labour Association, Ahmedabad. Vs. The Shri Ambica Mills Ltd. Nos. 1 and 2. Appn. No. 17/1940. Bombay Labour Gazette. (Nov. 1940) Vol. 20. Page 201.

3. Ibid.

binding upon the opponent mills. The merits of the dispute were not considered by the Government and were to be considered by us when the submission came for hearing. It is true that this section refers not only to submissions but also to agreements, settlements and award. When the disputes have already resulted in agreement, settlement or award and the Provincial Government has to consider whether they should not be made binding upon the parties who were not represented in such agreements, settlements and awards then, in such case the Provincial Government would undoubtedly have to consider the merits of the dispute and the agreement, settlement or award arising therefrom. But different considerations arise when an oportunity is given under this sub-section for showing cause why a submission should not be made binding, because in such cases the Provincial Government has not to consider the merits of the dispute, which would be considered by the arbitrator but has only to decide why matters should not be made uniform by making the submission binding on persons who are not parties to such submission. In our opinion therefore the mere fact that Provincial Government gave the opponent mills an opportunity of being heard before the submission was made binding on them does not, *ipso facto* make the award binding on them unless an opportuntiy is given to them for being heard in respect of the submission which, by reason of the notification has been made binding upon them".[1]

Effect of a notification under section 114 (2):

The effect of a notification making a submission binding upon the others is that the dispute is per force made a subject matter of arbitration in terms of the submission which was made binding upon them. In theory the submission of the dispute between the opponent mills and the Representative Union would have been the subject matter of an independent inquiry; although if notice had been issued to the opponent mills the two matters would undoubtedly have been heard together. The section, by its terms, does not make the opponent mills parties to the original submission but merely makes the submission binding upon the opponents.[2]

When the Provincial Government makes a submission binding upon certain other mills who were not members of the Mill owners' Association by a notification under sub-section (2), the effect is not that the non-member mills and their employees become parties to the original submission but that a fresh submission in terms identical with the original submission is made binding on the non-member mills and their employees. It cannot be said that the submission with regard to them was necessarily the same submission that was originally made. When a submission is made binding on the parties by a special notification the fresh submission as between the parties to it remains effective in spite of the fact that an award is made on the original submission. Therefore by virtue of the notification, a new submission is created in terms identical with original submission on which in theory, there should be an

1. The Textile Labour Association Ahmedabad. Vs. The Shri Ambica Mills Ltd. Nos. 1. and 2. Appn. No. 17/1940. Bombay Labour Gazette. (Nov. 1940) Vol. 20. Page 201

2. Ibid.

independent award.[1]

Other employees :

The notice served on the Representative Union for being heard in respect of the notification to be issued under sub-section (2) must be deemed to be a notice to all the employees affected by the notification and the other employees mentioned in this sub-section must be deemed to be represented by the Representative Union, for the Representative Union is a representative of the employees.[2]

This decision was under the Bombay Industrial Disputes Act, but the principle of it applies under this Act with greater force. For under that Act a Representative Union could be representative of employees if some employees affectd by the change are its members. But under this Act even if none of the employees affected by the change is its member, yet the Representative Union is their representative. [Section 30 (1)]

Order or decision of Labour Court or Industrial Court on whom binding.

115. An order or decision of a Labour Court or the Industrial Court against an employer shall bind his successors in interest, heirs and assigns in respect of the undertaking as regards which it is made or given and such order or decision against a registered union shall bind all persons who were members of the union at the date of the order or decision or who become members of the union thereafter.

This section is new. It lays down on whom the decision or order of a Labour Court or the Industrial Court is binding. As far as the Industrial Court is concerned section 94 also enacts on whom the decision, order or award of the Industrial Court is binding.

Agreement, etc., when to cease to have effect.

116. (1) A registered agreement, or a settlement or award shall cease to have effect on the date specified therein or if no such date is specified therein, on the expiry of the period of two months from the date on which notice in writing to terminate such agreement, settlement or award, as the case may be, is given in the prescribed manner by any of the parties thereto to the other party:

Provided that no such notice shall be given till the expiry of three months after the agreement, settlement or award comes into operation.

(2) Nothing in this section shall prevent the terms of a registered agreement or a settlement being changed or modified by

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1. The Textile Labour Association, Ahmedabad Vs. The Shri Ambika Mills Ltd. Appn. No. 55/1943 and 56/1940. Bombay Labour Gazette. (Jan. 1941) Vol. 20. Page 351.

mutual consent of the parties affected thereby.

(3) Notwithstanding anything contained in sub-section (1) or (2), if a registered agreement, or a settlement or award provides that it shall remain in force for a period exceeding one year, it may after the expiry of one year from the date of its commencement be terminated by either party thereto giving two months' notice in the prescribed manner to the other party.

(4) The party giving notice under sub-section (1) or (3) shall send a copy of it to the Registrar and the Labour Officer of the local area concerned.

(5) If a registered agreement, or a settlement or award is terminated under sub-section (1) or (3) or if the terms of a registered agreement or a settlement are changed or modified by mutual consent, notice of such termination, change or modification shall be given by the parties concerned to the Registrar and the Labour Officer. The Registrar shall enter the notice of such termination, change or modification in a register kept for the purpose.

Explanation.—For the purposes of this section, parties who shall be competent to terminate a registered agreement, or a settlement or award, or to change or to modify the terms of a registered agreement or a settlement and who shall give notice of such termination, change or modification under sub-section (5) shall be the employer who has signed the agreement or settlement or who is a party to the award or the heirs, successors or assigns of such employer in respect of the undertaking concerned and the representative of the employees affected by the agreement, settlement or award.

Legislative changes:

This section corresponds to section 77 of the Bombay Industrial Disputes Act. The changes are that the period of notice for terminating a registered agreement etc., is reduced from six months to two months in sub-sections (1) and (3). The proviso to sub-section (1) is new. In sub-section (2) the word "settlement" is added in deference to the remarks made by the Industrial Court in the undernoted case.[1] Sub-section (5) and the explanation are new. The explanation lays down who shall be competent to give the notice of change.

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1. In the matter of registration of the agreement dated 22-10-1943 between the Marsden Spinning and Mfg. Co. Ltd. and elected representatives of employees. Bombay Labour Gazette, (Jan. 1945) Vol. 24 Page 301.

Termination of an agreement, settlement or award :

An agreement, settlement or award would terminate on the date specified therein. If no date is specified it can be terminated by a two months' notice in writing given in the prescribed manner by one party to the other. If a registered agreement, settlement or award provides that it is to remain in force for more than one year, it may be terminated after the expiry of one year by either party giving two months' notice in the prescribed manner, but no notice for termination of agreement etc. can be given till the expiry of three months after the agreement etc. comes into operation. A copy of the notice is to be sent to the Registrar and the Labour Officer.

A registered agreement or the settlement can be modified or changed by the mutual consent between the parties.

The persons who can terminate an agreement, settlement or award, or modify or change the terms of a registered agreement or settlement are the employer who has signed the agreement or settlement or who is party to the award or the heirs and assigns of such employer and the representative of the employees affected by the agreement, settlement or award.

Section 116 (1) : Scope : Unilateral termination :

"This sub-section enables one of the parties to terminate a registered agreement, settlement or award by a notice irrespective of the willingness or consent of the other side. It is essentially a unilateral act. But there is nothing in the Act to prevent an existing agreement or settlement being modified by a subsequent agreement or settlement. In so far as the subsequent agreement or a settlement is in conflict with the earlier registered agreement, or settlement, the latter would be deemed to have been modified to that extent. Any other view would limit the freedom of contract under which parties may mutually agree to modify the terms of a former contract to which they have been parties. Such a view would be in conflict with section 77 (2) [now section 116 (2)] itself."[1]

"Sub-section (1) relates to unilateral act of the party which desires to terminate a settlement. If both parties are so desirous, the case would be governed by sub-section (2) which enables the terms of a registered agreement which might include a settlement (in this Act it does include a settlement) having been changed or modified by the mutual consent of the parties. Reading section 28 and 77 together (section 42 and 116 of the present Act) the effect is that where the termination of conciliation proceedings results in a settlement, the case is governed by section 28 (3) [corresponding to section 42 (3)] If one of the parties to settlement desires a change in it that change does affect the terms of a settlement for which it must proceed under section 77 (1) which refers to an unilateral act by which a settlement is to be terminated. During

1. In the matter of registration of the agreement dated 22-10-1943 between the Marsden Spinning and Manufacturing Co. Ltd. and the elected representatives of the employees. Bom. Labour Gazette. (Jan. 1945) Vol. 24, Page 301.

the time the settlement remains in force it is open to both the parties to supersede it by another agreement under section 77 (2) (corresponding to section 116 (2) of this Act.) In order to bring about this mutual settlement, the parties may come to a private agreement or one party may proceed by giving a notice of change under section 28 (corresponding to section 42). The latter proceedings might result in agreement before conciliation starts or in a settlement after the conciliation begins. The previous settlement would be deemed to have been modified by subsequent settlement or agreement (see Labour Gazette, January, 1945, Page. 903). But in any case it is not open to the parties without arriving at an agreement or settlement to enforce the new change by resorting to strike or look-out. On failure of these proceeding as the subsisting settlement would remain in force the only way to give effect to the desired change is to give a notice for termination of the settlement, under section 77 (1) (present section 46). Thus where after the conciliation proceedings for changing the terms of a settlement failed, the mills effected the change without following the procedure under section 77 (1) (corresponding to section 116 (1) of this Act), for termination of the settlement, held the change was illegal.[1]

There being a settlement as regards wage rates, the mills gave a notice for increase of hours and the conciliation proceedings were initiated. The workers wanted to reopen the question of wage rates. The conciliator said they could not go into the question unless the settlement regarding wage rates was validly terminated by a notice under section 77 (1) of the Bombay Industrial Disputes Act (corresponding to S. 116 (1) of this Act). Held the conciliator was right.[2]

Contracting out of an award :

It must be noted that sub-section (2) allows only the modification of a registered agreement and settlement by mutual consent and therefore a modification or change in the award even by mutual consent is not allowed. "It is true that there is no express section in the Act in prohibition of any contract by which any rights conferred on the employees under an agreement or an award could be waived by them. There are two sections of the Act, however which read together, prohibit any change in the terms of an award by mutual consent. They are sections 73 and 77 (corresponding to sections 46 and 116 of the present Act). Section 73 (2) (section 46 (3) of the present Act) provides that no employer shall make any change referred to in sub-section (1) (equivalent to sub-section (1) and (2) of section 46 of the present Act) in contravention of the terms of an award. Sub-section (3), (present sub-section (4) of s. 45) provides that any change made in contravention of the provisions of sub-sections (1) and (2) shall be illegal. This has a reference to a unilateral change which is sought to be made by one party to the award namely the employer. The case of bilateral change is provided for under sub-section (2) of section 77 (section 116 (2) of the present Act) which says that nothing in

1. The Jalgaon Girni Kamgar Union Vs. The Khandesh Spinning and Weaving Co Ltd. Appn. No. 80/1944. Bombay Labour Gazette. (July. 1946) Vol. 25. Page 852.

2 Narayan Krishna Shetty Vs. The Jam Manufacturing Co. Ltd. Appn. No. 6/1945. Bombay Labour Gazette. (Aug. 1946) Vol. 25. Page. 934.

that section shall prevent the terms of a registered agreement being changed or modified by the mutual consent of the parties affected thereby. This sub-section is, however, confined to a case of registered agreement (and settlement under this Act). From the fact that sub-section (1) refers to a registered agreement, settlement or award the only inference possible is that the Legislature meant to exclude the case of an award from the operation of sub-section (2). The result therefore is that an award cannot be changed or modified even by the mutual consent of parties thereto. The combined effect therefore of section 73 (2) and section 77 (2) (section 46 (3) and section 116 (2) of the present Act) is that although a registered agreement (and a settlement) can be modified by mutual consent, an award cannot be so modified and if an employer attempts to do so even with the consent of the other party, such an attempt would not only be a change but an illegal change."[1]

Under the Bombay Industrial Disputes Act (so also under this Act) a right conferred to a party under an award cannot be waived by him. Under Section 73 (2) [corresponding to section 46 (3)] no employee can make any change in contravention of the terms of an award. Therefore the non-payment of dearness allowance fixed under the award is illegal even though the employees had waived their right to dearness allowance[2] or have entered into a specific agreement not to claim it.[3]

Method of modification of an award by mutual consent :

The Industrial Court has held, "An award is by a third party and the third party can always be moved by mutual consent to amend the award as it was in fact done when it was amended in September 1941 (Ahmedabad award, dated 26th April 1946) by increasing the dearness allowance by 45 per cent. by mutual agreement between the parties"[4]

Explanation :

The explanation is new and important and determines who can give notice for terminating a registered agreement, settlement or award. The notice on behalf of the employees can be given by the representative of the employees affected. Who can act as representative of the employees is laid down by section 30.

For the manner of giving notice see rules.

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1. The Government Labour Officer Vs The Anant Mills Co. Ltd. Appn. No. 33/1941 and The Textile Labour Association A'bad Vs. The Hariyallabhdas Muchand Mills Co. Ltd. Appn. No. 42/1941. Bom. Labour Gazette (Oct. 1941) Vol. 21, Page 153. (F. B)

2. The Ajmaner Girni Kamgar Union Vs. The Pratap Spinning and Weaving and Manufacturing Co. Ltd. Appn. No. 5/1942. Bombay Labour Gazette. (July. 2942). Vol. 21 Page 1148.

3. Mithi Ratan Vs. The Bhulakia Mills Co. Ltd. Appn. No. 121/1943. Bombay Labour Gazette. (July. 1944) Vol. 23. Page 695.

Hirachand Velsi Vs. The Gujarat Ginning and Mfg. Co. Ltd. Appn. No. 39/1945. Bom. Labour Gazette. (Jan. 1946) Vol. 25, Page 341.

4. In the matter of registration of agreement dated 20-10-1943 between the Marsden Spinning and Weaving Co. Ltd. and the elected representatives of the employees. Bombay Labour Gazette. (Jan. 1945) Vol. 24, Page 301

Liability of the executive of a union.

117. Where anything is required to be done by any union under this Act, the person authorised in this behalf by the executive of the union, and where no person is so authorised every member of the executive of the union, shall be bound to do the same and shall be personally liable if default is made in the doing of any such thing.

Explanation.—For the purposes of this section, the executive of a union means the body by whatever name called to which the management of the affairs of the union is entrusted.

This section corresponds to section 78 of the Bombay Industrial Disputes Act.

Power of certain authorities to summon witnesses, etc.

118. (1) For the purpose of holding an inquiry or proceeding under this Act, the Registrar, a Conciliator, Board, Labour Court in its ordinary jurisdiction, a Court of Enquiry and the Industrial Court shall have the same powers as are vested in Courts in respect of—

(a) proof of facts by affidavits;

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

(c) compelling the production of documents; and

(d) issuing commissions for the examinations of witensses.

(2) The Registrar, a Conciliator or Board shall also have such further powers as may be prescribed.

(3) For the purpose of obtaining the information necessary for compiling and maintaining the record under Chapter XVII the officer authorised under section 112 shall have the powers specified in clauses (b) and (c) of sub-section (1) and in sub-section (2).

This section embodies section 16, section 40 (2) and section 57 (2) of the Bombay Industrial Disputes Act.

Certain officers to be public servants.

119. The Registrar, an Assistant Registrar, a Conciliator, a Labour Officer, an Assistant Labour Officer, an Arbitrator, a member of a Board, an officer authorised under section 112, a Judge of a Labour Court, a member of the Industrial Court or a Court of Enquiry and a member of the staff of any of the said Courts shall be deemed to be public servants within the meaning of section 21

XLV of 1860. of the Indian Penal Code.

This section corresponds to section 80 of the Bombay Industrial Disputes Act.

Provisions of act VII of 1929 not to be affected.

120. Nothing in this Act shall affect any of the provisions of the Trade Disputes Act, 1929, and no conciliation or arbitration proceeding shall VII of 1929 be held under this Act relating to any matter or trade dispute which has been referred to and is pending before a Court of Enquiry or Board of Conciliation under the said Act.

This section corresponds to section 82 of the Bombay Industrial Disputes Act.

Repeal of Bom. IX of 1934.

121. The Bombay Trade Disputes Conciliation Act, 1934 shall cease to apply in a local area to any industry in respect of which the Bom. IX of 1934 provisions of this Act have been brought into force in such local area.

This section corresponds to section 83 of the Bombay Industrial Disputes Act.

Repeal of Bom. XXV of 1938.

122. The Bombay Industrial Disputes Act, 1938, is hereby repealed: Bom. XXV of 1938

Provided that—

(a) every appointment, order, rule, regulation, notification or notice made, issued or given under the provisions of the Act so repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have made or issued under the provisions of this Act, unless and until superseded by any appointment, order, rule, regulation, notification or notice made, issued or given under this Act;

(b) any standing order settled, agreement registered, changes which have come into operation, settlements recorded or registered, submissions registered, awards made or orders passed by the Industrial Court, under the provisions of the Act so repealed shall be deemed to have been settled, registered, to have come into operation, to have been recorded, made or passsed by the appropriate authority under the corresponding provisions of this Act;

(c) any right, privilege, obligation or liabity acquired, accrued

or incurred under the Act so repealed shall not be affected and any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation or liability shall, so far as it is not inconsistent with the provisions of this Act, be made, instituted and availed of as if the said Act had not been repealed and continues in operation;

(d) any proceedings pending before the Industrial Court, conciliation proceedings, or any proceedings relating to the trial of offences punishable under the provisions of the Act so repealed shall be continued and completed as if the said Act had not been repealed and continues in operation; and any penalty imposed in such proceedings shall be recorded under the Act so repealed;

(e) a registered union or a Representative Union or a Qualified Union or other representatives elected, entitled to appear or act as the representatives of employees under the Act so repealed shall, notwithstanding the repeal of the said Act, continue to act as the representatives of employees in any proceedings under this Act for a period of three months from the date on which this Act comes into force.

This section is new and by it the Bombay Industrial Disputes Act is repealed but the provisos are very important and practically save everything that was done under that Act or was pending at the time of coming into force of this Act.

Under proviso (1) all appointment orders, rules, regulations, notifications or notices made, issued or given under the Bombay Industrial Disputes Act are to be deemed to be made, issued or given under this Act in so far as they are not inconsistent with this Act.

Under proviso (b) all the standing orders, agreements, changes, settlements, submissions and awards and orders under that Act in so far as they are not consistent with this Act are saved and are valid as settled, registered or made under this Act.

Proviso (c) lays down that all rights, privileges, obligations and liabilities acquired, accrued or incurred under the Bombay Industrial Disputes Act are not affected and may be enforced.

Proviso (d) lays down that all the pending proceedings shall be completed in accordance with the provisions of the Bombay Industrial Disputes Act.

Proviso (e) lays down that the persons entitled to act as representatives of employees shall continue to be so entitled for a period of 3 months from

the coming into force of this Act.

Rules.

123. (1) The Provincial Government may by notification in the *Official Gazette* make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing provision such rules may be made for all or any of the following matters, namely:-

(a) the authority to be prescribed under sub-clause (c) of clause (14) of section 3;

(b) the manner in which the panels representing the interests of employers and employees shall be consituted and the manner in which vacancies in the Board of Conciliation shall be filled up under section 7;

(c) the qualifications for being eligible to be appointed to preside over Labour Courts under section 9;

(d) the form in which the registers of unions and the approved list shall be maintained under section 12;

(e) the form of application under sub-section (1), (2) and (3) of section 13;

(f) the fee to be paid, and the form of certificate of registration to be issued, under section 14;

(g) the fee to be paid under sub-section (1), and the manner of publication under sub-section (4), of section 16;

(h) the fee to be paid under sub-section (1) of section 17;

(i) the dates on which and the manner in which returns shall be submitted under section 19;

(j) the manner of publication of orders under section 21;

(k) the manner of registration of a union for more local areas than one under section 22;

(l) the form of application under section 23;

(m) the officers to be authorised under section 25 and the manner in which and the conditions subject to which the rights under that section shall be exercised;

(n) the fees to be prescribed under sub-section (6) of section 26;

(o) the authority to be prescribed under clause (b) of sub-section (2), and the manner of determining the representative of employees under sub-section (3), of section 27;

(p) the manner in which the persons shall be elected under sub-section (1), recalled under sub-section (4), the period for which and the manner in which they shall function and the manner in which vacancies shall be filled under sub-section (5) of section 28;

(q) the manner of authorising a Qualified or Primary Union under clause (iii) of, the manner of accepting the terms of an agreement or settlement under proviso *Secondly* and the number of representatives and the manner of their election under proviso *Thirdly* to, section 30;

(r) the conditions subject to which the powers of entry and inspection shall be exercised under sub-section (2) of section 34;

(s) the manner of submission of draft standing orders under sub-section (1), and the manner of consulting the representative of employees and other interests under sub-section (2), of section 35;

(t) the form of notice and the other persons to be prescribed under sub-sections (1) and (2), and the manner of approach and the period to be prescribed under the proviso to sub-section (4), of section 42;

(u) the other persons to be prescribed under sub-section (3) of section 43;

(v) the manner of forwarding the memorandum of agreement under sub-section (1) of section 44;

(w) the manner of nomination of members by the union under sub-section (1), the appointment of the chairman and manner in which he shall perform his duties under sub-section (2), of section 49;

(x) the manner of conducting the proceedings of a Joint Committee under sub-section (2) of section 50;

(y) the manner in which the memorandum of agreement shall be forwarded under sub-section (1), the form in

which a special intimation shall be forwarded under sub-section (2), the other persons to be prescribed under sub-section (4), of section 52;

(z) the form in which the statement shall be forwarded under sub-section (1) of section 54;

(aa) the manner of holding conciliation proceedings under sub-section (1) of section 56;

(ab) the form in which the memorandum of settlement shall be drawn up, and the manner of its publication under sub-section (1) of section 58;

(ac) the manner of giving notice under sub-section (2) of section 59;

(ad) The procedure to be followed by a Conciliator or Board under sub-section (1) of section 60;

(ae) the manner of publication of a submission under sub-section (3) of section 66 ;

(af) the modifications to be prescribed under sub-section (2) and the manner of making the employers parties to arbitration under sub-section (3), of section 72;

(ag) the manner of publication under sub-section (2) of section 74;

(ah) the form and manner in which an application shall be made under sub-section (2) of section 79;

(ai) the manner in which the record shall be a maintained under section 111;

(aj) the conditions to be prescribed under sub-section (I) of section 112;

(ak) the manner of giving notice under section 116;

(al) the further powers of the Registrar, a Conciliator or Board under sub-section (2) of section 118;

(am) any other matter which is required to be or may be prescribed.

(3) The rules made under this section shall be subject to the condition of previous publication in the *Official Gazette.*

This section corresponds to section 84 of the Bombay Industrial Disputes Act.

SCHEDULE I.

(*Section 35*)

1. Classification of employees, e. g., permanent, temporary, apprentices, probationers, badlis, etc.

2. Manner of notification to employees of periods and hours of work, holidays, pay days and wage rates.

3. Notice to be given to employees of starting, alteration or discontinuance of two or more shifts in a department or departments.

4. Closure or reopening of a department or a section of department or the whole of the undertaking.

5. Attendance and late coming.

6. Leave: conditions, procedure and authority to grant.

7. Holidays: procedure and authority to grant.

8. Liability to search and entry into premises by certain gates.

9. Temporary stoppages of work, including playing off, and rights and liabilities of employers and employees arising therefrom.

10. Termination of employment: notice to be given by employer and employee.

11. Suspension or dismissal for misconduct, suspension pending inquiry into alleged misconduct and the acts or omissions which constitute misconduct.

12. Means of redress for employees against unfair treatment or wrongful exaction on the part of the employer or his agent or servant.

SCHEDULE II.

(*Section 42*)

1. Reduction intended to be of permanent or semi-permanent character in the number af persons employed or to be employed in any occupation or process or department or departments or in a a shift not due to *force majeure.*

2. Permanent or semi-permanent increase in the number of persons employed or to be employed in any occupation or process or department or departments.

3. Dismissal of any employee except as provided for in the standing orders applicable under this Act.

4. Rationalisation or other efficiency systems of work.

5. Starting, alteration or discontinuance of shift working otherwise than in accordance with the standing orders applicable under this Act.

6. Withdrawal of recognition to unions of employees.

7. Withdrawal of any customary concession or privilege or change in usage.

8. Introduction of new rules of discipline or alteration of existing rules and their interpretation, except in so far as they are provided for in the standing orders applicable under this Act.

9. Wages including the period and mode of payment.

10. Hours of work and rest intervals.

For the comments under Schedule II, see comments under section 46.

SCHEDULE III.

(Section 42)

1. Adequacy and quality of materials and equipment supplied to the workers.

2. Assignment of work and transfer of workers within the the establishment.

3. Health, safety and welfare of employees (including water, dining sheds, rest sheds, latrines, urinals, creches, restaurants, and such other amenities.)

4. Matters relating to trade union organization, membership and levies

5. Construction and interpretation of awards, agreements and settlements.

6. Employment including—

(i) reinstatement and recruitment;

(ii) unemployment of persons previously employed in the industry concerned.

7. Payment of compensation for stoppages.

COMMENTS.

SCHEDULE III is new and any employee desiring a change in an industrial matter specified in this schedule may make an application to the Labour Court. See sections 42 (4) and 78 (1) (A) (a) (iii).

SCHEDULE III : ITEM 2 :

Under the Bombay Industrial Disputes Act it was held that it is not open to a worker to refuse work in a different KHATA unless the change involved an alteration in his status or a decrease in wages. The burden of proving that the change involved an alteration in his status or decrease in wages was on him.[1]

Transfer from one machine to another :

Nor is there a privilege of a worker to claim to work on a particular machine. The employer does not commit an illegal change or violates standing orders by asking a worker to work or not to work on a particular machine. The same

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1. Syed Fidalli Kasamalli Vs. The National Mills Co. Ltd. Appn. No. 43/1943. Bombay Labour Gazette (Dec. 1943) Vol. 23. Page 268.

wages are paid to a worker whether he works on machine A or machine B and as long as wages remain the same and the method of work remains the same there is no illegal change.[1]

Under this Act the transfer from one department to another falls or from one machine to another falls under item, (a) of Schedule II and an operative aggrieved by such transfer may apply to the Labour Court under Section 42 (4) and section 78 (A) (iii).

Item 6 :

Under sub-clauses (i) and (iii) of section 78.(I) (A) (a) the Labour Court has the power to decide disputes regarding the propriety of legality of the orders passed by the employer under the Standing Orders and to decide disputes regarding any change in respect of an Industrial Matter specified in Schedule III and under section 78 (I) (C) to carry out any change which is matter in issue. So questions whether an employee has been properly discharged or dismissed under the Standing Orders and whether he should be reinstated or not, fall to be decided by the Labour Court under this Act. In fact numerous cases of this nature will come before it. Under the Bombay Industrial Disputes' Act, the Court has no powers to see to the propriety of any order passed by the employer or to order reinstatement of any dismissed or discharged employee. This power to decide the propriety of the order passed under the Standing Orders and to order reinstatement is new. But then, what are the principles on which the Labour Court will decide the propriety of a discharge or dismissal and order reinstatment ? No such principles have been laid down in the Act to guide the Courts. But there is a recent award of Sir Harsidhabhai Diwatia, the President of the Industrial Court in which the questions of the propriety of the discharge of employees and the principles governing the reinstatement of such employees have been very ably discussed. Though the award was given by Sir. H. Diwatia in his personal capacity and therefore it has not the binding force of a decision of the Industrial Court. Yet, coming as it does from no less a person than the President of the Industrial Court and because of the very able discussion of the principles involved, it carries great weight and will probably be ranked as a leading authority in this respect. The facts of the case were that the monthly paid staff of the mills company formed a union of which one Mr. Bhimji, an engineer in the employment of the company was elected the vice-president. Some time thereafter Mr. Bhimji was all of a sudden discharged with one month's pay in lieu of notice. The members of the union went on a strike as protest. Ultimately the dispute was referred to the arbitration of Sir H. Diwatia. Out of the 800 employees who went on strike 89 had been discharged on the alleged grounds of leaving work without notice, for illegal strike and for giving threats of intimidation. The questions to be decided were whether Mr. Bhimji was properly discharged or not, whether all or any of the employees were properly discharged or dismissed and whether they

1. Bai Kanku Jivi Vs. The Shree Anand Cotton Mills, Ahmedabad. Application No 77/1945. Bombay Labour Gazette, (July, 1946) Vol. 25. Page 844.

should be reinstated.[1]

Difference between civil law and principles governing industrial relations :

Over-ruling the contention on behalf of the mills that there is no law compelling the employer to retain an employee against his will, the learned Arbitrator observed, "It is true that according to Civil Law governing master and servant, it is open to the master to discharge a servant with proper notice or to dismiss him for a proper cause. Even in the case of a discharge without notice or a wrongful dismissal, the servant is entitled to damage but not to reinstatement. It is well known that specific performance of a contract of service cannot be granted by a Civil Court. If therefore, this dispute is to be decided by a Civil Court no relief for reinstatement could be granted even if the discharge is held to be illegal. But although no relief could be obtained in a court of law both the parties to the present dispute have expressly referred the questions of improper discharge and reinstatement for arbitration and they have agreed to be bound by the award. It is therefore not only open but incumbent on me to decide these questions according to the principles governing industrial relations between the employers and employees, in absence of any statutory law. There is also the Bombay Industrial Relations Bill which has been passed by both the houses of Legislature in Bombay and awaiting the assent of the authorities in which provision has been made for relief of reinstatement in cases of improper discharges or dismissals, the compulsory recognition of certain kinds of unions and penalty against victimisation of the employee for joining a Trade Union. That law is however confined to clerks and menials and will not apply to higher employees. In the present case the discharged or dismissed employees are clerks, technicians and officers. However the Trade Unions Act of 1926 applies to all workmen without any distinction and thus includes what is known as the white collered class and any recognised Union of these employees will have a right to negotiate with the employers. These two measures—the proposed amendment in the Trade Unions Act and the Bombay Industrial Relations Bill—clearly show that the time has come in India when legitimate Trade Union activities and protection against 'unfair labour practices' by the employers have come to be recognised as fundamental principles of industrial relations. They have now been firmly recognised in Europe, America and Australia and their application to India which is now rapidly becoming one of the leading industrial countries in the world can no longer be disputed."[2]

Established principles in industrial relations :

In England the Trade Unions have come to be recognised as a part of the industrial system to such an extent that collective bargaining has become a normal feature of industrial relations. British Trade Union officers have not faced the problem of opposition to Trade Unionism or discrimination against workmen because of their membership (Industrial and Labour Relation in Great Britain by Gannett and Catherwood, page 335). The practical sense of the

1. In the matter of a dispute between The India United Staff Union and The India United Mills Limited Bombay Labour Gazette. (Jan. 1947) Vol. 26 Page 335.
2. Ibid.

leaders of capital and labour is fully wanting in the United States. As one American writer observes, "The industrial friction which flares up so prominently has been due principally to the employers' opposition to the acceptance of Trade Unionism as a definite part of the industrial system". It is for this reason that after a long and bitter struggle between Capital and Labour, the Federal Legislature of the United States had to enact a law in 1935 known as the National Labour Relations Act which recognises the two fundamental rights of labour, viz., to organise and to strike. Thus the Act among other things empowers the National Labour Relations Board to order any person engaged in 'unfair labour practice' to desist from it and to take affirmative action including the reinstatement of employees. There have been a large number of decisions under this Act of the Board and also some important judgments of the Supreme Board of the United States. The principles laid down may be summarised as follows:–

1. It has been held that the Act does not interfere with the normal exercise of the right of the employer to select its employees or to discharge them. (Ludwig Teller : 'Labour Disputes and Collective Bargaining.' Vol 2, page 828).

2. As regards the burden of proof in cases of discharge it has been held "A strong inference would be drawn and is drawn by the Board from the fact that an employee has been discharged either immediately or shortly after the affiliation with the Union or his election to Union Office." (Herbert A. Lien; "Labour Law and Relations", page 132).

3. In cases of discrimination in discharge, it has been held, "Where an entire group of men are subjected to discriminatory treatment in connection with reinstatement, the burden is upon the employer and not upon the Board to show which of the employees would not have been normally recalled." (Teller; Vol 2 page 833).

4. A discharge, of an employee for stoppage of work in protest over the discharge of an union leader has been held to be discriminating. (Teller: Vol. 2. page 830).

5. Striking employees retain their status as employees under the Act in two situations : first, where they strike in connection with a current labour dispute; second; where the strike is the result of an unfair labour practice.

6. Where a strike is provoked by the employer on account of "unfair practice" by him, and even though such strike may be in violation of law or carries criminal penalties, the strikers are entitled to the protection of the Act and can ask for reinstatement. The Supreme Court has held, "Even

assuming that the strikers' conduct was violative of certain State Laws carrying criminal penalties we cannot say that the respondent therefore is guilty in any lesser degree. One who engages in persistent and open defiance of a national law cannot be heard to assert that the retaliatory conduct of his employees in seeking to secure their rights is necessarily a bar to their reinstatement". (Lien; page 166).

7. As regards misdemeanours by the strikers, the principle of reinstatement is thus summarised :—

(a). The employees have a right to continue as employees if no serious injury to person or property is involved and if the offence is considered and treated as a very minor one by the properly constituted local authorities (Lien: page 169). Unlawful acts which are felonies or serious misdemeanours are a bar to reinstatement, unless the alleged unlawful acts are never tried or the employer takes no disciplinary action in regard to the acts or disregards such acts as to some of the strikers while insisting upon emphasizing them in connection with others or where the employers' resort to violence has been so extreme as to call forth like violence from the employees (Teller: Vol. II, pages 853-54.)

(b) In case of serious offences reinstatement is with-held but where the misconduct whether in reinstating persons equally guilty with those whose reinstatement is opposed, or in other ways, gives rise to the inference that union activities rather than misconduct is the basis of his objection, the Board has usally required reinstatement. (Teller : Vol. II, pages 852-53).

(c) It has been held, "A brawl or fist fighting between union or non-union employees is no bar to reinstatement. But engaging in serious assault and battery or threatening to burn the plant or filing a baseless charge (against a superintendent) for assault and battery with intent to kill, have been considered bars to reinstatement" (Teller Vol. II, pages 855-57.).

(d) Peaceful picketing and persuading other employees to join the strike are allowed and are not regarded as bars to reinstatement.[1]

In Australia it has now been the settled law that persons who were driven out of employment because they were engaged in legitimate union activities are entitled to be reinstated. (Commonwealth Arbitration Reports, Vol. 46, Part II, page 422). In one case where some of the striking employees were not employed while others equally culpable strikers were reinstated it was held that, "A position such as one which has developed in this case is one

1. Ibid.

which a body of employees may reasonably regard as a legitimate grievance and one which is likely to engender feeling of hostility and discontent" (vide Commonwealth Arbitration Reports. Vol. 53 part 111 page 576).[1]

"The above principles of industrial relation are so well recognised in industrially advanced countries that they have come to be regarded as fundamental principles of labour relations. Of course they are confined to cases of improper discharge as violating the fundamental priciples of right to organise and to strike, arising out of "unfair labour practices" by the employers. Every employers has a large discretion in discharging or otherwise punishing his employees for inefficiency, negligence, dishonesty, insubordination or misconduct so long as that is done in good faith and without any ulterior motive, arbitrary conduct or unnecessary harshness his discretion will not be interfered with. (Lien : page 142). But the position would be different when the employees' conduct is provoked by the unfair labour practice of the employer himself. It is only in such cases that the principles discussed above would have application."[2]

Following the aforesaid principles it was held by Sir Harsidbbhai that, (1) though the strike of the employees to whom the Bombay Industrial Disputes Act appliesd was illegal, the irregularity or illegality of the strike did not affect the propriety or otherwise of their discharge or dismissal if the strike was provoked by the company by resorting to unfair labour practice and as the strike took place because of the unfair labour practice of the company it was not entitled to discharge or dismiss these employees as a disciplinary measure for going on a strike without a notice even though some of them were holding responsible positions. (2) So also persuasion and even minor threats would not affect the right of the employees to reinstatement if they were improperly discharged as the strike was provoked by the company. The only ground in favour of the discharge would be serious misconduct or violence to person or property.

So out of the total 89 employees discharged two employees—one who was proved to have tampered with telephone apparatus and the other who caused serious injuries to a worker by throwing an electric bulb—were held to be not entitled to reinstatement while the others were ordered to be reinstated. Mr. Bhimji was held to be discharged because he was the vice president and a prominent leader of the union. Therefore his discharge amounted to unfair labour practice and so his reinstatement was also ordered.

1. Ibid. 2. Ibid.

Item 7 : Payment of compensation for stoppages :

For discussion on this topic see comments under standing order no. 16 for operatives.

APPENDIX I

STANDING ORDERS AS FINALLY SETTLED BY THE INDUSTRIAL COURT UNDER SECTION 26 (6) OF THE BOMBAY INDUSTRIAL DISPUTES ACT, 1933 FOR OPERATIVES IN COTTON TEXTILE MILLS.

Under Section 26 (6) of the Bombay Industrial Disputes Act, the standing orders for operatives in the Textile Mills as well as Standing Orders for the clerks in the Textile Mills were settled. Under Proviso (b) of Section 122, of this Act the Standing Orders settled under the Bombay Industrial Disputes Act are deemed to be settled by the appropriate authority under the corresponding provisions of this Act. And therefore the Standing Orders settled under that Act are valid and binding. The Standing Orders for Cotton Textile Mills have therefore been given here as they are vary important.

The Standing Orders for the operatives in the Cotton Textile Mills in Bombay City, Kurla, Gokak, Poona and Sholapur mentioned in the Schedule A are reproduced here. The Standing Orders for operatives in the Cotton Textile Mills in other centres (Ahmedabad, Viramgam, Nadiad and Surat) mentioned in Schedule 'B' are practically the same as for Bombay city etc., but whereever there are changes, both are given separately. The Standing Orders for operatives and clerks in the Mills in Khandesh and for several other concerns have also been settled by the Comissioner of Labour but have not been published here. Such Standing Orders are substantially the same with slight variation.

1. These orders shall come into force on and from the 12th. December 1939.

COMMENTS

"Before the Bombay Industrial Disputes Act came into force the uncontrolled will of the management prevailed in all these matters (conditions of employment, working of shifts, temporary stoppages, termination of services etc.) and usually there were no uniform rules. Standing Orders lay down now, a definite procedure which the employers must observe." The Bombay Industrial Relations Act goes much further and provides that an employee who feels aggrieved by the manner in which a Standing Order has been applied even though the procedure has been complied with would be entitled to approach the Labour Court and the court has power to decide regarding

the propriety of any order of the management in such cases.[1]

The Standing Orders in their final form may be described as, " Labour's Charter of Rights" and gives a measure of protection to the employee which is an advance on any thing he has previously achieved.[2]

When no Standing Orders are framed :

"The petition fails on a preliminary ground. No Standing Orders have been framed under the Bombay Industrial Disputes Act on the date on which the alleged discharge occurred, namely the 29th of August 1940. The Mills purported to have acted under their own Standing Orders. The Court, however, can interfere only if there is an illegal change with regard to any Standing Orders framed under the Act.[3]

Under section 35 (5), the Provincial Government is empowered to notify model Standing Orders in respect of an industry and if such model Standing Orders have been notified they will apply to an undertaking in the industry till Standing Orders have been framed under the Act. If no model Standing Orders have been notified, then of course in accordance with the above decisoin the management would not be bound to follow any procedure with respect to matters specified in Schedule I.

Standing Orders to be construed strictly :

" The duty of the Court is to construe the Standing Orders strictly. Where the language is perfectly plain it must be given effect to. The duty of the Court is not to make laws. It is to administer laws."[4]

2. In these orders, unless there is anything repugnant in the subject or context :

Bombay and others	**Ahmedabad and others**
(a) " Operatives " means all workpeople, male and female, employed in the mill or in the mill premises whose names and ticket numbers are included in the dep-	(a) "Operatives " means all work-people, male or female, employed in the mill or in the mill premises, *either directly or through contrac-*

1 Mr. Gulzarilal Nanda, Minister of Labour, Government of Bombay.

2 Bombay Labour Gazette, Volume 19, page 396.

3 Chandrashanker Shirtaj Vs. The Indian Woollen Mills Ltd. Appln. No. 50/1940 Bombay Labour Gazette, (Dec. 1940), Vol. 20, page 298.

4 The Textile Labour Association, Ahmedabad Vs. The Ahmedabad Manufacturing and Calico Printing Co. Ltd. Appln. No. 163/1943. Bombay Labour Gazette (Oct. 1944) Vol. 24, Page 96. Also Appln. No. 164/1943 Bombay Labour Gazette (Oct. 1944), Vol. 24, Page 102.

artmental musters, and includes Overseers, Jobbers, Muccadams, Watch and Ward Staff, Motor Vehicle staff and Cartmen.	*tors and* / or whose names and ticket numbers are included in the departmental or contractor's musters, and includes Overseers, Jobbers, Muccadams, Watch and Ward Staff, Motor Vehicle Staff and Cartmen.

(a) " The Company " means...Mills Co. Ltd.

(b) " The Manager " means Company's Manager or Acting Manager for the time being.

(d) The masculine includes the feminine.

COMMENTS

Operative : An Assistant Weaving Master is not an operative within the meaning of the definition of 'Operative' in Standing Order no. 2. The expression "Assistant Weaving Master" is not the same thing as " Assistant in weaving." The expression " Assistant in weaving " can refer only to a person who renders actual or physical assistance in the act of weaving. The Assistant Weaving Master does not weave himself, and therefore cannot be called an " Assistant in Weaving " and therefore the Standing Orders for operatives are not applicable to an Assistant Weaving Master.[1] The application of an Assistant Weaving Master that the termination of his services was in contravention of the Standing Orders framed for operatives and therefore constituted an illegal change was dismissed on the ground that he was not an operative within the meaning of the Standing Order no. 2.[2]

3. Operatives shall be classed as (1) Permanent; (2) Probationers; (3) Badlis; (4) Temporary Operatives; and (5) Apprentices.

A " permanent " operative is one whose name has been entered in the Muster Roll and who has been given a permanent ticket and has completed a probationary period of two months in the same or another occupation in the mill.

1. Somnath Motilal Shah. Appln. No. 199/1943. Bombay Labour Gazette (July 1944) Vol. 23, page 701.
2. Ibid

A "probationer" is one who is provisionally employed to fill a permanent vacancy, and has not completed two months' service in that post. If a permanent operative is employed as a probationer in a new post, he may, at any time during the probationary period of two months, be reverted to his old permanent post.

A "badli" is one who is employed on the post of a permanent operative or probationer, who is temporarily absent.

Bombay and others

A "temporary operative" is one who is engaged for work which is of an essentially temporary character.

Ahmedabad and others

A "temporary operative" is one who is engaged for work which is of an essentially temporary character, or who is engaged temporarily as an additional operative in connection with work of a permanent character.

An "apprentice" is a learner who is given a nominal allowance during the period of his training.

COMMENTS

Creation of a new class of operatives: It is not open to a mill to create a new class of operatives not contemplated by the Standing Orders. Thus where it was contended that the Dhobighat workers on a daily wage basis did not fall under any of the classes of operatives contemplated by Standing Order no. 3, and were therefore not entitled to dearness allowance, the contention was overruled.[1]

Permanent operative:

"Three conditions must be fulfilled before a person can be deemed to be a permanent operative. His name must be entered in the Muster Roll. He must possess a permanent ticket. He must have finished a probationary period of two months' work. Standing Order no. 3 requires that all these three conditions, not any one or two of them only, must be fulfilled before a person can be called a permanent operative. Admittedly

1. The Textile Labour Association, Ahmedabad Vs. The New Swadeshi Mills of Ahmedabad Ltd. Appln. No. 30/42, Bombay Labour Gazette (Sept.1942), Vol.22 page 48.

therefore one of the conditions is missing in the present case. Permanent tickets were not given to the workers of the third shift . . . . I am not able to accept the argument that as soon as two months' probationary period is finished by an operative he should be deemed to have become entitled automatically, to the status of a permanent operative even though there is considerable substance in the contention that although the operatives complete a probationary period of two months' work they are often not given permanent tickets."[1]

"If an operative cannot properly fall within the scope of the definition of other operatives, he cannot be regarded as a permanent operative unless he satisfies the conditions laid down in the definition of a permanent operative. A permanent operative is one who has completed two months' probationary period, whose name is entered in the Muster Roll and who has been given a permanent ticket. Therefore if the operative wanted to attain the status of a permanent operative, then after the completion of two months' service, it was his business to demand that his name be entered in the Muster Roll and that he be given a permanent ticket. The applicant failed to do this and therefore he does not properly fall within the definition of a permanent operative."[2]

It is implicit in the language of Standing Order no. 3 that it is obligatory on a mill to give a permanent ticket to a permanent operative. If an operative's name has been entered on the Muster Roll and has completed a probationary period of two months in the same or another occupation in the mills he is entitled to be given a permanent ticket and if such a ticket is not given the mills are guilty of an illegal change.[3]

Thus, refusal to give permanent tickets to the probationers who had completed two months' probationary period was held in the above noted case to be an illegal change.

Probationer: Where a person was taken as a probationer and served for more than 3 months and thereafter discharged without notice, it was held that the applicant must be deemed to be a permanent operative.

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1. The Textile Labour Association, Ahmedabad Vs. The Ahmedabad Manufacturing and Calico Printing Co. Ltd. Applns. Nos.163/1943 & 164/1943 Bombay Labour Gazette. (Oct. 1944) Vol. 24, page 96 and 102.

Bechar Dahya and another Vs. The New Manekchowk Spinning and Weaving Co. Ltd. Appln. No. 30/1943. Bombay Labour Gazette(Aug.1943) Vol.22page814.

2. Babu Bhiwa Vs. The Seksaria Cotton Mills Ltd. Appln. No. 157/1943. Bombay Labour Gazette (April 1944). Vol. 23, page 500.

3. The Textile Labour Association Vs. The Maheshwari Mills Ltd., Ahmedabad. Appln. No. 20/1945 Bombay Labour Gazette (March 1946) Vol. 25. Page 514.

Standing Order no. 3 defines a probationer thus: " A probationer is one who is provisionally employed to fill a permanent vacancy and has not completed two months' service in the post." It is implicit in this definition that as soon as a pobationer completes two months' service, he becomes a permanent operative automatically.[1]

Temporary closure:

If the operatives have completed their two months' probation, then they retain their permanent character and when after a temporary closure they are employed again, they do not cease to be permanent operatives. Thus where a night shift was temporarily closed and then again re-started it was held that the employees who were permanent before the closure of the night shift do retain their permanent character when they were re-employed and it is not true that they become new operatives.[2]

Admission that notice was due:

Where mills admitted that the notice of discharge was due to the applicant, the Court presumed that the applicant was a permanent employee. For in case of a Badli, discharge would be effected without any notice while in the case of a permanent operative he could be discharged only by fourteen days' notice.[3]

Two months' service:

Where an operative had put up only 52 days' work, held that he was not a permanent employee, as Standing Order no. 3 lays down, among other things that a permanent employee is one who has completed probationary period of two months in the occupation of a mill.[4]

Temporary operatives:

Where it was contended that the Dhobighat workers who were engaged on daily wages must be deemed to be temporary operatives, held that the contentions were incorrect. " For, a temporary operative is one who is engaged for a work which is of an essentially temporary character or who is engaged temporarily as an additional operative in connection with work of a permanent character. Dhobighat work is not a work of

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1. Nanubhai A. Bhatt Vs. The Rajnagar Spinning Weaving and Manufacturing Co. Ltd. Appln. No 11/1945. Bombay Labour Gazette (Nov. 1945), Vol 25, page 198.

2. The Government Labour Officer, Bombay Vs. The Manager, Jubilee Mills. Appln. No. 22/1940 Bombay Labous Gazette (Sept. 1940) Vol 20. Page 53.

3. Nurkhan Mirkhan Vs. Ahmedabad New Textile Mills Co. Ltd, Appln No. 72/1943. Bombay Labour Gazette (Oct. 1944) Vol 24, Page 107.

4. Ram Avtar Laxman Vs. The Marsdan Spinning and Manufacturing Co. Ltd. Appln. No. 119/1943 Bombay Labour Gazette (Oct. 1944) Vol. 24. Page 118.

temporary character, nor the operatives in question are engaged temporarily as additional operatives in connection with that work."[1]

Where a person was changed from looms to looms for short intervals like seven days, twelve days, nineteen days and so on and was without work for several days in certain months, held that he was not a permanent employee. For a permanent employee would not be changed from looms to looms at such short intervals nor would he be without work for some time.[2]

There is no particular duration fixed for a temporary hand. There is no time limit beyond which a temporary hand ceases to be so and becomes a permanent hand. If the operative does not come within the definition of a permanent operative in Standing Order no. 3, he is not a permanent operative though he might have put in service for more than a year.[3] Cases are easily conceivable in which people may work much longer than two months and may not be permanent. For instance take the case of a Badli. He may continue to work as a mere substitute in the place of a permanent worker for several months, but he is not a permanent operative. Similarly a person may be engaged in work which is essentially of a temporary nature for several months. He too cannot be called a permanent operative.[4]

Contractor's employees:

The contractor's employees fall within the meaning of operatives as defined in clause (a) of Standing Order no. 2 (as settled for Ahmedabad,) because they were persons employed in the mill through the Contractor. The question is whether they can be regarded as permanent operatives under Standing Order no. 3, i. e., persons whose names have been entered in the Muster Roll and who have been given a permanent ticket and have completed the probationary period of two months in the same or another occupation in the mill. It is common ground that in the case of employees in question (who were contractor's employees) their names were not entered in the Muster Roll of the Company nor were any permanent tickets given to them by the Mills. It is irrelevant whether the third requirement viz. the probationary period of two months in the same or another occupation

1. The Textile Labour Association, Ahmedabad Vs. The New Swadeshi Mills Co. Ltd. Appln No 30/1943. Bombay Labour Gazette (Sept.1942) Vol 22,page 38.

2. Abdulla Bokosh Vs. The National Mills Co.Ltd. Appln. No. 83/1943 (March 1944) Vol 23 Page 447.

3. Jivan Lala Vs. The Ahmedabad Manufacturing & Calico Printing Co. Ltd. Appln No 55/1943 Bombay Labour Gazette (Sept 1943) Vol 23. Page 44.

4. The Textile Labour Association, Ahmedabad Vs The Ahmedabad Manufacturing and Calico Printing Co. Ltd Applns Nos. 163/44 and 164/44. Bombay Labour Gazette (Oct. 1944) Vol. 24. Pages 96 and 102.

in the mill is satisfied or not. In the circumstances the applicants were not the permanent operatives as defined in the Standing Orders.[1]

Badli for a non-existent person :

Where an operative contended that he cannot be considered as a Badli for a person who did not exist as there were some vacant numbers in the Register and therefore he was wrongly treated as a Badli although he was a permanent employee, held that he had no right to be treated as a permanent operative unless the management took him as such.[2]

Bombay and others

4. Every permanent and probationary operative without exception shall be provided with a departmental ticket showing his number, and on attendance each day, deliver up the ticket at the place provided.

Every "badli" shall be provided with a "badli" card, which shall be surrendered if he obtains permanent or probationary employment.

Ahmedabad and others

4. Every operative shall be given a permanent ticket unless he is a probationer, badli, temporary operative or an apprentice.

Every permanent operative, without exception, shall be provided with a dapartmental ticket showing his number, and on attending the mill each day, shall on being required to do so, show it to the person authorised by the Company to inspect it.

Every "badli" shall be provided with a "badli" card, which shall be surrendered if he obtains permanent employment.

Every temporary operative shall be provided with a special ticket or a pass which he shall surrender at the place provided when entering the mill.

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1 The Textile Labour Association, Ahmedabad Vs. The Manecklal Harilal Mills Co. Ltd. Appln. No. 37/42. Bombay Labour Gazette (Sept. 1943) Vol. 23. Page 52.

The Textile Labour Association, Ahmedabad Vs. The Ahmedabad Cotton Manufacturing Co. Ltd. Appln. No. 7/1942 Bombay Labour Gazette (Sept. 1942)Vol. 23 Page 49.

2. Deochand Sukha Vs. The Khatau Makanji Spinning and Weaving Mills Co. Ltd. Appln. No. 15/1941 Bombay Labour Gazette (June 1941) Vol 20. Page 932.

Every apprentice shall be provided with a card which shall be surrendered if he obtains permanent or probationary employment.

Every apprentice shall be provided with a card which shall be surrendered if he obtains permanent employment.

5 The periods and hours of work for all classes of operatives shall be posted up on a notice board at the time-keeper's office.

6. Notices specifying (a) the days observed by the mill as holidays and (b) pay days, shall be posted as required by the Factories Act and the Payment of Wages Act respectively.

Bombay and others

7. Notices specifying the rates of wages payable to all classes of workers and for all classes of work shall be displayed in a conspicuous position in the departments in which the operatives concerned are actually working.

Ahmedabad and others

7. Notices specifying the rates of wages payable to all classes of workers and for all classes of work with such essential data as will enable the wages to be determined shall be displayed on beams in the Weaving Department and in other departments at such conspicuous places as the Company thinks fit.

COMMENTS

The opponent company introduced the work of overlocking of blankets which had not hitherto been done by them and they were themselves not able to fix the rates just at the commencement of the new work. After examining the nature of work, they were able to fix the rates about, month and a half afterwards. The workers alleged that it constituted a breach of Standing Order no. 7, which requires the notice specifying the rates of wages to be affixed. Held that it was an entirely new kind of work and it was not obligatory on the company under Standing Order no. 7 to fix the rates before the work started. For, although the Standig Order no. 7 directs that notice specifying rates of wages shall be affixed in the department, there is no direction that such notice should be affixed in all cases before the work starts. Held, there was no illegal change.[1]

1. Ganpat Ramchandra Vs. The Indian Woollen Mills. Appln. Nos. 25/1946 and 26/1946 Bombay Labour Gazette (Oct 1946) Vol. 26. Page 98.

In this case the wages were also not paid for a month and a half because the mills could not themselves fix the rates of the new type of work though subsequently they were paid. Held, there is no Standing Order laying down that the wages must be paid on a particular day. The remedy of the workers was under the Payment of Wages Act, by making an application for payment of delayed wages and compensation. Held, there was no illegal change.[1]

8. Any wages due to an operative but not paid on the usual pay day on account of their being unclaimed shall be paid by the Company on such unclaimed wage pay day in each week as may be notified to the workers and following the date on which a substantiated claim was presented by the operative or, on his behalf, by his legal representative provided that such claim is submitted within three years from the date on which the wages become due to the operative.	8. Any wages due to an operative but not paid on the usual pay day on account of their being unclaimed shall be paid by the Company on such unclaimed wage pay day in each week as may be notified to the workers and following the date on which a substantiated claim was presented by the operative or, on his behalf, by his legal representative provided that such claim is submitted within three years from the date on which the wages become due to the operative. If the operative is unable to present himself, the Company shall, if requested by him in writing so to do, send his pay by Money Order at his cost.
9. Shift working shall be regulated in accordance with the Factories Act.More than one shift may be worked in a department or departments or any section of a department at the discretion of the Company. If	9. Shift working in a department or departments or a section of a department shall be regulated in accordance with the Factories Act If however, there are any collective agreements or awards for regulating

1. Ibid.

more than one shift is worked in the mill, operatives shall be liable to be transferted from one shift to another. Shift working may be discontinued after putting up a notice in the timekeeper's office. Notice of one month of discontinuance of any shift shall be given, provided, however, that it shall not be necessary to give one month's notice if as a result of the discontinuance of the shift no permanent employee is discharged. If as a result of discontinuance of shift working any permanent employees are likely to be discharged, they shall be discharged having regard to the length of their service in the mill, those with the shortest term of service being discharged first. If the shift is restarted, a week's notice thereof shall be given by posting a notice at the mill premises and the employees discharged as a result of discontinuance of the shift shall, if they present themselves at the time of re-starting of the shift have preference in being re-employed, having regard to the length of their previous service in the mill, those with the longest term of service being re-employed first.

shift working they shall be adhered to in so far as they are not inconsistant with the Factories Act. Shift working may be discontinued after putting up a notice in the timekeeper's office. Notice of one month of discontinuance of any shift shall be given provided, however, that it shall not be necessary to give one month's notice if as a result of the shift no permanent employee is discharged. If as a result of discontinuance of shift working, any permanent employees are likely to be discharged, they shall be discharged having regard to the length of their service in the mill, those with the shortest term of service being discharged first. If the shift is restarted, a week's notice thereof shall be given at the mill premises and the employees discharged as a result of discontinuance of the shift shall, if they present themselves at the time of restarting of the shift, have preference in being re-employed having regard to the length of previous service in the mill, those with the longest term of service being re-employed first.

COMMENTS

Difference between Bombay and Ahmedabad :

In the Standing Order as settled for Bombay mills, the mill-authorities have been given power to transfer an operative from day shift to night shift; but no such power was conferred under Standing Order as settled for Ahmedabad mills; and there, if an operative in the day shift is unwilling to work in the night shift, he cannot be compelled to do so.[1] It was contended that there is no prohibition in the Standing Order as settled for Ahmedabad mills as regards transfer of operatives from one shift to another and therefore transfer from day shift to night shift is allowed and does not constitute an illegal change. The contention was over-ruled on the ground that when the Standing Orders came before the Industrial Court, this point was thoroughly argued and in Standing Orders as settled for Bombay mills, the mills were given power to transfer an operative from day shift to night shift but no such power was conferred in Standing Orders settled for Ahmedabad mills.[2]

So where an operative was transferred in Ahmedabad from day shift on pain of being dismissed, held it amounted to an illegal change.[3] But there is a very recent award of the Industrial Court to the effect that the mills in Ahmedabad should be allowed to work three shifts if they want, with a system of change-over for one year. In both the cases of two shifts-as well as three shifts working, there will be a system of change-over at the end of each month by which the workers of the first shift will go over to the second and those of the second to the third and those of the third to the first. In the case of the two-shift working, the day shift and the night shift workers will change in rotation at the end of every month. The minimum period of working of the second and third shift shall be three months and in both cases, notices of one month of discontinuance of the second or third shift should be given. The award is to remain in force upto 15th February 1947 when the question of its further continuance will be determined.[4] So also where the mill authorities in Surat (where the change-over was not allowed) introduced a system of change-over of employees from day shift to night shift without giving a notice under sec. 28(2) of Bombay

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1. Chaman Balchand Vs. The Maneck-chowk and Ahmedabad Manufacturing Co. Ltd, Appln. No. 57/1940, Bombay Labour Gazette (Feb. 1941) Vol 20 page 429.

2. The Textile Labour Association, Ahmedabad Vs. The Kaisar-I-Hind Mills Co. Ltd. Appln. No. 27/1941 Bombay Labour Gazette (Sept. 1941) Vol. 21, Page 41.

3. Ibid.

4. The Ahmedabad Mill Owners Association Vs. The Textile Labour Association, Ahmedabad. Submission No. 9/1946. Bombay Government Gazette Part I (27 Feb. 1947) Page 751.

Industrial Disputes Act, held it was an illegal change.[1]

Standing Order no. 9 : Not ultra-vires :

The Standing Order no. 9 is not ultra-vires. The words "shift working" appearing in Schedule I is wide enough to include Standing Orders concerning matters arising from the shift working.[2]

At the time of starting : There would be infringement of Standing Order no. 9 only if the applicants had presented themselves *at the time* of starting of the shift and had not been employed as required by the Standing Order. Where therefore it was not proved that the applicants had presented themselves at the time of re-start of the night shift, held, there was no breach of this Standing Order.[3]

Re-employment is as permanent operative : If the operatives have completed their two month's 'probation' at any time before a shift is discontinued, then when they are re-employed after the temporary closure, they retain their character as permanent operatives and do not cease to be permanent. The provisions of the Standing Order no. 9 are only consistent with the permanent employees who are discharged by the closure of the shift being regarded as such when they are to be employed on the re-opening of the shift. If all the workers whether old or new are to be treated as probationers when the night shift is re-started, the management might close the night shift at any time within two months after its start without giving any notice at all and the provisions about notice of one month in this Standing Order would he rendered nugatory. Thus in the undernoted case the night shift was re-started on 15th May when the permanent employees, discharged on account of the closure, were taken back. Then within two months of the re-start that night shift was closed on Ist July after only two days' notice. Held, the mills committed an illegal change because, according to the Standing Order no. 9 one month's notice ought to have been given; for, the permanent operatives who were re-engaged on 15th May, when the night shift was re-started, must be deemed to be permanent operatives and not new employees and therefore it was immaterial that the shift which began on 15th May continued for less than two months.[4]

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1. Abde Rehman Subrati Vs. The Surat Cotton Spinning and Weaving Mills Co. Ltd. Application No. 43/1944. Bombay Labour Gazette (Nov. 1944) Vol. 24 page 193.

2. Mulji Bechar and others Vs The Harivallabhdas Mulchand Mills Co. Ltd. Appln. No. 61/1940. Bombay Labour Gazette (April 1940) Vol. 20 page 622.

3. Mulji Bechar and others Vs. The Harivallabhdas Mulchand Mills Co. Ltd. Appln. No. 62/1940 Bombay Labour Gazette (April 1941) Vol. 20, page 622.

4. The Government Labour Officer Bombay Vs. The Manager, Jubilee Mills. Appln. No. 22/1940 Bombay Labour Gazette (Sept. 1940) Vol. 20, page 53.

Where the third shift was run intermittently for about two years, but the employees in that shift were not given permanent tickets although some of them had completed more than two months' service, the court held that the history of the shift was sufficient to show that the third shift was intended to be a purely temporary affair and that the workers who were engaged in it were not intended to be appointed permanently and were not permanent in fact and therefore the closure of the third shift without any notice did not constitute an illegal change, for, the Standing Order no. 9 contemplates a month's notice only in case of a discharge of a permanent operative.[1]

Employee: The import of the word 'employee' occurring in the Standing Order no. 9 must be limited by the meaning or significance which is usually attached to the expression 'operative.' Thus technical assistants viz., an Assistant Weaving Master is not an operative within the meaning of the Standing Orders and therefore the Standing Order no. 9 does not apply to them.[2]

Where the night shift was discontinued before the Standing Order no. 9 came into operation but re-started after the said Standing Order no. 9 came in force, held that the Standing Order was applicable although the suspension took place before the Standing Order came into operation That particular part of the Standing Order which refers to the re-employment of workers was in force when the necessity of putting it into operation arose in October 1940.[3]

10. All operatives shall be at work in the mill at the times fixed and notified to them. Operatives attending late shall be shut out and treated as absent.

Any operative, who after presenting his ticket, card or pass, is found absent from his proper place or places of work during working hours without permission or without any sufficient reason, shall be liable to be treated as absent for the period of his absence.

If, however, he is so absent from the mill premises during

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1. The Textile Labour Association, Ahmedabad.Vs. The Ahmedabad Manufacturing and Calico Printing Co Ltd. Applns. No. 160/1944 and 164/1944 Bombay Labour Gazette (Oct. 1944) Vol. 24, pages 96 and 102.

2. Somnath Motilal Shah Vs. The Ahmedabad Cotton Mills Co. Ltd. Appln. No. 199/1942. Bombay Labour Gazette (July 1944) Vol. 23 page, 701.

3. Mulji Bechar Vs. The Harivallabhdas Mulchand Mills Co. Ltd. Appln. No. 62/1940. Bombay Labour Gazette (April 1941) Vol. 20, page 622.

working hours without permission, he shall be liable to be treated as absent for the whole day, in case his absence commences before the recess period and for half a day in case his absence commences after the recess period.

If the operative is so absent from the mill premises with the permission of the head of the department, his wages for the period of absence shall be liable to be deducted.

The deductions from wages to be made for the periods of absence under this Standing Order shall be made in accordance with the provisions of the Payment of Wages Act.

Bombay and others

11. Service for a total period of 12 months in a mill shall qualify an operative for a total period of one month's leave. Grant of such leave shall depend on the exigencies of the mill and shall be at the discretion of the Company.

Ahmedabad and others

11. Service for a total period of 12 months in a mill shall qualify an operative for a total period of one month's leave, with or without pay according to the terms of contract, custom or usage of the mill. Grant of such leave shall depend on the exigencies of the mill and shall be at the discretion of the Company.

Any operative who desires to obtain leave of absence shall apply to an officer or officers appointed for the purpose by the Company. It shall be the duty of such officer or officers to obtain the orders, on such application, of the authority appointed by the Company on two days in a week fixed for the purpose; provided, that if the leave applied for is of an urgent nature, that is, to commence on the date of the application or within three days thereof, the orders of the authority empowered to grant leave shall be obtained without any delay. If the leave asked for is granted, a leave pass shall be issued to the operative. If, however, the leave is refused or postponed, the fact of such refusal or postponement and the reasons therefor shall be recorded in writing in a register to be maintained for the purpose, and if the operative so desires, a copy of such entry in the register shall

be supplied to him. If the operative after proceeding on leave desires an extension thereof he shall make an application for the purpose to the authority granting leave either in writing or orally or through any other person. In any case, a written reply either of the grant or refusal of extension of leave shall be sent to the operative if his address is available and if reply is likely to reach him before the expiry of the leave originally granted to him.

If the operative remains absent beyond the period of leave originally granted or subsequently extended, he shall lose his lien on his appointment unless (1) he returns within eight days of the expiry of the leave and (2) gives explanation to the satisfaction of the authority granting leave of his inability to return before the expiry of leave. In case the operative loses his lien on the appointment, he shall be entitled to be kept on the "badli" list.

COMMENTS

Losing line: Where the applicant returned to duty on the 9th day after the expiry of the leave and did not satisfy the management of his inability to return before the expiry of his leave, held, he lost his lien on his appointment and the act of management in not taking him back is not illegal.[1]

If a person over-stays his leave without permission, by more then eight days he has no right to be taken up back as a permanent operative.[2]

Where an employee remained for nearly two and half months after the expiry of his leave he was held to have lost his lien on his permanent post.[3]

In the following case where the operative who was absent without leave for some days was told when he returned to duty that another operative was appointed in his place and therefore no appointment could be given to him, the court held that absence from duty on the part of an

1. Wasudeosing Rambahalsing Vs. The Victoria Mills Ltd. Appln. No. 51/1940. Bombay Labour Gazette. (Feb. 1941) Vol. 20 page 423.

2. Deochand Sukha Vs. The Khatau Makanji Spinning and Weaving Mills Co. Ltd. Appln No. 15/1941 Bombay Labour Gazette. (July 1941) Vol. 20 page 932.

3. Rameswar Maluram Vs. The New Pratap Spinning Weaving and Manufacturing Co Ltd., Dhulia Appln. No. 197/1941 Bombay Labour Gazette. (Jan. 1941). Vol. 23 page. 330.

employee without leave or permission is a misconduct under Standing Order no. 21. No sooner an operative commits such misconducts, he renders himself liable to proceedings for suspension or discharge or dismissal. If such a misconduct is committed by an employee, it is open to the mills either to suspend him, or discharge him or dismiss him according to the rules laid down by the Standing Orders. It is not open to them to appoint another operative in his place without formally discharging him or dismissing him according to the provisions prescribed in the Standing Orders.[1]

This case was rightly distinguished in the following case on the ground that it was a case of absence without leave and was not covered by Standing Order no. 11. Standing Order no. 11 deals with cases of over staying of the leave and lays down that if an employee who is granted leave over-stays by eight days or more he loses his lien on his post.[2]

Failure to reply to an application for extension of leave:

Under Standing Order no. 11 the mills are bound to send a written reply to an application desiring extension of leave. Thus where on operative whose leave expired on 30th April, applied on the 16th April for a further extension of 10 days, the mill did not reply to the application and terminated his services. Held, the action of the mills was illegel.[3]

This Standing Order does not limit its provisions to one extension but it applies to any extension whatever.[4]

Where a person whose leave expired on 7th March asked for leave on 18th March and was granted leave up to 30th April, held the mill must be deemed to have condoned his absence and extended the period of leave.[5]

Bombay and others	Ahmedabad and others
12. An operative may be granted casual leave of absence not exceeding 10 days in the aggregate in a calender year. Such leave shall not be for more than three days at a time except in case of sickness. Such	12. An operative may be granted casual leave of absence with or without pay not exceeding 10 days in the aggregate in a calender year. Such leave shall not be for more than three days at a time except in

1. Gulamrasul Valimahomad Vs. The New Mahekchowk Spinning Weaving Co. Ltd. Appln. No. 47/1943 Bombay Labour Gazette (Aug. 1943). Vol. 22, page 812

2. Rameshwar Maluram Vs. The New Pratap Spinning Weaving and Manufacturing Co. Ltd. Appln. No, 197/1943 Bombay Labour Gazette (Jan. 1944) Vol. 23 page 330.

3. Dhondu Vithal Vs. The Manager, Khatau Makanji Spinning and Weaving Co. Ltd. Appln. No. 21/1940 Bombay Labour Gazette (Sept. 1940,) Vol. 20 page 52. 4 Ibid. 5. Ibid.

leave is intended to meet special circumstances which cannot be foreseen. Ordinarily, the previous permission of the head of the department shall be obtained before such leave is taken, but when this is not possible, the head of the department shall as soon as may be practicale be informed in writing of the absence from work and of the probable duration of such absence.

case of sickness Such leave is intended to meet special circumstances which cannot be foreseen. Ordinarily, the previous permission of the head of the department shall be obtained before such leave is taken, but when this is not possible the head of the department shall as soon as may be practicable, be informed in writing of the absence from work and of the probable duration of such absence.

13. The number of holidays to be granted to the operatives and the days which shall be observed as holidays by the mill shall be regulated in accordance with the Factories Act and the custom or usage of the mill.

COMMENTS

Custom or usage : Where according to the custom and usage, the Ramzan Id day was observed as a holiday, yet the mill did not observe it as a holiday in the year 1940, held that the mills acted contrary to the usage and custom and therefore in contravention of the Standing Order no. 13, which lays down that the number of holidays to be granted to the operatives and days to be observed as holidays shall be regulated in accardance with the Factories Act and the custom and usage of the mills. The fact that there were no Muslims working in the mills at that time is immaterial. For, the importance of a holiday consists not always in the oppor tunity it provides in performing religious rites but in compulsory rest that he gets by reason of that holiday. It is equally immaterial whether the workers did come to the mill on that day or not. On this point the willingness or unwillingness of the workers has no bearing. It may be that even though the workers considered themselves to be entitled to a holiday they had to attend on the Ramzan day being afraid that if they did not do so, they might lose their wages for that day.[1]

14. No operative shall enter or leave the mill premises except by the gate or gates appointed for the purpose.

1. The Textile Labour Association, Ahmedabad, Vs. The National Mills Co. Ltd Appln. No. 61/1940 Bombay Labour Gazette (April 1941) Vol. 20. Page 633.

Bombay and others

15. All male operatives shall be liable on leaving the mill premises to be searched by the gateman and all female operatives shall be liable to be detained by the gateman for search by the female searcher, if acting without malice he suspects that any operative who is so detained is in wrongful possession of the property belonging to the Company; provided that no search shall be made except in the presence of two other persons of the same sex as the suspected operative.

Ahmedabad and others

15. If any operative is in possession of any cloth manufactured or similar to that manufactured in the mills, he shall show it and get it marked by the gatekeeper or a clerk when entering the mill.

All male operatives shall be liable on leaving the mill premises to be searched by the gateman and all female operatives shall be liable to be detained by the gateman for search by the female searcher, if acting without malice he suspects that any operative who is so detained is in wrongful possession of the property belonging to the Company; provided.

(1) That an operative may, with the previous permission in writing of the head of the department, take samples of yarn and/or cloth for the purpose of a *bona fide* trade dispute;

(2) That no search shall be made except in the presence of two other persons of the same sex as the suspected operative.

16. The Company may, at any time or times, in the event of a fire, catastrophe, breakdown of machinery, or stoppage of the power supply, epidemic, civil commotion or other cause, beyond the control of the Company, stop any machine or machines or department or departments, wholly or partially for

any period or periods, without notice and without compensation in lieu of notice.

In the event of a stoppage of any machine or department under this Order during working hours, the operatives affected shall be notified by notices put upon notice boards in the department concerned and at the time-keeper's office, as soon as practicable, when work will be resumed and whether they are to remain or leave the mill. The period of detention in the mill shall not ordinarily exceed one hour after the commencement of the stoppage. If the period of detention does not exceed one hour, operatives so detained shall not be paid for the period of detention. If the period of detention in the mill exceeds one hour, operatives so detained shall be entitled to receive wages for the whole of the time during which they are detained in the mill as a result of the stoppage. In the case of piece-workers, the average daily earnings for the previous month (Hapta in the case of other centres) shall be taken to be the daily wages.

COMMENTS

Playing off is temporary termination of service:

Where the management discharged certain workers by giving 14 days' notice on account of the shortage of work due to sudden stoppage of Government orders, held that the very fact of discharge by notice shows that it was not a case of playing off under Standing Order no. 16. They could have played off the applicants if it was necessary to stop the department for a reason which was beyond their control. In such a case it would have been regarded as a temporary measure but a discharge after 14 days' notice of a permanent worker would not necessarily mean that the employer wants to dispense with his services temporarily. If the matter came under Standing Order no. 16, there was no reason to discharge the workers with 14 days' notice. The intention of the opponent mills was therefore to effect a reduction atleast of a semi permanent character and therefore such action amounted to an illegal change.[1]

Beyond the control of the company:

In each case where the mills company purports to act under Standing

1. Eknath Mahadeo and others Vs. The Bombay Textile Mills Ltd. Appln. No. 1/1944, Bombay Labour Gazette. July 1944, Vol. 23, Page. 703.

Order no. 16, it has to be ascertained from its factswhether the cause for the temporary termination of services was beyond the control of the Company.[1]

Playing off due to stoppage of Government orders for requisitioned looms :

Where the looms on which the applicants were working were requisitioned for the purpose of preparing machine-gun belting as per Government orders, and the Government suddenly decided to stop further production on the looms and therefore the management terminated the services of the applicants but re-appointed them when the new order was received, held, "Although Standing Order no. 16 was not expressly mentioned, the mills meant to act under that Standing Order. The correspondence as well as evidence lead on behalf of the opponents showed that there was no certainty of getting fresh orders immediately after the existing order has been carried out. Nor could it be definitely ascertained within some appreciable time before the existing order could be finished that the next order would not be received so that notices to the employees might be given under section 28 of the Bombay Industrial Disputes Act. In each case where the Company purports to act under Standing Order no. 16, it has to be ascertained from its facts whether the cause for the temporary termination of services was beyond the control of the company and in my opinion the present case falls under this Standing Order because the opponent company was not in a position to anticipate when, if at all, the new order would be received although they did think that at some near time in future an order would be received. It was not possible for the Company to find out the exact time when the old order would be finished and that a new order would not be received immediately thereafter. The present case is governed by Standing Order no. 16 and there was no illegal change."[2]

Shortage of colour chemicals :

Where the workers had to be temporarily reduced on account of the shortage of colour chemicals and the workers were re-employed after seven days, held that the action of the management came under Standing Order no. 16 and not under item (1) of Schedule II. For, it was not possible to know at what time the Government would cease supplying colour chemicals and at what time they would renew the supply and so the supply depended upon causes beyond the control of the Company and even of the Government.[3]

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1. Mahomed Yusuf Ahmed & others Vs. The Bombay Textile Mills Ltd. Appln. No. 2/1944, Bombay Labour Gazette. (July 1944.) Vol. 23 page 705.
2. Ibid.
3. The Dhulia Girni Kamgar Union Vs. The New Pratap Spinning Weaving and Manufacturing Co Ltd.Appln. No.16/1944. Bombay Labour Gazette (July 1944) Vol. 23 page 708.

Shortage of coal:

Where the mills were closed for two months due to shortage of coal, held that the employees were properly played off.[1]

The stoppage of the mills due to shortage of coal which could not be obtained on account of the difficulty of transport is beyond the control of the employers and is covered by the Standing Orders nos. 16 and 17.[2]

Where the workers were played off as the mills could not get the necessary woolen materials from Australia, held, the playing off was for a circum stance which is beyond their control as an after-effect of war.[3]

Shortage of bobbins:

Owing to the absence of the workers in the weaving department there were not sufficient empty bobbins and therefore the spinning department was stopped. The workers alleged that the stoppage of the spinning department was not for a cause beyond the control of the mills. Admittedly the mills had 62 gross bobbins in stock. Held that even if they have stock in reserve the management must have some discretion as to how to utilise the materials provided the discretion is not exercised with an ulterior motive. If they had no sufficiet stock of bobbins it cannot be said that they were bound to maintain a large stock so that the work shall never stop. The stock in possession of the mill was sufficient to keep the spinning department running if the weavers had worked on three days. Held, the stoppage was beyond the control of the management and therefore there was no illegal change.[4]

Over-production:

This Standing Order refers to closure for such causes as fire etc. and such other causes as are beyondt he control of the company. When the Standing Orders were settled by the Industrial Court, this question was carefully gone into and it was decided that Standing Order No. 16 should be restricted to cases specifically mentioned there, which are obviously beyond the control of the Company. Over-production does not come within the cases contemplated by that Standing Order. For, over-production is not beyond the control of the Company.[5]

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1. The Dhulia Girni Kamgar Union Vs.The New Pratap Spinning Weaving and Manufacturing Co. Ltd. Appln. No. 17/1944 Bombay Labour Gazette (July 1944) Vol 23, Page 709

2. The Textile Labour Association. Ahmedabad Vs. The Ahmedabad Mill Owners' Association Submission No. 4/1946. Bombay Government Gazette Part I (27 Feb. 1947) Page 746.

3. Ganpat Ramchandra Vs. The Indian Woolen Mills. Appln. No 25/1946 & 26/1946 Bombay Labour Gazette (Oct. 1946) Vol 26. Page 98.

4. Thakarji Umaji and others Vs. The Jam. Manufacturing Co. Ltd. Mill No. 1. Appln. No. 12/1946 Bombay Labour Gazette (July 1946) Vol. 25 Page 865.

5. Chaman Balchand and others Vs. The Maneckchowk and Ahmedabad Manufacturing Co. Ltd. Appln. No. 57 of 1940, Bombay Labour Gazette, (Feb. 1941) Vol 20 Page 429.

Unruly conduct of the employees:

Where the mills were closed from 13th December 1944 to 1st February 1945 owing to unruly and disorderly behaviour of the employees some of whom assaulted and injured the manager and other officials of the mills as a result of whicht hese officials of the mills refused to attend the mills as they were afraid of being assaulted by angry workers; held that the reason for closing of the mills was beyond the control of the management. It was contended that the management should have taken the help of the police as the workers were willing to come to work and there was no justifiable cause for *Continuing* the closure for several days. But the Court held that the incident which took place on 12th December was so serious that the officers of the mills had reasonable apprehension that their lives were in danger and therefore they did not come for work. It may have been possible to secure police help before, but some allowance must be made for the state of mind of the mills agents who were without responsible officers to work the mills and who wanted the feelings of the workers to cool down. Held that the management were justified in keeping the mills closed.[1]

Force majeure: Any temporary reduction in the number of persons employed due to *Force Majeure* is intended to be dealt by the Standing Order framed under the Schedule I of the Act while item I of Schedule II of the Act refers to the reduction intended to be of a permanent or semi-permanent character in the number of persons employed not due to *Force Majeure.*[2]

Meaning of force majeure: What is meant by *Force Majeure* can be gathered from the provisions made in the standing orders for temporary stoppage of work such as is made in the Standing Order no. 16 for the textile mills. In a case arising out of Standing Order no. 16 in application no. 16/44, Mr. Justice Divatia held that shortage of colour chemicals due to war conditions and Government controls was sufficient justification for temporary stoppage of work. If the word *Force Majeure* is interpreted in this sense it would appear that shortage of yarn and needles owing to the conditions created by the war was due to *Force Majeure.*

The words " *Force Majeure* " do not necessarily refer to an act of *God* but all circumstances which are beyond the control of the party which seeks the protection of force majeure clause.[3]

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1. Bhikhaji Sakharam Vs. The Jam Manufacturing Co. Ltd Appln. No. 4/1945 Bombay Labour Gazette (March 1946) Vol. 25, page 505.

2. Kali Mohan Bhoumik and others Vs. The Shree Jam Hosiery Works. Appln. No. 153/43 Bombay Labour Gazette (Aug. 1944) Vol. 23, page 753.

3. ibid.

For trade reasons : In Bombay there was proved to be an established practice of playing off the employees for trade reasons. The system had been in vogue for over 12 years. The Court held that it must be regarded as a part of the contract of employment. It was argued that after coming into operation of the Standing Orders, 'playing off' is permitted only in respect of cause due to *Force Majeure* or strike. Therefore 'playing off' for trade reasons or for reasons connected with the detailed working of the various departments must be deemed to have been prohibited unless the conciliation machinery is set in motion. The Court over-ruled the contention holding, "The system of 'playing off' to the extent defined in old Standing Ordar no. 14 is the established practice of the industry subject to which the contractual objections exist between the employers and employees. Although there is no section in the Act which expressly saves the existing usages and customs in the industry it does appear that the legislature intended to save such existing usages and customs and therefore this usage was not affected and acting in consonance with usage was no change within the definition of the term.[1]

Failure to repair a loom :

If an operative was not able to work on a machine for some time, on account of the negiect of the management in repairing it, it would not come under Standing Order no. 16. For there is no general breakdown of machinery as a result of which the loom stopped working.[2]

Burden of proof :

Where the management closed the mills under Standing Order no. 11 on the ground that there was lack of process on account of strike in three departments, it was held. " The applicants (workers) have not proved that the other departments could have been properly worked in spite of the strike in the three principal departments. It is the management that is the proper judge as to whether the other departments are affected by the strike and unless there is evidence to prove their *mala* fides be or any other ulterior purpose it cannot regarded as amounting to a breach of the Standing Order. Ordinarily it would not be in the interest of the management to close down the other departments if there was enough material for working them.[3]

No right to work during this period :

When the mills were closed due to shortage of coal, no employee is entitled, as of right, to be employed during that period. "It is true that some operatives were required to work

1. Sukhram Lakshman & others Vs. The Khatau Makanji Spinning and Weaving Co. Ltd. Appln. No 50/41. Bombay Labour Gazette (Sept. 1941) Vol. 21. page 56.

2. Khalil Muddi Vs. The Laxmi Silk Mills Co. Ltd. Appln No. 54/1940 Bombay Labour Gazette (Feb. 1941) Vol. 20 page, 426.

3. Ganpat Damodar Khamkar Vs. The Raymond Woolen Mills. Appln. No, 67/1947. Bombay Government Gazette Part, 1, (6th March 1947) Page, 813.

from time to time during that period for keeping the engines in order and for that purpose the mills employed the necessary number of men by turns. But it is not open to the operatives to contend that if the management gave them work for some time during this period they were bound to get work during the whole of the time."[1]

Compensation for loss of earnings due to stoppages :

There is no bar to the workers asking for compensation even though they may not be entitled to the wages under Standing Order no. 17. Thus where the workers demanded compensation for loss of earnings due to stoppage of mills on account of coal-shortage it was held, " What they claim in this dispute is not wages but some compensation for the loss of their earnings and the demand for such compensation is an industrial matter within the meaning of the term. It cannot be said that if a matter is covered by Standing Orders, no demand can be made by the workers for any loss which they might suffer due to the operation of the Standing Order."[2]

However any party wishing to make out a case for compensation in spite of the provisions of Standing Order no. 16, has to make out a very strong case. As long as the Standing Orders no. 16 and 17 are there they cannot be rendered obsolete by giving workers as compensation what they cannot get as wages irrespective of any other consideration.[3]

Under the B. I. D. Act a notice of change was to be given and the conciliation proceedings had to be taken. Under this Act an application to the Labour Court would lie for such compensation.

The Government made recommendations as a result of the deliberations of the Second Tripartite Conference between the employers, employees and the Government in the year 1943 that the relief may be given to the workers for closure of mills or factories in certain cases. The recommendations are not obligatory but recommendatory. The Industrial Court has held that if any relief is to be given on the basis of these recommendations they should be taken in its entirety. The Court following one of the recommendations viz. compensation, should be paid when only stoppage is for seven days or more, held that where all the stoppages were for less than seven days, no compensation should be given. But in the case of the Pratap Spinning Weaving and Manufacturing Co. Ltd., in which though none of the stoppage was for more than seven days, the Adjudicator gran-

1. The Dhulia Girni Kamgar Union Vs. The New Pratap Spinning Weaving and Manufacturing Co. Ltd. Appln. No. 171/1944 Bombay Labour Gazette (July 1944) Vol. 23, page. 709.

2. The Textile Labour Association, Ahmedabad Vs.The Ahmedabad Mill Owners, Association. Submission No. 4/1946. Bombay Government Gazette, Part I (27 Feb. 1947) Page 746.

3. Ibid.

ted relief at a flat rate of 75 p. c. of the earnings, on the ground that the mills designedly made the periods of closure shorter to avoid the condition of relief imposed by the Government proposals by bringing their case within the condition of exemption by reducing it to a period of less than 7 days and had acted *mala fide*.[1]

The demand for bonus stands on a different footing from the demand for compensation for loss in wages. In the former case the worker gets some share in the increased profits while in the latter case both sides have suffered losses and the compensation for loss in wages adds to the loss which the employer has suffered on account of stoppages.[2]

17. Any operative played off under Order 16 shall not be considered as dismissed from service, but as temporarily unemployed, and shall not be entitled to wages during such unemployment to the extent mentioned in Order 16. Whenever practicable a reasonable notice shall be given of resumption of normal work and all operatives played off under Order 16, who present themselves for work, when the normal working is resumed, shall have prior right of reinstatement.

18. The Company may, in the event of a strike affecting either wholly or partially, any one or more department or departments of the mill, close down, either wholly or partially such department or departments and any other department or departments affected by such closing down, and for any period or periods. The fact of such closure shall be notified by notice put upon the notice board in the departments concerned and in the time-keeper's office as soon as practicable. The operatives concerned shall also be notified by a general notice prior to the resumption of work, as to when work will be resumed.

19. (a) The employment of any permanent operative may be terminated by fourteen days' notice or by payment of thirteen days' wages in lieu of notice. If he draws wages on a piece-rate basis, the thirteen days wages shall be computed on the average daily earnings of such operative for the days actually

1. In the matter of the dispute between The Pratap Spinning and Weaving and Manufacturing Co. Ltd. Bombay Labour Gazette. (April 1946) Vol. 25 Page. 621.

2. The Textile Labour Association, Ahmedabad Vs. The Ahmedabad Mill Owners' Association. Submission No. 4/46 Bombay Government Gagette Part I (27 Feb. 1947). Page 746.

worked during the previous wage period. The reasons for the termination of service shall be recorded in writing and shall be communicated to the operative, if he so desires at the time of discharge, unless such communication, in the opinion of the Manager, may directly or indirectly lay the Company and the Manager or the person signing the communication open to criminal or civil proceedings at the instance of the operative.

(b) Probationers other than those transferred from permanent posts in the mill, "badlis", temporary operatives and apprentices may leave, or be discharged from service without notice by an Officer not below the rank of the head of a department.

(c) Where the employment of any person is terminated by or on behalf of the mill, the wages earned by him shall be paid before the expiry of the second working day from the day on which his employment was terminated.

COMMENTS

Clause (a) of the Standing Order no. 19 lays down the procedure for the discharge of a permanent employee and clause (b) lays down the procedure for the discharge of temporary operatives, 'badli', apprentices and probationers other than those transferred from permanent posts in the mill. The important distinction is that a permanent employee can be discharged only by fourteen days' notice or payment of thirteen days' wages in lieu of notice while one who is not a permanent operative can be discharged without notice. The discharge of such an operative without notice would not be an illegal change while the discharge of a permanent operative without notice would amount to an illegal change.[1]

1. Babu Bhiva Vs.The Seksaria Mills Ltd. Appln. No. 157/1943. Bombay Labour Gazette (April 1944) Vol. 23 page 500.

Chhabaji Jethaji Vs.The Maneklal Harlal Spinning and Manufacturing Co. Ltd. Appln. No. 38/1943 Bombay Labour Gazette (Sept. 1943) Vol. 23, Page 31.

Ram Avtar Laxman Vs. The Marsden Spinning and Manufacturing Co Ltd Appln No. 119/1943 Bombay Labour Gazette (Oct. 1944) Vol. 24, page. 118.

The Textile Labour Association Ahmedabad Vs. The Ahmedabad Cotton Manufacturing Co. Ltd. Appln. No. 7/1942 Bombay Labour Gazette (Sept. 1943) Vol. 23 Page 48.

The Textile Labour Association Ahmedabad. Vs. The Maneklal Mills Co. Ltd. Appln No. 37/42 Bombay Labour Gazette (Sept. 1943) Vol. 23 Page 52.

Jivanlala Vs. The Ahmedabad Manufacturing & Calico Printing Co.Ltd. Appln. No. 59/1943 Bombay Labour Gazette (Sept. 1943) Vol. 23 Page 44.

In view of this difference it becomes very important to decide whether a particular employee is permanent or not. If the employee discharged without a notice is permanent, then the discharge is illegal and constitutes an illegal change. If the employee is not permanent, his discharge without notice is perfectly legal.[1]

For decisions as to whether an operative is permanent or not, see comments under Standing Order no. 3.

Notice:

Standing Order No. 19 does not seem to contemplate a written discharge notice except in case where the operatives desire a written statement of the reasons of their discharge.[2]

It is not necessary that there must be an individual notice of discharge given to each of the employees to be discharged. It is enough if there is a written order which has been communicated to the workers concerned. Thus where a general notice was put up and contents thereof were brought to the knowledge of the employees to be discharged, held that the notice was sufficient.[3]

Refusal to accept notice:

Where the mills passed an order discharging an operative with 13 days' pay in lieu of notice, but he did not accept it, it was held that he cannot complain that its contents were not known to him.[4]

But if the notice cannot be served on the operative sought to be discharged, it should be sent to the Government Labour Officer who is "the representative of the employees." Where this course was not adopted the Court held that no notice was served and there was breach of Standing Order no. 19.[5]

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1. Ibid.

2. Mahomedkhan Ahmedkhan Vs. The Maheshvari Mills Co. Ltd. Applns. No. 113 to 118/1943 Bombay Labour Gazette (July 1944) Vol. 23 page 694.

3. Bai Yesu Harishchandra Vs. The Jam Manufacturing Co. Ltd. Appln. No. 49/1942 Bombay Labour Gazette (April 1943) Vol. 22. Page 532.

4. Mehbub Mohidin Vs. The Colaba Land and Mills Co. Ltd. Appln. No. 47/1942 Bombay Labour Gazette (Dec. 1942) Vol. 22 Page 255.

5. Nurkhan Mirkhan Vs. The Ahmedabad New Txtile Mills Co. Ltd. Appln. 72/1943 Bombay Labour Gazette (Oct. 1944) Vol. 24 Page 107.

So also where the mills contended that the discharge notice was not accepted by the applicant but the original notice which was not accepted as alleged was not produced by the mills and this fact was not brought to the knowledge of the Government Labour Officer, the Court held that no notice was served. The Court remarked that in such cases the original notice must be produced by the mills together with the written statement as it is an important piece of evidence.[1]

The operative is entitled to work for the full period of the notice of discharge and therefore in the case of an operative who was given 14 days' notice on 7th January 1943 but was not allowed to work from 10th January onwards, held the action of the mills was illegal.[2]

So also where an operative who was allowed to work only for two days and was refused work for the remaining days of the notice period, it was held that mills committed an illegal change.[3]

Discharge notice and discharge order :

Separate discharge order necessary : "A notice and discharge order are entirely distinct things. Between the commencement of the notice and the discharge, there is an interval of 14 days. In other words the notice and the discharge are separate by a span of 14 days. In these circumstances the same exhibit cannot be taken to represent both a notice and a discharge order. A notice of discharge is not analogous to a notice of forfeiture of tenancy under the Transfer of Property Act. In the case of a notice of forfeiture of tanancy, forfeiture takes place automatically on the expiry of the notice period. But in the case of a notice of discharge a separate discharge order is obligatory under the Standing Orders. This follows by necessary implication from Standing Order no. 25."[4]

Thus where an operative who was alleged to be discharged on 11th March 1944 by a notice given on 25th Feb. 1944 was not given a discharge order on 11th March but was given such order on 25th February,

1. Mahomed Safi Nannekhan Vs. The Vivekanand Mills Ltd. Appln. No. 37/19-43 Bombay Labour Gazette (Aug. 1943) Vo. 22. Page. 822.

Mahomed Nazir Ramzan Vs. The Shri Vivekanand Mills Co. Ltd. Appln. No. 36/43 Bombay Labour Gazette (Aug. 1943) Vol. 22. Page 919.

2. Asakalli Gulammahomed Vs. The Silver Cotton Mills Co. Ltd. Appln. No. 26/1943 Bombay Labour Gazette (Sept. 1943) Vol. 23. Page 27.

3. Parashram Hari Vs. The Phoenix Mills Ltd. Appln. No. 150/43 Bombay Labour Gazette (April 1944)Vol. 23 Page.497.

4. Fakirram Lutairam Vs. The Bhalakia Mills Co. Ltd. Appln. No, 18/1944 Bombay Labour Gazette (May 1945) Vol. 24. Page 549.

Rajebhai Rehmanbhai Vs. The Ahmedabad Cotton Manufacturing Co.Ltd. Appln. No. 115/1944 Bombay Labour Gazette (June 1945) Vol, 24 .Page 620.

held that as no discharge order was given on 11th the date of termination of the notice, the termination of the applicant's service was illegal and therefore amounted to an illegal change.[1]

But where a discharge order was given on the same day as the notice of discharge but at the termination of the period of notice, signature of the applicant was taken on the pay voucher in which it was stated that he was discharged by 14 days' previous notice, it was held he was validly discharged though the discharge order could not be considered evidence of valid discharge.[2]

It is not open to the mills to appoint another operative in the place of one operative without formally discharging or dismissing him according to the provisions prescribed in the Standing Orders.[3]

Discharge may be for any reason:

A discharge under Standing Order no. 19 (*a*) is not a punishment as such but merely an incident of the conditions of service. An operative may be discharged for many reasons other than those mentioned in Standing Order no. 21.[4]

Though whenever there is a misconduct (which is specified in Standing Order no. 21) it is open to the management either to discharge the employee or to dismiss him, in the case of discharge the procedure laid down in Standing Order no. 19 is to be followed and in the case of dismissal the procedure prescribed under Standing Order no. 22 is to be followed.[5]

Reasons of discharge:

Under the Bombay Industrial Disputes Act it was held that it is not open to the Industrial Court to go into the question whether the reason assigned is sufficient or insufficient, valid or invalid, good or bad, true or untrue etc. To do so would be to question the discretion of the manager.

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1. Fakirram Lutairam Vs. The Bhalakia Mills Co. Ltd. Appln.18/1944 Bombay Labour Gazette (May 1945) Vol. 24 page 549.

2. Rajibhai Rehmanbhai Vs. The Ahmedabad Cotton Manufacturing Co. Ltd. Appln. No. 115/1944 Bombay Labour Gazette (June 1945) Vol. 24,page 620.

3. Gulam Rasul Valimahomad Vs. The New Manekchowk Spinning & Weaving Mills Co. Ltd. Appln. No. 47/1943 Bombay Labour Gazette (Aug.1943)Vol.22, page 812.

4. Dhudaku Shamji Vs. The New Pratap Spinning Weaving and Manufacturing Co. Ltd. Appln, Nos. 165/1943 to 191/1943 Bombay Labour Gazette (Jan. 1944) Vo 23, page 326.

5. Ahmedbhai Chandbhai Vs. The Ahmedabad New Textile Mills Co. Ltd. Appln. No. 73/1944 Bombay Labour Gazette (July. 1944) Vol. 23, Page 690.

Vallamji Velji Vs. The Ahmedabad New Textile Mills Co. Ltd. Appln. No. 79/1943 Bombay Labour Gazette (July 1944) Vol. 23 Page 692.

All that the Court had to see was whether the formality which has been laid down in Standing Order no. 19 (a) has been observed or not.[1]

If it has been observed, we cannot go further and decide whether the reason itself is a reason or not. "It is argued by the applicant's learned pleader that if this view is to be held it would work very perjudicially against the interests of the operatives; since it would give wide powers to the employers to assign any arbitrary reason or even an untrue reason to get rid of the operatives. It cannot be said that this contention is meaningless. But I am afraid, as the Standing Orders Stand, no relief could be given to the applicants in the circumstances as those of the present case. All that we have got to do is merely to see whether the formality prescribed in Standing Order no. 19 (a) has or has not been followed in these cases. The reason 'having no work' has been assigned in the discharge order and that is sufficient compliance with the provisions of Standing Order no. (19)a.[2]

Under Section 78 (1) (A) (a) (i) of this Act, the Labour Courts have been invested with power to decide the propriety of an order made under the Standing Orders. The Industrial Court under the Bombay Industrial Disputes Act had no such power and therefore if an employee under this Act feels that the order of discharge though legal is not proper, can approach the Labour Court and the Labour Court has power to decide the propriety of such order and under clause (b) of paragraph (C) of Section 78 (1) to require the employer to carry out any change. So under this Act the Court can look into the reasons of discharge and if it thinks them to be improper it can require the mills to carry out any change including reinstating the employee. Thus under this Act the Court has to see whether the formalities prescribed by the Standing Orders have been observed or not as well as whether the reasons of discharge are proper or not.

Reasons of discharge to be recorded :

Standing Order no. 19 says among other things that the reasons for termination of service must be recorded and shall be communicated to the

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1. Jamaluddin Ghissu Vs. The Asarva Mill. Appln. No. 146/1943 Bombay Labour Gazette (March 1944) Vol. 23,page 451.

Yusuf Din Mahomad Vs. The Niranjan Mills Ltd, Appln. No. 130/1943 Bombay Labour Gazette (Dec. 1943) Vol. 23 page 275.

Dhudaku Shamji Vs. The New Pratap Spinning & Weaving and Manufacturing Co. Ltd. Dhulias Appln. No. 165/1943 to 191/1943 Bombay Labour Gazette (Jan. 1943) Vol.23, page 326.

Abdul Raheman Yakub Vs. The Sholapur Spinning and Weaving Co. Ltd. Appln. No. 8/1944 Bombay Labour Gazette (July 1944) Vol. 23 Page 707.

Rajaram Vishram Bari Vs. The Khandesh Spinning and Weaving Co. Ltd. Appln.No.15/1942 Bombay Labour Gazette (Aug. 1942) Vol. 21 Page 1184.

2. Applns. Nos. 146/1943, 154/1943, 155/1943. Supra 78 (1) (A) (a) (i).

operative if he so desires at the time of discharge etc. The direction is peremptory and if the reasons are not recorded, it amounts to an illegal change.[1]

Reasons to be communicated unless of an incriminating nature:

The reasons for discharge must be communicated to the operative if he so desires unless in the opinion of the manager they tend directly or indirectly to incriminate the Company. So it is open to the Company to refuse to disclose the reasons on that ground. But if in the reasons recorded there is nothing incriminating, the Company would be acting illegally. Thus where the reason recorded (which was not communicated to the operative) was "discharged being undesirable" held that the reason was not of an incriminating nature and should have been communicated to the applicant. Therefore it was held that the discharge was illegal and amounted to an illegal change.[2]

The Court may look into the reasons to see whether they are *prima facie* of an incriminating nature in cases where the reasons recorded are not communicated to the discharged operative discharged on the ground that they are of an incriminating nature.[3]

Where four reasons were recorded for the discharge of an operative and the fourth reason was not communicated on the ground that it was of an incriminating nature, the Court observed, "The fourth reason is in my opinion of an incriminating nature and the opponent was not bound to communicate the same to him"[4]

In a case where reasons of discharge were not communicated, it was held, "The Standing Order No. 19 (a) read with Standing Order No. 25 requires that the reasons for the discharge must be put down in writing at the time when the order is made, although if they are of an incriminating nature they need not be communicated to the operative. Though the reasons have been noted on the counterfoils of the books containing orders of discharge, but the reasons mentioned therein do not appear to be of an incriminating nature. Moreover the endorsements do not bear any date and I am not satisfied that these endorsements were made at the

1. Noormahomed Allabaksh Vs. The Sarangpur Cotton Manufacturing Co. Ltd. No. 2.Appln. No. 55/1943 Bombay Labour Gazette (Sept. 1943) Vol. 23, Page 39.

2. Shivram Jayaram Vs The Khandesh Spinning & Weaving Mills Co Ltd. Appln. 13/1942 Bombay Labour Gazette (Aug. 1942) Vo. 21. Page 1182.

3. Kashinath Shanker Vs. The Khatau Makanji Spinning & Weaving Mills Co. Ltd. Appln. No. 21/1942 Bombay Labour Gazette (Dec. 1942) Vol. 22, Page 256.

4. Haribhau Govind Patil Vs. The New Prahlad Mills Co. Ltd. Appln. No. 18/1942 Bombay Labour Gazette (August 1942) Vol. 21. Page 1185.

time when the operatives were discharged and therefore the provisions of Standing Orders nos. 19(a) and 25 have been infringed and the discharge is illegal."[1]

Although it is not obligatory on the company to communicate the reasons to the employee if they are of an incriminating nature, it would be better that it is stated on the discharge notice supplied to the operative that the reasons cannot be communicated as they are of an incriminating nature so that the operative should know why the reason would not be communicated to him.[2]

Dismissal or discharge:

The question often arises whether a termination of the service of an employee is a discharge under Standing Order no. 19 or dismissal under Standing Order no. 22. See for the discussion on this point comments under the same heading under Standing Order no. 22.

Dicharged employee:

After a valid discharge an employee ceases to be an employee except in cases where the discharge is on account of any dispute relating to a change in respect of which a notice is given or an application is made under section 42. Thus an employee cannot, after his discharge, make an application for declaration of an illegal change on the ground that the mills have caused a permanent or semi-permanent reduction in the number of persons employed[3] or that they have not paid him the dearness allowance payable under an award.[4]

20. Any permanent operative desirous of leaving the Company's service shall give fourteen days' notice to the head of the department concerned. The wages due to such an operative must, if possible, be paid on the day the notice expires and in any case within two days after the expiry of the notice.

If any permanent operative leaves service without notice he shall be liable to be sued for damages.

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1. The Jalgaon Girni Kamgar Union Vs. The Khandesh Spinning & Weaving Mills Co. Ltd. Applns No. 53—54 of 1942. Bombay Labour Gazette (April 1943) Vol. 22. Page 533.

2. The Dhulia Girni Kamgar Union Vs. The New Pratap Spinning & Weaving & Manufacturing Co. Ltd. Appln. No. 82/1945 Bombay Labour Gazette (Aug. 1946) Vol. 25, Page 936.

3. Ganpat Rambhau Gaekwar Vs. The New Prahlad Mills Co. Ltd. Appln. No. 16/1941. Bombay Labour Gazette (July 1941) Vol. 20 Page 936.

4. Natwarlal Sankalchand Vs. The Vijaya Mills Ltd. Appln. No. 113/1945 Bombay Labour Gazette (July 1946) Vol. 25, page 859

21. The following acts or omissions shall be treated as misconduct :—

(a) Wilful insubordination or disobedience whether alone or in combination with another or others of any lawful and reasonable order of a superior.

(b) Striking work in contravention of the provisions of the Bombay Industrial Disputes Act, 1938.

(c) Inciting other operatives to strike work in contravention of the provisions of the Bombay Industrial Disputes Act, 1938.

(d) Theft, fraud or dishonesty in connection with the Company's business or property.

(e) Taking or giving bribes or any illegal gratification whatsoever.

(f) Habitual absence without leave or absence without leave for more than ten consecutive days.

(g) Habitual late attendance.

(h) Habitual breach of any Standing Orders.

Bombay and others

(i) Collection of any moneys within the mill premises for purposes not sanctioned by the manager.

Ahmedabad and others

(i) Collection (other than collection of subscription of a registered trade union) of any moneys within the mill premises for the purposes not sanctioned by the Manager.

(j) Engaging in trade within the mill premises.

Bombay and others

(k) Riotous or disorderly behaviour during working hours on mill premises or any act subversive of discipline.

Ahmedabad and others

(k) Drunkenness or riotous or disorderly behaviour during working hours on mill premises or any act subversive of discipline.

(l) Habitual negligence or neglect of work.

(m) Habitual breach of any rules, or instructions for the maintenance and running of any department, or the maintenance of the cleanliness of any portion of the mill premises or mill compound.

(n) Frequent repetition of any act or omission for which a fine may be imposed under the Payment of Wages Act.

COMMENTS

Scope of the Standing Order no. 21:

Misconduct: This Standing Order gives the list of acts or omissions which shall be treated as misconduct. Under the Standing Order no. 22 the employer is entitled to suspend or dismiss an employee for the misconduct after complying with the procedure laid down in that Standing Order. The list given in this Standing Order is exhaustive and therefore if an act of an operative does not fall under any one of the clauses of this Standing Order, it is not a misconduct and the employer would not be entitled to dismiss or suspend an operative for such an act, and the dismissal or suspension of an operative for an act not falling under any one of the clauses of this Standing Order would be an illegal change.[1] Standing Order no. 22 provides that suspension or dismissal may be ordered on account of misconduct. Standing Order no. 21 says what should be treated as misconduct.[2]

But it is not true that in every case of misconduct the manager must only dismiss the operative, and not discharge him. Where-ever there is a misconduct on the part of an employee, it is open to the mills to discharge him or dismiss him. In the case of discharge the procedure laid down in Standing Order no. 19 is to be followed. In the case of dismissal the procedure prescribed in Standing Order no. 22 is to be followed.[3]

Clause (a): Wilful insubordination:

Where it was proved that an employee committed several acts of misconduct such as abusing, disorderly behaviour etc., and where he refused to accept the notice which was offered to him under Standing Order no. 22, held, his dismissal was legal and did not amount to an illegal change.[4]

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1. Nazaralli Badamiya Vs. The Ahmedabad Jupitor Spinning Weaving and Manufacturing Co. Ltd. Appln. No. 34/1943. Bombay Labour Gazette (August 1943) Vol. 22, page 818.
2. Ibid.
3. Ahmedbhai Chandbhai Vs. The Ahmedabad New Textile Mills Co. Ltd, Apoln No 73/1943 Bombay Labour Gazette (July 1944) Vol. 23, page 690.
4. Ibrahim Mahomed Vs. The New Shorock Spinning & Manufacturing Co. Ltd. Applu. No. 5/43 Bombay Labour Gazette (May 1943). Vol 22, page 600.

Clause (b): Striking work in contravention of the provisions of the act:

"When the Standing Order for the operatives of the Textile mills were being settled, the Commissioner of Labour had suggested that striking work either singly or with other operatives without giving 14 days' notice should be treated as a misconduct. But after hearing the parties, the Industrial Court came to the conclusion that the cessation of work either singly or with other operatives for reasons unconnected with an industrial dispute should not even be treated as a misconduct. They therefore deleted those words and restricted the Standing Order no. 21(b) to striking work in contravention of the provisions of the Bombay Industrial Disputes Act 1938. It is, therefore clear that the Industrial Court did not desire that striking work in connection with matters not connected with an industrial dispute should be treated even as a misconduct."[1]

Thus it has been held that striking work for celebration of a "Foundation day",[2] or for taking part in municipal election,[3] or on account of Oras day is not on account of an industrial dispute but can reasonably be attributed to the expressed desire of the employees to celebrate the day.[4]

It was held that cessation of work for these causes did not amount to a strike. It is clear that it would not be misconduct within the meaning of Standing Order no. 21.

It is competent for the management to decide for themselves that a particular strike was illegal and dismiss a leader for inciting that strike. It is not necessary that the management ought first to approach the Industrial Court to get a declaration that the strike was illegal and then only if successful they can punish the inciters. It is only when the management desire to prosecute an instigator that it is

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1. The Manekchowk and Ahmedabad Manufacturing Co. Ltd. No. 1. Vs. The Textile Labour Association, Ahmedabad. Applns. Nos. 2/1941 and 3/1941 Bombay Labour Gazette (April 1941) Vol. 20, page 626.

The Pratap Spinning Weaving and Manufacturing Co. Ltd. Vs. The Amalner Girni Kamgar Union. Appln. No. 27/1942 Bombay Labour Gazette (Dec. 1942) Vol. 22, page 252.

2. The New Maneckchowk and Ahmedabad Manufacturing Co. Ltd. No. 1 Vs. The Textile Labour Association Ahmedabad, Applns. No. 2/1941 and 3/1941 Bombay Labour Gazette (April 1941) Vol. 20, page 626.

3. The Pratap Spinning Weaving and Manufacturing Co. Ltd. Vs. The Amalner Girni Kamgar Union. Appln. No. 27/1942 Bombay Labour Gazette (December 1942) Vol 22, page 252.

4. The Ahmedabad Kaiser-i-Hind Mills Co. Ltd. Vs. The Textile Labour Association, Ahmedabad. Appln No. 36/1944 Bombay Labour Gazette (December 1945) Vol. 25, page 268.

essential to obtain such a declaration, otherwise not. The management can judge for themselves whether a strike is illegal or not and can act up to their judgment. If they misjudge, they take a risk and will be liable to punishment under Sec. 64 (i) (g) and (2), corresponding to Sec. 101 (1) and (3) of this Act, if the strike is not illegal.[1]

Where the management lawfully increased the daily hours of work from 9 to 10 and the applicant who refused to work in the 10th hour was suspended, held that the appellant had struck work in contravention of the Act and consequently it was a misconduct. Therefore his suspension was legal.[2] So also the workers who had gone on an illegal strike for a short time as a protest against working overtime were dismissed, it was held that the strike being illegal, their action amounted to a misconduct and therefore their dismissal was legal.[3] That the worker himself was against the strike is immaterial if he, in fact did not attend the mill and offer himself for work during the pendancy of the strike.[4]

But the fact that the employees resorted to an illegal strike in contravention of the Bombay Industrial Disputes Act would not entitle the mill authorities to dismiss them forth-with. It amounts to "misconduct" under Standing Order no. 21 and before any person could be dismissed, the provisions of Standing Order no. 22 have to be followed and therefore where the operatives who refused to work for extra hours which the management had lawfully increased, were refused admission the next day, held that though the strike was illegal, the dismissal being without following the procedure laid down in Standing Order no. 22 was illegal.[5]

Clause (d): Theft or mischief to another operative's property:

Where an operative was dismissed for cutting the tube and tyre of another operative, held, that act does not amount to misconduct. "It was contended that the act falls under clause (k) of the Standing Order no. 21 which includes drunkenness or riotous or disorderly behaviour during working hours or any act subversive of discipline or efficiency. It is difficult to hold that every act of mischief committed by one worker

1. Kashan Dharamayya Vs. The manager, Laxmi Cotton Manufacturing Co. Ltd. Appln No. 15/1940 and 16/1940 Bombay Labour Gazette (Aug. 1940) Vol. 19, page 1021.

2. Jivansing Bhagwansing Vs. The Broach Fine Counts Spinning and Weaving Mills Co. Ltd. Appln No. 39/1941 Bombay Labour Gazette (March 1943) Vol. 22, page 451.

3. Mahadeo Vishnu and others Vs. The Victoria Mills Ltd. No, 2. Appln. No. 23/1943. Pombay Labour Gazette (Nov. 1943) Vol. 23, page 197.

4. Chudaji Ramji Waghmare Vs. The Tata Mills Ltd. Appln. No.148/1943 Bombay Labour Gazette (January 1944) Vol. 23, page 318

5. The Ahmedabad Cotton Manufacturing Co. Ltd. Vs. The Textile Labour Association, Ahmedabad. Appln. No. 4/1941 and 8/1941 Bombay Labour Gazette (April 1941) Vol. 20, page 629.

against the property of another worker would amount to an act of disorderly behaviour or an act subversive of discipline. Under clause (d) of the Standing Order no. 21, "theft, fraud or dishonesty in connection with the company's business or property" amounts to misconduct. If therefore there was any act amounting to theft or mischief with regard to the property of the mills, it would certainly have been an act of misconduct; but a petty case of theft or mischief connected with the property of a fellow worker would not in my opinion be such disorderly behaviour as would amount to misconduct under clause (k). It would be open to the management to hand over the offending operative to the police and he would be punished in a Court of Law if he committed any criminal offence. But this clause does not enable the employer to regard an act of petty mischief or theft as a disorderly behaviour for which he could be summarily dismissed. Dismissal on this ground is illegal"[1]

Clause (f): Habitual absence without leave:

Where an operative was proved to be habitually absent without leave, held that his conduct amounted to misconduct under clause (f) of this Standing Order and his dismissal was legal.[2]

So also where an operative overstayed his leave for more than 10 days without permission and refused to work as a Badli, held, his conduct amounted to misconduct and his dismissal after following the procedure prescribed under Standing Order no. 22 was legal.[3]

But where there was a general strike for three and half months in Ahemedabad mills and it was agreed between the Ahmedabad Mill Owners' Association and the Textile Labour Association, Ahmedabad, that the permanent employees who return before 9th January 1943 should be taken back, but the applicant, a permanent employee who offered himself for work before the due date was not taken back, held that though his prolonged absence would be a misconduct, it was not competant to the mills to treat his absence as a misconduct in view of the above agreement and therefore his dismissal amounted to an illegal change.[4]

Clause (i): Not sanctioned by the manager:

According to the Standing Orders settled for the mills in Khandesh the collection of union subscription, unless sanctioned by the manager,

1. The Amalner Girni Kamgar Union Vs. The Pratap Spinning Weaving and Manufacturing Co. Ltd. Appln. No. 63/19-41. Bombay Labour Gazette (March 1942) Vol. 21, page 722.

2. Balkrishna Bama Vs. The Century Spinning & Manufacturing Co. Ltd. Appln. No. 52/1941 Bombay Labour Gazette (December 1941) Vol. 20, page 379.

3. Shri Ram Ghasiram Vs. The Sarangpur Cotton Manufacturing Co Ltd. No. 2. Appln. No. 85/1943 Bombay Labour Gazette (January 1944) Vol. 23, page 312.

4. Jetha Hira Vs. The Gujarat Hosiery Factory. Appln. No. 44/1943 Bombay Labour Gazette (Sept. 1943) Vol. 23, page 34.

amounts to misconduct within the meaning of clause (i) of the Standing Order no. 21, even though the union was a Representative Union. For merely because the union whose subscription is collected is a Representative Union it cannot automatically be a purpose sanctioned by the manager. Specific sanction must be, therefore, obtained, of the manager. In case of the cotton textile mills of Ahmedabad no permission of the manager is required for collection of subscription of a Registered Union. Therefore the conduct of the operative in collecting subscription of even a Representative Union in Khandesh without the sanction of the manager amounts to misconduct.[1]

Where an employee who collected in the mill premises money for Congress membership which was not a purpose authorised by the manager was dismissed, held, his action amounted to misconduct and he was rightly dismissed.[2]

But under Standing Order no. 21 (l) it is the *collection* of money for unauthorised purpose that is deemed to be a misconduct and not contribution of money for such a purpose. Thus where an employee was dismissed for contributing money to an unauthorised fund, held, the dismissal was illegal and amounted to an illegal change.[3]

Clause (l) : Habitual negligence :

This clause is about habitual negligence or neglect of work. Negligence is one thing whereas habitual negligence is quite a different thing. Negligence of work is not a misconduct under this clause. Thus where an operative was charged with negligence of work and not habitual negligence of work, held, his suspension being not for any misconduct under Standing Order no. 21 was illegal and amounted to an illegal change.[4]

Thus where the operative was charged with *chhapu* or a certain kind of flaw in the weaving of the cloth, the court held, "It is perfectly legitimate to deduce negligence on the part of the operative but this

1. The Amalner Girni Kamgar Union Vs. The Pratap Spinning Weaving and manufacturing Co. Ltd. Appln. No. 93/1943 Bombay Labour Gazette (January 1944) Vol. 23, page 314.

2. Dwarkaprasad Ramlal Vs. The Indian Woollen Mills. Appln. No. 27/1945 Bombay Labour Gazette (April 1946) Vol. 25, page 596.

3. Bai Kashibai Narayan Vs. The Mayer Mills Ltd. Appln. No. 19/1945 Bombay Labour Gazette (April 1946) Vol. 26, page 595.

4. Asharam Devchand Vs. The Broach Fine Counts Spinning & Weaving Co. Ltd. Appln. No. 205/1943 Bombay Labour Gazette (June 1944) Vol. 23, page 627.

Ibrahim Amir Vs. The Broach Fine Counts Spinning & Weaving Co Ltd Appln. No. 206/1943 Bombay Labour Gazette (June 1944) Vol. 23 page 629.

Jamnadas Girdhar Vs. The Broach Fine Counts Spinning & Weaving Co. Ltd. Appln. No. 207/1943 Bombay Labour Gazette (June 1944) Vol. 23 page 631.

negligence must be distinguished from habitual negligence or habitual neglect of work. Negligence of work is not a misconduct under Standing Order no. 21 and therefore the suspension of the operative was illegal."[1]

Similarly in the undernoted cases the operatives were suspended for '*Antari chhapa*"[2] "less picks"[3] "*Antaripati*"[4] "less yards"[5] respectively. In every one of the cases the court held that it was legitimate to deduce negligence but not habitual negligence and therefore the suspension not being for a misconduct under Standing Order no. 21 was illegal.

Carelessness for two days cannot amount to habitual negligence or neglect of work within the meaning of clause (l) of Standing Order no. 21. Therefore, "bringing damage continuously for two days" cannot amount to misconduct within the meaning of that clause and therefore suspension on that ground was held to be illegal.[6]

So also where the opponent was suspended for "causing damage" to cloth, the Court held that "damage does not find place in Standing Order no. 21. The argument that damage must have resulted from neglect of work is futile because Standing Order no. 21 (l) refers to habitual neglect of work and therefore the suspension was held to be illegal.[7]

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1 Madhavsing Premsing Vs. The Broach Fine Counts Spinning & Weaving Co. Ltd. Appln. No 209/1943 Bombay Labour Gazette (June 1944) Vol. 23, page 634.

Mahamed Karim Vs. The Broach Fine Counts Spinning & Weaving Co. Ltd Appln. No. 210/1943 Bombay Labour Gazette (June 1944) Vol. 23 page 636.

Ratilal Motilal Vs. The Broach Fine Counts Spinning and weaving Co, Ltd. Appln, No. 214/1943 Bombay Labour Gazette (June 1944) Vol. 23 page 644.

Revadas Pranjivan Vs The Broach Fine Counts Spinning & Weaving Co Ltd. Appln. No. 215/1943 Bombay Labour Gazette (June 1944) Vol. 23 page 646.

2 Jamnadas Girdhar Vs The Broach Fine Counts Spinning & Weaving Co. Ltd. Appln. No 207/1943 Bombay Labour Gazette (June 1944) Vol. 23 page 631.

3. Manilal Chunilal Vs. The Broach Fine Counts Spinning & Weaving Co. Ltd. Appln. No. 211/1943 Bombay Labour Gazette (June 1944) Vol. 23 page 638.

Ramji Dhanji Vs. The Broach Fine Counts Spinning & Weaving Co Ltd. Appln. No. 213/1943 Bombay Labour Gazette (June 1944) Vol. 23, page 642.

4. Nathubhai Hargovan Vs. The Broach Fine Counts Spinning & Weaving Co. Ltd. Appln. No. 212/1943 Bombay Labour Gazette (June 1944) Vol. 23, page 640.

5. Syed Alimiya Mirasah Vs. The Broach Fine Counts Spinning & Weaving Co. Ltd. Appln. No. 216/1943 Bombay Labour Gazette (June 1944) Vol. 123, page 648.

6, Nabibhai Hanifbhai Vs The New Manekchowk Spinning & weaving Co Ltd. Appln. No 145/1943 Bombay Labour Gazette (January 1945) Vol. 24, Page 291.

7. Nazaralli Badamiya Vs The Ahmedabad Jupitor Spinning Weaving & Manufacturing Co. Ltd. Appln. No. 34/1943 Bombay Labour Gazette (August 1943) Vol. 22, Page 818.

But if the operative has been habitually negligent, the order of suspension after following the procedure prescribed under Standing Order no. 22 is perfectly legal.[1] Where an applicant was found sleeping during working hours though previously warned several times, held, the dismissal was proper.[2]

The word "habitual" governs both negligence and neglect of work and it is the habitual neglect of work that would be misconduct within that Standing Order. A single act of bad workmanship cannot constitute habitual neglect of work. The charge against the operative was that on a single occasion she was guilty of bad workmanship as "she filled the bobbins badly". This single act of bad workmanship does not amount to "habitual neglect of work" and therefore it would not be misconduct within the meaning of the Standing Order no. 21 and therefore the suspension is illegal.[3]

Bombay and others

22. (i) An operative may be suspended for a period not exceeding four days or dismissed without notice or any compensation in lieu of notice if he is found to be guilty of misconduct.

The order of suspension shall be in writing and may take effect immediately on communication thereof to the operative. Such order shall set out in detail the alleged misconduct and the operative shall be

Ahmedabad and others

22. (i) An operative may be suspended for a period not exceeding four days or dismissed without notice or any compensation in lieu of notice if he is found to be guilty of misconduct.

The order of suspension shall be in writing and may take effect immediately on communication thereof to the operative. Such order shall set out in detail the alleged misconduct and the operative and/or

1. Abderehman Kadarkhan Vs. The Broach Fine Counts Spinning & Weaving Co. Ltd. Appln. No. 204/1943 Bombay Labour Gazette (June 1944) Vol. 23 Page 626.

Jivansing Bhagvansing Vs. The Broach Fine Counts Spinning & Weaving Co. Ltd. Appln. No. 208/1943 Bombay Labour Gazette (June 1943) Vol. 23 Page 633.

2. Shanker Dayal Ayodhyaprasad Vs. The Simplex Mills Co. Ltd. Appln. No 112/1943 Bombay Labour Gazette (Nov. 1943) Vol. 23, Page 201.

Maruti Sakharam Vs. The New Pratap Spinning Weaving and Manufacturing Co. Ltd. Appln. No. 142/1943 Bombay Labour Gazette (Jan. 1944) Vol. 23. Page 316.

3. The Dhulia Girni Kamgar Union Vs. The New Pratap Spinning Weaving and Manufacturing Co. Ltd. Appln. No. 121/1944 Bombay Labour Gazette (June 1945) Vol. 24. Page 638.

given an opportunity of explaining the circumstances alleged against him. If on enquiry the order is confirmed or modified, the operative shall be deemed to be absnet from duty for the period of suspension and shall not be entitled to any remuneration for such period. If, however, the order is rescinded, the operative shall be deemed to be on duty during the full period of suspension and shall be entitled to the same wages as he would have received if he had not been suspended.

registered union of which he is a member shall be given an opportunity of explaining the circumstances alleged against him. If on enquiry the order is confirmed or modified, the operative shall be deemed to be absent from duty for the period of suspension and shall not be entitled to any remuneration for such period. If, however, the order is rescinded, the operative shall be deemed to be on duty during the full period of suspension and shall be entitled to the same wages as he would have received if he had not been suspended.

No order of dismissal shall be made unless the operative concerned is informed in writing of the alleged misconduct and is given an opportunity to explain the circumstances alleged against him.

No order of dismissal shall be made unless the operative concerned and/or the registered union of which he is a member is informed in writing of the alleged misconduct and is given an opportunity to explain the circumstances alleged against him.

In awarding punishment under this Standing Order the Manager shall take into account the gravity of the misconduct, the previous record, if any, of the operative and any other extenuating or aggravating circumstances that may exist.

In awarding punishment under this Standing Order the Manager shall take into account the gravity of the misconduct, the previous record, if any, of the operative and any other extenuating or aggravating circumstances that may exist.

(ii) A copy of the order made by the Manager shall be supplied to the operative concerned.

(ii) A copy of the order made by the Manager shall be supplied to the operative concerned.

COMMENTS.

Under the Standing Order no. 22, the employer is empowered to suspend or to dismiss an employee without notice or compensation in lieu of notice if the employee is guilty of misconduct. Standing Order no. 21 lays down what would be misconduct. Standing Order No. 22, moreover, prescribes the procedure for suspension and dismissal. The procedure is to be strictly followed and any suspension or dismissal without following the provision of this Standing Order would be illegal and would constitute an illegal change.[1]

No distinction between permanent and temporary operatives :

The Standing Order no. 22 does not make any distinction between permanent and temporary operatives so far as the procedure to be followed for suspension or dismissal of the operative is concerned. Whenever the Standing Orders intended to make a distinction between permanent and temporary operatives it has been clearly stated so. Therefore the procedure prescribed by this Standing Order for dismissal and suspension applies to all operatives whether permanent or temporary.[2]

There is nothing to suggest that this Standing Order applied only to the permanent operatives. Throughout this Standing Order the word opera-

1. Government Labour Officer, Bombay Vs. The Ambika Silk Mills Co. Ltd. Appln. No. 60/40 Bombay Labour Gazette (February 1941) Vol. 20, Page 427.

Government Labour Officer, Bombay Vs. The Ambika Silk Mills Co. Ltd. Appln. No.14/1941 Bombay Labour Gazette (May 1941) Vol. 20, Page 703

Government Labour Officer Vs. The Ahmedabad Cotton Waste Manufacturing Co. Ltd. Appln. No. 19/41 Bombay Labour Gazette (Sept. 1941) Vol. 21, Page 38.

Government Labour Officer Vs. The Sarangpur Cotton Manufacturing Co. Ltd. Appln. No. 23/41 Bombay Labour Gazette (Sept. 1941) Vol. 21. Page 40.

Hargovan Ishwar Vs. Aruna Mills Co. Ltd. Appln. No. 30/41 Bombay Labour Gazette (September 1941) Vol 21 Page 45,

Government Labour Officer Vs. The Sarangpur Cotton Manufacturing Co. Ltd. Appln. No. 39/41 Bombay Labour Gazette (Sept. 1941) Vol. 21, Page 46.

Mahomedkhan Ahmedkhan Vs. The Maheshwari Mills Co. Ltd. Appln No. 2/1943 Bombay Labour Gazette (May 1943) Vol. 22, Page. 596.

Triponna Hanumant Vs. The Ahmedabad Manufacturing and Calico Printing Co. Ltd. Appln. 67/43 Bombay Labour Gazette (Sept. 1943) Vol. 23, Page 47.

Raheman Masum Vs. The New Pratap Spinning Weaving and Manufacturing Co. Ltd. Appln. No, 131/43 Bombay Labour Gazette (January 1944) Vol. 23.Page. 315.

2. Nanubhai A. Bhatt Vs. The Rajnagar Spinning Weaving & Manufacturing Co. Ltd. Appln. No. 11/1945 Bombay Labour Gazette (Nov. 1945)Vol.25 Page 198

Soma Moti Vs. The Fine Knitting Co. Ltd. Appln. No. 229/1943 Bombay Labour Gazette (February 1945) Vol. 24, Page 354.

tive is used. The adjective 'permanent' or 'temporary' is not used. Therefore even if a temporary operative is to be dismissed, the procedure prescribed by this order is to be followed.[1]

So the dismissal or suspension even of a temporary employee without complying with the procedure prescribed by the Standing Order no. 22 would amount to an illegal change.[2]

Procedure for suspension :

It would appear from the wording of this Standing Order that the order of suspension contemplated is the preliminary order relieving the operative from his duties. Such order has to set out in detail what is alleged against the operative. Thereafter an inquiry has to be held and then the preliminary order has got to be confirmed or modified according to the findings arrived in the course of enquiry. The procedure which appears to be in vogue in Bombay viz., the communication of an oral order of suspension to the operative, thereupon holding an inquiry and then passing the order of suspension is not strictly correct. There must be a preliminary order in writing setting forth the allegations against the operative and this order has, on inquiry, either got to be confirmed or modified. It is admitted in the present instance that no preliminary order of suspension in writing was passed and no such order was communicated to him. Therefore the order of suspension has not been properly passed and the opponent mills have committed in illegal change."[3]

The written order of suspension has got to be communicated to the operative and so where the written order of suspension was either before or after the inquiry not served upon the operative, held that the order of suspension was in contravention of the Standing Order no. 22 and amounted to an illegal change.[4]

Under clause 11 of Standing Order no. 22, a copy of the order made by the manager has to be supplied to the operative concerned and under Standing Order no. 25, a written order in the prescribed form has to be given to him.

Suspension to be for a misconduct:

It must be noted that the suspension can be only for a misconduct as stated in Standing Order no. 21. Thus the suspension of an operative

1. Mithi Ratan and others Vs. The Bhalakia Mills Co. Ltd. Applns. 122/1943, 124/1943, 126/1943, 128/1943 Bombay Labour Gazette (July 1944) Vol. 23 Page 699
2. Ibid.
3. Baboo Jairam Vs The Coorla Spinning & Weaving Co. Ltd. Appln. No. 102/1944 Bombay Labour Gazette (June 1945) Vol. 24. Page 632.
4. Shesbgiri Timmanpai Vs. The New Era Textile Mills Co. Ltd. Appln. No. 107/1944 Bombay Labour Gazette (June 1945) Vol 24. Page 634.

for ' damage ' which did not come within any of the clauses of Standing Order no. 21 was held to be not a suspension for 'misconduct' and therefore not a suspension under Standing Order no. 22 and therefore was an illegal suspension and so amounted to an illegal change.[1]

Effect of an illegal suspension :

An illegal suspension cannot be recognised at all as a suspension. The termination of the employment must therefore amount to an illegal dismissal.[2]

But where an order of suspension for four days passed against an operative was superseded by a valid discharge notice before any effect was given to the suspension order, the order remaining merely a paper order, held that there was no suspension at all and therefore no illegal change.[3]

No suspension :

Where the mills were closed due to shortage of coal for two months, but as some operatives were required during that period to keep the engines in working order, the management employed some employees by turn. The applicants got their turn for some time and were given off by rotation. Held, there was no suspension of these employees; for it was not open to the operatives to contend that merely because the management gave them work for some time during this period of two months they were bound to give them work for the whole time.[4]

Procedure for dismissal :

Standing Order no. 22 contemplates that before any order of dismissal is made—

(1) The operative must be informed in writing of the alleged misconduct.

(2) He should be given an opportunity to explain the circumstances alleged against him.

(3) If after hearing the operative the management is of the opinion that no satisfactory explanation is given, the order of dismissal can be passed and not till then.[5]

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1. Nazaralli Badamiya Vs. The Ahmedabad Jupitor Spinning Weaving and Manufacturing Co. Ltd. Appln. No. 34/1943 Bombay Labour Gazette (August 1943) Vol. 22. Page 818.

2. Ibid.

3. Saudhan Jainarayan Vs. The Sarangpur Cotton Manufacturing Co. Ltd. No. 2. Appln. No. 118/1943 Bombay Labour Gazette (March 1945) Vol. 24. Page 409.

4 The Dhulia Girni Kamgar Union Vs. The New Pratap Spinning Weaving & Manufacturing Co. Ltd. Appln. No. 17/1944 Bombay Labour Gazette (July 1944) Vol. 23 Page. 709.

5. The Government Labour Officer Vs. The Manager, Ambika Silk Mills Co. Ltd. Appln. No. 60/1940 Bombay Labour Gazette (Feb. 1941) Vol. 20 Page 427.

(4) Under Standing Order no. 25 the written order must be given to the employee in the prescribed form and a copy of the orders by the manager shall be given to the operative also under clause 2 of Standing Order no. 22. The provisions of Standing Order no. 22 are obligatory and non compliance thereof constitutes an illegal change.[1]

Thus where an operative was dismissed without previously being informed of her alleged misconduct and hearing her explanation, held the mills had committed an illegal change.[2]

So also where the operatives who went on a strike which was illegal were dismissed forthwith the Court held that the fact that the employees resorted to an illegal strike in contravention of the Bombay Industrial Disputes Act did not entitle the mill authorities to dismiss them forthwith. Going on an illegal strike amounts to misconduct under Standing Order no. 21 and before any person can be dismissed the provisions of Standing Order no. 22 have to be followed and therefore the action of the mills constituted an illegal change.[3]

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1. The Government Labour Officer Vs. The Ambika Silk Mills Co. Ltd. Appln. No. 14/1941 Bombay Labour Gazette (May 1941) Vol. 20. Page 703.

The Government Labour Officer, AhmedabadVs.The Ahmedabad Cotton and Waste Manufacturing Co. Ltd. Appln. No. 19/1941 Bombay Labour Gazette (Sept. 1941) Vol. 21. Page 40.

The Government Labour Officer, Ahmedabad Vs. The Sarangpur Cotton Manufacturing Co. Ltd. Appln. No. 23/1941 Bombay Labour Gazette (Sept. 1941) Vol. 21 page 40.

Hargovan Ishwar and others Vs. The Aruna Mills Co. Ltd. Appln. No. 30/1941 Bombay Labour Gazette (September 1941) Vol. 21. Page 45.

The Government Labour Officer, Ahmedabad Vs. The Sarangpur Cotton Manufacturing Co. Ltd. No. 2. Appln. No. 39/1941 Bombay Labour Gazette (Sept. 1941) Vol. 21. Page 46.

Mohomedkhan and 6 others Vs. The Maheshwari Mills Co. Ltd. Appln. No. 131/1943 Bombay Labour Gazette (Jan. 1944) Vol. 23 Page 315.

2. The Government Labour Officer Vs. The Manager Ambika Silk Mills Co. Ltd. Appln. No. 60/1940 Bombay Labour Gazette (February 1941) Vol. 20. Page 427.

The Government Labour Officer Vs. The Ambika Silk Mills Co. Ltd. Appln. No. 14/1941 Bombay Labour Gazette (May 1941) Vol. 20. Page 703.

The Government Labour Officer, Ahmedabad Vs. The Ahmedabad Cotton & Waste Manufacturing Co. Ltd. Appln. No. 19/1941 Bombay Labour Gazette (September 1941) Vol. 21 Page 38.

The Government Labour Officer Vs. The Sarangpur Cotton Manufacturing Co. Ltd. Appln. No. 23/1941 Bombay Labour Gazette (Sept. 1941) Vol. 21. Page 40

Mahomed Khan Ahmedkhan and others Vs.The Maheshwari Mills Co. Ltd. Appln. No. 2/1943 Bombay Lobour Gazette (May 1943) Vol. 22. Page 596.

Rahiman Masum Vs. The New Pratap Spinning Weaving & Manufacturing Co. Ltd. Appln. No. 131/1943 Bombay Labour Gazette (Jan. 1944) Vol. 23. Page. 315.

3.The Ahmedabad Cotton Manufacturing Co. Ltd. Vs. The Textile Labour Association, Appln. No. 4/1941 and 8/1941 Bombay Labour Gazette (April 1941) Vol. 20. Page 629.

Discharge after illegal dismissal:

Where the management served an order of dismissal without complying with the provisions of Standing Order no. 22 but after finding out that the dismissal order was illegal, they cancelled it and offered 13 days' wages in lieu of notice. Held that the dismissal order being illegal, the attempt of the mills thereafter to regularise the procedure by giving a discharge order, does not make the previous dismissal a valid one and therefore the previous dismissal being illegal constituted an illegal change.[1]

Notice in writing:

Standing Order no. 22 provides that no order of dismissal shall be passed unless an operative is informed *in writing* of the alleged misconduct and an opportunity to explain the circumstances against him has been given. Where no notice in writing was given to the operative, held that it was a dismissal otherwise than in accordance with the Standing Orders and therefore constituted an illegal change.[2]

Where the mills company dismissed an employee without giving a notice to show cause, held that it was a contravention of the Standing Order no. 22 and therefore amounted to an illegal change.[3]

Oral Notice:

Oral notice for an explanation to an operative is not sufficient compliance with Standing Order no. 22 and thus where an operative was dismissed without any written notice given to him, though an oral notice was given, the Court held it to be an illegal change.[4]

Warning order:

Where an operative was dismissed, without any notice to show cause, but was previously given a warning order, it was held that the warning order could not be construed as a notice to show

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1. S. A. Appuswami Vs. The Jasmine Silk Mills Ltd. Appln. No 66/1943 Bombay Labour Gazette (Nov. 1943) Vol. 23. Page 199.

2. Hargovan Ishwar and others Vs. The Aruna Mills Co. Ltd. Appln. No. 30/1941 Bombay Labour Gazette (Sept. 1941) Vol. 21. Page 45.

The Government Labour Officer, Ahmedabad Vs. The Sarangpur Cotton Manufacturing Co. Ltd. No 2. Appln. No. 39/1941 Bombay Labour Gazette (Sept. 1941) Vol. 21. Page 46.

Saidaali Umraali Vs. The Shree Vivekanand Mills Co. Ltd. Appln. No. 108/1944 Bombay Labour Gazette (Nov. 1945) Vol. 25. Page 271.

3. Soma Moti Vs. The Fine Knitting Co. Ltd. Ahmedabad. Appln. No, 229/1943 Bombay Labour Gazette (Feb. 1945) Vol. 24. Page 354.

Gopaldas Beohardas Vs. The Ahmedabad Cotton Manufacturing Co. Ltd. Appln. No. 40/1944 Bombay Labour Gazette (May 1944) Vol. 24. Page 555.

4. Nanubhai A. Bhatt Vs The Rajnagar Spinning Weaving & Manufacturing Co. Ltd. Appln. No. 11/45 Bombay Labour Gazette (Nov. 1945) Vol. 25 Page 198.

Ganganath Raghunath Vs. The Ashoka Mills Co. Ltd. Appln. No. 106/1943 Bombay Labour Gazette (Oct. 1944) Vol. 24. Page 114.

Mahanand Durgadatta Vs. The Ramlal Silk Mills. Appln. No. 47/1941 Bombay Labour Gazette (Sept. 1941) Vol. 21. Page 50.

cause why he should not be dismissed. "It is implicit in every warning order that the previous lapse on the part of the delinquent is condoned and hence the present warning order calls upon him not to indulge in such conduct in future. It can hardly be construed as a notice in writing to show cause."[1]

Notice to precede order of dismissal :

The information in writing out-lining the operative's misconduct and giving him an opportunity to explain his conduct must precede the formal dismissal order. This is perfectly clear from the language of the Standing Order. The dismissal order itself cannot be construed as the information in writing within the meaning of the Standing Order no. 22.[2]

A dismissal order cannot be passed *before* informing the operative in writing and hearing his explanation.[3]

It was contended in the under-noted cases that it was not the practice of the mills to inform any operative of the misconduct alleged against him but that a dismissal order containing the reasons for dismissal was given to the worker. The Court held that it was not the correct practice and the dismissal order cannot be passed before giving the operative an opportunity to be heard. Therefore the order of dismissal passed without *previously* informing the operative of her misconduct and without giving a hearing to her was an illegal change under item (3) of Schedule II of the Act.[4]

It was held in an earlier case that this Standing Order does not preclude the various acts viz. (1) informing in writing of the misconduct (2) operative's explanation and (3) the dismissal, from being simaltaneous and that though it was possible to argue that the procedure laid down in the Standing Orders was not followed to the letter, it is a technical error and cannot be construed as a breach of the provision. The Court also re-

1. Kasimsab Dawoodsab Vs. The Sholapur Spinning & Weaving Co. Ltd. Appln. No. 36/1942 Bombay Labour Gazette (Nov. 1942) Vol. 22. Page 183.

2. Abdul Rehman Nurmahomed Vs. The Commercial Ahmedabad Mills Co. Ltd. Appln. No. 25/1943 Bombay Labour Gazette (July 1943) Vol. 22 Page 760.

Kallu Ismail Vs. The Commercial Ahmedabad Mills Co. Ltd. Appln. No. 31/1943 Bombay Labour Gazette (July 1943) Vol. 22 Page 761.

Jamal Ahmed Vs. The Commercial Ahmedabad Mills Co. Ltd. Appln. No. 32/1943 Bombay Labour Gazette (July 1943) Vol. 22. Page 763.

Mahomed Hanif Mahomed Yusuf Vs. The Commercial Ahmedabad Mills Co. Ltd. Appln. No. 35/43 Bombay Labour Gazette (July 1943) Vo. 22 Page 764.

Badrudin Hussainbhai Vs. The Commercial Ahmedabad Mills Co Ltd. Appln. No. 45/1943 Bombay Labour Gazette (July 1943) Vol. 22 Page 766.

3. The Government Labour Officer, Bombay Vs. The Ambika Silk Mills Co. Ltd. Appln. No. 14/1941 Bombay Labour Gazette (May 1941) Vol. 20. Page 703

4. The Government Labour Officer Bombay Vs The Manager, Ambika Silk Mills Co. Ltd. Appln. No. 60/1940 Bombay Labour Gazette (Feb 41) Vol. 20 Page 427.

The Government Labour Officer, Ahmedabad Vs. The Ahmedabad Cotton & Waste Manufacturing Co. Ltd. Appln. No. 19/1941 Bombay Labour Gazette (Sept. 1941) Vol. 21. Page 38.

marked, " The Bombay Industrial Disputes Act is new as also the Standing Orders thereunder and the rules of procedure under both are fluid and are yet to be crystallised."[1]

But the latter decisions definitely laid down that the notice must precede the dismissal order and if the procedure laid down in Standing Order no. 22 is not followed it would amount to an illegal change. Hence this decision must no longer be considered to be good law. The only reason given in the earlier decision, namely, the Act is new etc., also ceases to be valid as sufficient time has elapsed after the passing of the Act.

Procedure in case of urgency :

" The requirements of Standing Order no. 22 must be strictly complied with. If it is required that the operative must be relieved immediately of of his duties, it is open to the management to pass an order of suspension and such order takes effect immediately on communication thereof to the operative under the second paragraph of Standing Order no. 22. Thereafter the management should inform the operative in writing of the alleged misconduct and give him an opportunity to explain the circumstances against him. It is only after this procedure has been gone through that an order of dismissal can be passed ". The court rejected the plea that in exceptional cases the order of dismissal must be made immediately effective and the procedure of giving notice in writing to the operative, giving him an opportunity to explain the circumstances against him and the order of dismissal may be simultaneous.[2]

In the undernoted case where the operative was suspended for four days pending inquiry into charges of insubordination and was thereafter dismissed, held that it was open to the management to confirm or modify the order of suspension passed previously and the order of dismissal must be regarded as a modification of the previous order of suspension and therefore the second order of dismissal was not illegal.[3]

Service of notice :

If notice to show cause is not accepted by the employee, though offered to him, the order of dismissal is valid.[4]

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1. Keshav Dharmayya Vs. The Manager, The Laxmi Cotton Manufacturing Co. Ltd. Applns. No. 15/1940 and 16/1940 Bombay Labour Gazette (August 1940) Vol. 19, page 1022.

2. The Government Labour Officer Vs. The Sarangpur Cotton Manufacturing Co. Ltd. Appln. No. 23/1941 Bombay Labour Gazette (Sept. 1941) Vol. 21, page 40.

3. Dattaram Krishna Vs The New Prahlad Mills Co. Ltd. Appln. No. 34/1941 Bombay Labour Gazette (July 1941) Vol. 20, page 942.

4. Ibrahim Mahomad Vs. The New Shorrock Spg. and Mfg. Co. Ltd. Appln. No. 5/1943 Bombay Labour Gazette (May 1943) Vol. 22, page 600.

But if for any reason whatever the applicant made it impossible for the mills to serve the notice on him personally, the notice should be served on the Government Labour Officer. For the Government Labour Officer is the representative of the employees and where this obvious course was not resorted to, the Court held that no written notice was given to the employee and held the dismissal to be illegal.[1] But in a latter case the Court held that though it would have been advisable to send the notice to the Government Labour Officer when the operative refused to accept it but at the same time, it must be noted that Standing Orders no. 22 and 25 do not specifically contemplate this procedure and the Court held on other evidence that the notice was offered but the operative refused to accept it.[2]

But in a case where the notice alleged to be refused did not bear an endorsement to that effect nor was it sent to Labour Officer the Court held that no notice was given to the operative concerned.[3] So also where the original notice alleged to be refused was neither sent to the Labour Officer nor produced in the Court by the mills, the Court concluded that no show cause notice was given.[4]

The notice must charge misconduct :

An operative was charged with negligence (which is not a misconduct, habitual negligence being a misconduct under Standing Order no. 21 (1) but the manager held that he was habitually negligent and suspended him, the Court held, "What the manager found is one thing and what he was charged with is another thing. The charge against the applicant in this particular case was that of negligence of work as distinguished from habitual negligence. Negligence of work is not a misconduct under Standing Order no. 21. In these circumstances the applicant not having been charged with any misconduct under Standing Order no. 21, he cannot be found guilty of any such misconduct and cannot be subjected to suspension on that account and such suspension is illegal."[5]

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1. Nurkhan Mirakhan Vs. The Ahmedabad Textile Mills Co Ltd. Appln. No. 721/1943 Bombay Labour Gazette (Oct. 1944) Vol. 24, page 107.

2. Mohanlal Manjibhai Mistri Vs. The Nagri Mills Co. Ltd. Appln. No. 202/1943 Bombay Labour Gazette (Jan. 1945) Vol. 24, page 293.

3. Valimahomed Abdul Rehman Vs. The Ahmedabad Laxmi Cotton Mills Co. Ltd. Appln. No. 192/1943 Bombay Labour Gazette (Oct. 1944) Vol. 24, page 127.

4. Gopal Bechardas Vs. The Ahmedabad Cotton Manufacturing Co. Ltd. Appln. No. 40/1944 Bombay Labour Gazette (May 1945) Vol. 24, page 555.

5. Asharam Ravchand Vs. The Broach Fine Counts Spinning & Weaving Co. Ltd. Appln. No. 205/1943 Bombay Labour Gazette (June 1944) Vol. 23, page 627.

Where the reason alleged is not a misconduct under Standing Order no. 21, the order of suspension would be illegal.[1]

Opportunity to explain the circumstances against him :

If the opportunity to explain the circumstances against him is not given to the operative concerned, the dismissal would amount to an illegal change.[2] Where an operative who was asked to give his explanation within 24 hours did submit his written explanation in time but the management did not accept it and dismissed him, held that the management contravened the provisions of Standing Order no. 22.[3] This Standing Order does not require in what manner the explanation should be taken. All that is necessary is that the opportunity must be given to explain circumstances against him. It may be oral and may not be reduced into writing.[4] Where it was contended that the applicants were simultaneously given the "notice to show cause and the order of dismissal", the Court held that if this contention that no inquiry was held was correct the action of the mills would amount to an illegal change. But it was found on evidence that the applicants were given an opportunity to be heard and therefore there was no breach of Standing Order no. 22. In this case the management had kept the dismissal order ready. The court observed that the "act of keeping of the dismissal pass ready before the explanations of the persons against whom the action was to be taken were heard, is not calculated to create confidence as regards the impartial nature of the inquiry which is enjoined by the Standing Orders"[5]

Where the applicant was given one and half hours as time in which to explain, held that "if fairness and justice have any sense, it was difficult to call this a reasonable opportunity to explain the circumstances against him" and therefore it was held that no reasonable opportunity to explain the circumstances was given to him.[6] But where an operative was asked to show cause within half an hour of the receipt of the

1. Nabibhai Hanifbhai Vs. The New Manekchowk Spinning & Weaving Co. Ltd. Appln. No. 145/1943 Bombay Labour Gazette (Jan. 1945) Vol. 24, page 291.

2. The Government Labour Officer Vs. The Ambika Silk Mills Co. Ltd. Appln. No. 60/1940 Bombay Labour Gazette (Feb. 1941) Vol. 20, page 427.

3. Ibrahim Ismail Vs. The Ahmedabad Laxmi Cotton Mills Co. Ltd. Appln. No. 87/1943 Bombay Labour Gazette (Oct. 1944) Vol. 24, page 92.

4. Chudaji Ramji Waghmare Vs. The Tata Mills Ltd. Appln. No. 148/1943 Bombay Labour Gazette (Jan. 1944) Vol. 23, page 318.

5. Abdul Samat Rajabali Vs. The Bradbury Mills Ltd. Appln. No. 195/1943 Bombay Labour Gazette (April 1944) Vol. 23, page 501.

6. Gopaldas Bechardas Vs. The Ahmedabad Cotton Manufacturing Co. Ltd. Appln. No. 40/1944 Bombay Labour Gazette (May 1945) Vol. 24, page 555.

"show cause notice" but neither in his application nor in his evidence he made a grievance of it, held, it could not be urged that he was not given sufficient opportunity to show cause.[1]

Dismissal order: Copy of the dismissal order to be supplied:

Standing Order no. 22 (ii) provides that a copy of the order passed by the manager shall be supplied to the employee. Thus where the dismissal slip was not given to the employee dismissed, held that it was an illegal change.[2]

Manager must apply his mind :

"It is obvious from the language of the Standing Order no. 22 that the manager must apply his own mind to the merits of the case before awarding punishment. In this particular instance we find that the manager did not apply his mind to the question of dismissing the applicant. The weaving master admitted in his evidence that it was he who passed the dismissal order. It is true that the copy of the dismissal order bears the signature of the manager, but in view of the fact that the dismissal order was passed by the weaving master, as admitted by him in his evidence, I am of the opinion that the manager's signature on the dismissal slip was merely mechanical act and he did not apply his mind to the question of the applicant's dismissal." The court held that the provisions of Standing Order no. 22 were contravened.[3]

"The manager's signature being absent both on the suspension slip and the dismissal slip there is no doubt that the manager did not apply his mind to the question of the applicant's suspension or dismissal, and therefore the orders of suspension and dismissal being illegal must amount to an illegal change."[4]

"It is also clear that the Manager does not appear to have applied his mind to the question of the applicant's suspension. Had he applied his mind, I should have thought that the suspension slip would have been signed by him. That being so the concluding part of Standing Order no. 22 (i) has not been complied with. Standing Order no. 22 (ii)

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1. Maruti Sakharam Vs The New Pratap Spinning & Weaving & Manufacturing Co. Ltd. Appln. No. 142/1943 Bombay Labour Gazette (Jan. 1944) Vol. 23, page 316.

2. Ibrahim Ismail Vs, The Ahmedabad LaxmiCotton Mills, Co. Ltd. Appln. No. 87/1943 Bombay Labour Gazette (Oct. 1944) Vol. 24, page 92.

3. Ibid.

4. Chinubhai Sankalchand Vs The Ahmedabad Cotton Manufacturing Co. Ltd. Appln. No. 73/1944 Bombay Labour Gazette (May 1945) Vol. 24, page 563.

has also not been complied with. This is clear on the face of the suspension slip which does not bear the Manager's signature."[1]

The order of dismissal must be passed by the manager. Thus where the order was passed by the weaving master, it was held that the dismissal was otherwise than as provided in the Standing Orders within the meaning of item 3 of Schedule II and therefore amounted to an illegal change.[2]

Similarly where the order was passed not by the manager, but some one on his behalf, held it was a dismissal otherwise than in conformity with the Standing Order no. 22 and therefore amounted to an illegal change.[3]

But the dismissal order signed by the departmental head and the director who was in the management of the mills was held to be valid.[4]

Discretion of the manager :

Under Section 78 (1) (A) (a) of this Act the Labour Court is empowered to decide upon the propriety of any order passed by an employer under the Standing Orders and under clause (C) (b) of Section 78 (1) to require the employer to withdraw any change which is the matter in issue in the proceeding before it. The effect of these provisions is that the Labour Court can and has power to decide whether the order of the employer dismissing the employee is proper or not. And if the Labour Court comes to the conclusion that the order was improper in the circumstances of the case, even though legal, it can order the employee to be reinstated or require the employer to make any change that it deems proper in that respect. This power is new. Under the Bombay Industrial Disputes Act, the Industrial Court had no power to go into the question whether the reason assigned for dismissal is good, bad, true or untrue. It was held that the Industrial Court could not interfere with the discretion of the manager. All that it could do was to see whether the formality prescribed in Standing Orders has or has not been followed. It could not sit in appeal

1. Nabibhai Hanilbhai Vs. The New Manekchowk Spinning & Weaving Co. Ltd. Appln. No. 145/1943 Bombay Labour Gazette (Jan. 1945) Vol. 24. page 291.

2. The Government Labour Officer Vs. The Sarangpur Cotton Manufacturing Co. Ltd. No. 2, Appln. No. 39/1941 Bombay Labour Gazette (Sept. 1941) Vol. 21, page 46.

3. Hargovan Ishwar Vs. The Aruna Mills Co. Ltd. Appln. No. 70/1941 Bombay Labour Gazette (September 1941) Vol. 21, page 45.

4. Shanker Dayal Ayodhya Prasad Vs. The Simplex Mills Co. Ltd. Appln. No 112/1943 Bombay Labour Gazette (Nov. 1943) Vol. 23, page 201.

over the orders of the manager.[1] But this is no longer good law and the Labour Court now can interfere with the discretion of the manager if the order is not proper and in fact it will be sitting in appeal over the order of the manager made not only under the Standing Order no. 22 but under all other Standing Orders. For the language of clause (1) (A) (a) and clause (1) (C) (b) of section 78 is sufficiently wide. For the principle on which reinstatement would be ordered see comments under the caption 'Reinstatement' under Sch. III.

Circumstances to be taken into account :

Standing Order no. 22 clause (1) says, "In awarding punishment, under this Standing Order the manager shall take into account the gravity of the misconduct, the previous record, if any, of the operative or any other extenuating or aggravating circumstances that may exist." In the case noted, the mills had laid down a rule for their officers that in all cases of theft the culprit should be dismissed.[2] The Court observed, "No order of dismissal should be passed in future on the inflexible ground that all acts of theft must result in dismissal; but the order should be passed after considering the nature of the misconduct and all the extenuating circumstances and written order of dismissal should also state whether the management took those circumstances into consideration before passing the order."

Reasons for dismissal :

Where the order of dismissal contained no reason, the court held that the dismissal amounted to an illegal change.[3]

1. Jamaluddin Ghissu Vs. The Asarva Mills. Applns. No. 146/1944, 154/1944 and 155/1944 Bombay Labour Gazette (March 1944) Vol. 23, page 451.

The Amalner Girni Kamgar Union Vs. The Pratap Spinning Weaving & Manufacturing Co. Ltd. Appln. No 48/1940 Bombay Labour Gazette (Dec. 1940) Vol. 20, page 296.

Chudaji Ramji Waghmare Vs. The Tata Mills Ltd. Appln. No. 148/1943 Bombay Labour Gazette (Jan. 1944) Vol. 23, page 318.

Maruti Sakharam Vs. The New Pratap Spinning Weaving & Manufacturing Co. Ltd. Appln. No. 142/1943 Bombay Labour Gazette (Jan. 1944) Vol. 23, page 316.

Abdul Samat Rajabali Vs. The Bradbury Mills Co. Appln. No. 195/1943 Bombay Labour Gazette (April 1944) Vol. 23, page 501.

Genu Parbat Borade Vs. The Bombay Dying & Manufacturing Co. Ltd. Appln. No. 203/1943 Bombay Labour Gazette (Aug. 1944) Vol. 23, page 757.

2. The Government Labour Officer, Bombay Vs. The Manager Jacob Sassoon Mills, Bombay, Appln. No. 53/1940 Bombay Labour Gazette (Dec. 1940) Vol. 20, page 300.

Ibrahim Ismail Vs. The Ahmedabad Laxmi Cotton Mills Co. Ltd. Appln. No. 87/1943 Bombay Labour Gazette (Oct. 1944) Vol. 24, page 92.

3. Bai Anu Chandra Vs. The Khandesh Spinning & Weaving Mills Co. Ltd. Appln. No. 14/1942 Bombay Labour Gazette (Aug. 1942) Vol. 21, page 1183.

But it was held in a latter case, " Under Standing Order no. 25 no reasons are required to be given unless the form prescribed by the Company or the Mill Owners' Association, Bombay requires such reasons to be recorded. The form prescribed by Mill Owners' Association, Bombay does provide for reason of dismissal being mentioned therein. But as the procedure required to be followed before passing an order of dismissal, has been resorted to in this case, the mere failure to mention the reason for dismissal can at the most be regarded an irregularity which does not affect the validity of the dismissal order and cannot be said to have prejudiced the case of the operative."[1]

Discharge or dismissal:

Often the question arises whether the operative was discharged or dismissed. The mills usually contend that he was discharged and the operative contends that he was dismissed. If the operative is alleged to be discharged then it must be proved that the procedure prescribed by Standing Order no. 19 was complied with. If it cannot amount to a legal discharge under Standing Order no. 19 the only other alternative would be that it is a dismissal.[2] Under Standing Order no. 19 among other things a 14 days' notice is necessary for the discharge of a pormanent operative and where such notice was not proved to be given to the operative, or the reasons for discharge were not recorded as required by the Standing Order no. 19 the termination of the employee's service cannot amount to a legal discharge and as the procedure under Standing Order no. 22 was not followed it would be an illegal dismissal in contravention of the provisions of the Standing Order no. 22.[3] So where it was alleged that the notice of discharge was given to an operative but he refused to accept it, but the mills did not produce the original notice sought to be given to him either before the Labour Officer or in the Court, the Court held that the termination of the services of the worker was not a discharge under Standing Order no. 19. It, therefore, must amount to a dismissal and as the procedure for dismissal as laid down was admittedly not followed, it was an illegal dismissal and constituted an illegal change.[4] Where the words used in the

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1. Baboo Jairam Vs. The Coorla Spinning & Weaving Co. Ltd. Appln. No. 102/1944 Bombay Labour Gazette (June 1945) Vol. 24, page 632.

2. Noormahomed Allabax Vs. The Sarangpur Cotton Manufacturing Co. Ltd. No. 2, Appln. No. 55/1943 Bombay Labour Gazette (Sept. 1943) Vol. 23, page 39.

3. Noormahomed Allabax Vs. The Sarangpur Cotton Manufacturing Co. Ltd. No. 2. Appln. No. 55/1943 Bombay Labour Gazette (Sept. 1943) Vol. 23, page 39.

4. Mahomed Nasir Ramjan Vs The Shri Vivekanand Mills Co. Ltd. Appln. No. 36/1943 Bombay Labour Gazette (Aug. 1943) Vol. 22, page 819.

Mahomed Shafi Nanekhan Vs. The Shree Vivekanand Mills Co. Ltd. Appln. No. 37/1943 Bombay Labour Gazette (Aug. 1943) Vol. 22, page 822.

only notice given to the worker was "*Bartaraf Karavama avechhe*" in Gujarati, the Court held that the term '*Bartaraf*' means dismissal and therefore it cannot be said that the worker was discharged and as no notice to explain the circumstances was given under Standing Order no. 22, it was held to be an illegal dismissal.[1] But where the notice stated, "We discharge you by this notice. Therefore you will take away your salary upto date including your notice pay", the Court held that it was a valid discharge under Standing Order no. 19 (a). For, dismissals are never accompanied by the offer of notice pay.[2] There is no justification for the argument that whenever the termination of the operative's services is on account of misconduct, it must amount to dismissal and not to discharge. Whenever there is a misconduct on the part of the employee it is open to the mills either to discharge or to dismiss him. In case of discharge the procedure laid down in the Standing Order no. 19 is to be followed and in case of dismissal the procedure prescribed in Standing Order no. 22 is to be followed.[3] Where certain workers were dismissed after proper inquiry for their "disorderly behaviour" (throwing bobbins at the officer etc.) but as a matter of grace were given 13 days' wages in lieu of notice, held there was no illegal change.[4]

Dismissal or voluntary abandonment:

Another question which often crops up is whether the operative was dismissed or whether he voluntarily abandoned his services; the mills usually contending that the operative voluntarily abandoned his services and the operative contending that he was illegally dismissed. This question is to be determined on the facts of each individual case, and no general rule can be laid down. But generally it has been held that where the operative approaches the Labour Officer with promptness and goes with the memo from the Labour Officer to the mills for his reinstatement,[5] and where the

1. Bechar Dahya Vs. The New Manekchowk Spinning & Weaving Co. Ltd. Appln. No. 30/1943 Bombay Labour Gazette (Aug. 1943) Vol. 22, page 814.

2. Ahmedabad Chandbhai Vs. The Ahmedabad New Textile Mills Co. Ltd. Appln. No. 73/1943 Bombay Labour Gazette (July 1944) Vol. 23, page 690.

Vallamji Velji and others Vs. The Ahmedabad New Textile Mills Co. Ltd. Appln. No. 79/1943 Bombay Labour Gazette (July 1944) Vol. 23, page 662.

3. Ahmedbhai Chandbhai Vs The Ahmedabad New Textile Mills Co. Ltd. Appln. No.73/1943 Bombay Labour Gazette (July 1944) Vol. 23, page 690.

Vallamji Velji & others Vs The Ahmedabad New Textile Mills Co. Ltd. Appln. No. 79/1943 Bombay Labour Gazette (July 1944) Vol. 23, page 692.

4. Kashi Mahadu and others Vs. The Raghuvanshi Mills Ltd Appln No. 56/1940 Bombay Labour Gazette (Jan. 1942) Vol 21, page 518.

5. Kalubhai Vs The Ahmedabad Jupitor Spinning Weaving & Manufacturing Co Ltd. Appln. No. 63/1943 Bombay Labour Gazette (Dec. 1944) Vol 23 page 270.

Shivram Moti Vs. The Rajnagar Spinning Weaving & Manufacturing Co. Ltd. Appln. No. 70/1943 Bombay Labour Gazette (Sept. 1944) Vol. 24, page 49.

Shivprasad Shivlal Vs. The New National Mills Ltd. Appln. No. 10/1944 Bombay Labour Gazette (Feb. 1945) Vol. 24, page 357.

mills refuse to reinstate the operative, the inference would be that the operative was dismissed[1] while the delay in approaching the Labour Officer has been construed as proving voluntary cessation of work. If the dismissal had been wrongful the operative would have made a complaint to the Labour Officer with promptness.[2]

So also delay in making an application to the Industrial Court and accepting a Badli job in the mills go to prove voluntary termination of service.[3] Where the applicants contended that they were summarily dismissed because, bribe was demanded from them which they refused to give, but this fact was not told to the Labour Officer, held the story of dismissal was an invention. For, if they were true they would not have suppressed it at the time of complaining to the Labour Officer.[4] Where the applicant who alleges that he was illegally dismissed because he refused to contribute to the expenses of a dancing girl at the marriage of the Head Jobber but did not mention this fact to the Labour Officer whom he approached after a delay of six days nor did he mention this fact in the application to the Industrial Court, the Court refused to believe the story and held the mills' story of voluntary termination of service to be true.[5] Where the manager stated in his letter to the Labour Officer that "he was dismissed which please note," held it could not be a case of voluntary abandonment of service.[6]

Procedure in case of voluntary abandonment of service :

"The Standing Orders do not contemplate any voluntary termination of employment on the part of the operative except under Standing Order no. 20. As far as Standing Orders are concerned only three kinds of termination by the employer are contemplated; either by suspension, or by discharge, or by dismissal. It may be noted that absence from duty on the part of an operative without permission or leave is a "misconduct" under Standing Order no. 21. No sooner an operative commits such

1. The Dhulia Girni Kamgar Union Vs. The New Pratap Spinning Weaving & Manufacturing Co. Ltd. Appln. No. 101/1944 Bombay Labour Gazette (June 1945) Vol. 24, page 630

Mahomed Shafi Mahomed Ibrahim Vs. The Aryodaya Spinning & Weaving Co. Ltd. Appln. No. 56/1943 Bombay Labour Gazette (Sept. 1943) Vol. 23, page 42.

2. Mohanlal Manjibhai Mistri Vs. The Nagri Mills Co Ltd. Appl No. 202/1943 Bombay Labour Gazette. (Jan 1945) Vol. 24 page 293 (a delay in 6 weeks).

Abudl Karim Ramjuji Vs. The Ahmedabad Kaiser-i-Hind Mills Co. Ltd. Application No. 94/1943 Bombay Labour Gazette (Oct. 1944) Vol.24, page 113 (a delay of a month.)

3. Atmaram Detaji Vs The National Mills Co. Ltd. Appln. No. 93/1944 Bombay Labour Gazette (Dec. 1945) Vol.25, page 269.

4. Okha Devraj & others Vs. The New Swadeshi Mills of Ahmedabad Ltd. Appln. No. 144/1943 Bombay Labour Gazette (Oct. 1944) Vol. 24, page 120.

5. Anis Ahmed Ismail Vs. The National Mills Co. Ltd. Appln. No 82/1943 Bombay Labour Gazette (March 1944) Vol. 23, page 445.

6. Mahomed Shafi Mahomed Ibrahim Vs. The Aryodaya Spinning & Weaving Co. Ltd. Appln. No. 56/43 Bombay Labour Gazette (Sept. 1943) Vol. 23, page 42.

misconduct, he renders himself liable to proceedings for suspension or discharge or dismissal. If such a misconduct is committed by an employee it is open to the mills either to suspend him or discharge him or dismiss him according to the rules laid down by the Standing Orders. It is not open to them to appoint another operative in his place without formally discharging or dismissing him according to the provisions prescribed in the Standing Orders.[1] "It is quite clear from the spirits of the Standing Orders that if the employee abandons employment voluntarily he has got to be formally discharged by the mills. Until formally discharged, his name will continue to appear on the records of the mill."[2] But in the undernoted case, which is the earliest, the Industrial Court has held to the contrary. "It is contended by the applicant's learned advocate that even if the applicant voluntarily abandoned work, proceeding under Standing Order no. 22 should have been taken as soon as his absence amounted to more than 10 consecutive days. I regret I cannot agree. Standing Order no. 22 deals with the case of an operative's dismissal by the mills. I do not think it applies when the operative voluntarily terminates his own employment. There is no express provision anywhere in the Standing Orders that even in case of a voluntary abandonment of work by an operative the mills should record a formal dismissal order by giving a notice or charge sheet or some sort of information to the operative."[3]

Clause (ii) :

"This clause lays down that a copy of the order made by the manager shall be supplied to the operative concerned and if the dismissal slip is not given to the operative it amounts to contravention of this clause."[4]

23. All complaints arising out of his employment including those relating to unfair treatment or wrongful exaction on the part of the employer or his agent or servant shall be submitted by an operative or on his behalf by a registered union of which he is a member or by the Government Labour Officer to the Manager or such other officer or officers as he may appoint. The Manager or such officer shall personally investigate the complaint at such

1. Gulam Rasul Valimohmad Vs. The New Maneckchowk Spinning & Weaving Co. Ltd. Appln. No. 47/43 Bombay Labour Gazette (Aug. 1943) Vol. 23, page 812.

2. Krishnaji Yellapa Powar Vs. The Shree Ambica Mills Ltd. (Nos. 1 & 2) Appln. No. 72/1944 Bombay Labour Gazette (May 1945) Vol. 24, page 561.

3. Mahomed Hanif Mahomed Yusuf Vs. The Commercial Ahmedabad Mills Ltd. Appln. No. 35/1943 Bombay Labour Gazette (July 1943) Vol.22, page 764.

4. Ibrahim Ismail Vs The Ahmedabad Laxmi Cotton Mills Co. Ltd. Appln No. 87/ 1943 Bombay Labour Gazette (Oct. 1944) Vol. 24, page 92.

times and places as he may fix and the complainant operative, registered union, or the Government Labour Officer shall have the right to be present at such investigation. Where the complainant allegas unfair treatment or wrongful exaction on the part of his employer or his agent or servant, a copy of the order finally made shall be supplied to the complainant if he asks for one. In other cases the decision of the investigating officer, and the action, if any, taken by him shall be intimated to the complainant.

Provided that complaints relating to—

(1) assault or abuse by any person holding a supervisory position, or

(2) refusal of an application for urgent leave shall be enquired into without avoidable delay by the Manager or such other officer or officers as he may appoint.

COMMENTS

Scope of the Standing Order :

"Standing Order no. 23 is not intended for the complaints of dismissal of the employees. The complaints that are referred to therein are complaints arising out of the employment and during the course of employment. What kinds of complaints are contemplated is indicated by the complaints described in the proviso to that Standing Order. The complaints contemplated are day to day complaints which arise in numerous ways during the course of the employment. Another reason why I think the dismissal of an employee cannot form the subject matter of a complaint under Standing Order no. 23, is this. Under Standing Order no. 22, the order of dismissal is to be passed by the Manager. Under Standing Order no. 23 the complaints are to be made to the Manager or some other officers that he may appoint. It could hardly have been contemplated that complaints arising out of the Wrongful dismissal of an employee under Standing Order no. 22 should be referred to the same officer who passed the alleged wrongful order of dismissal or even to an officer subordinate to him."[1]

Thus where it was contended that it was the business of the Government Labour Officer to bring the complaints about illegal dismissals to

1. The Government Labour Officer Vs. The Sarangpur Cotton Manufacturing Co. Ltd. Appln. No. 39/41 Bombay Labour Gazette (Sept. 1941) Vol. 21, page 46.

Hargovan Ishwar Vs.The Aruna Mills Co. Ltd. Appln. No. 30/1941. Bombay Labour Gazette. (Sept 1941) Vol. 21, page 45.

The Government Labour Officer Vs. The Sarangpur Cotton Manufacturing Co. Ltd. Appln. No. 23/1941. Bombay Labour Gazette (Sept. 1941) Vol. 21, page 40

the notice of the manager under Standing Order no. 23, it was held that Standing Order no. 23 is not intended for the complaints of that kind.[1]

Duty of investigation :

"The employer is bound to make an investigation and it would be illegal if it is not made. Of course, if in the course of the investigation it appears on account of a voluntary admission by the employee that he was not assaulted, the mills would be justified in not proceeding further with the investigation, but the admission must be voluntary and true."[2] In the above noted case the Representative Union made an application for investigation about a complaint made by an operative that the manager and the engineer assaulted and abused him. The mills did not make any investigation on the ground that the operative on being asked said that he did not want an inquiry. The court held that the Representative Union had the right to ask for an investigation into the complaint and therefore non-investigation thereof was illegal.[3]

Complaint to be independent :

The complaint under this Standing Order must be an independent complaint and not merely in defence to a charge of misconduct. An operative was charged with misconduct viz. quarrelling and disorderly behaviour. During the course of inquiry in respect of the same charge under Standing Order no. 22, he alleged that the charge was false and had been made against him because he was a member of a particular union. It was contended that the management acted illegally in not inquiring into his complaint under Standing Order no. 23. Held that the alleged complaint was in the course of his defence in an inquiry under Standing Order no. 22; it was not an independent complaint made by him about any unfair treatment or wrongful exaction on the part of the employer and therefore the management was not bound to make an inquiry under Standing Order no. 23.[4] For, defence to a charge under Standing Order no. 22 would not amount to a complaint under Standing Order no. 23.[5] Where the action (suspension) taken by the management did not arise out of an independent complaint made to it but arose out of a breach

1. Ibid.

2. Jalgaon Girni Kamgar Union Vs. The Khandesh Spinning and Weaving Mills Co. Ltd. Appln. No. 7/1945 Bombay Labour Gazette (March. 1946) Vol. 25, page 509.

3. Ibid.

4. The Amalner Girni Kamgar Union Vs. The Pratap Spinning Weaving & Manufacturing Co. Ltd. Appln. No. 62/1941 Bombay Labour Gazette (March 1942) Vol.21, page 720.

The Amalner Girni Kamgar Union Vs. The Pratap Spinning Weaving & Manufacturing Co. Ltd. Appln. No. 6/1942 Bombay Labour Gazette (July 1942) Vol.22,page 1119.

5. The Amalner Girni Kamgar Union Vs.The Pratap Spinning Weaving & Manufacturing Co. Ltd. Appln. No. 62/1941 Bombay Labour Gazette (March 1942) Vol. 21, page 720.

of the Standing Orders, held that Standing Order no. 23 did not apply.[1]

Mere failure to investigate as laid down in Standing Order no. 23 does not effect the merits of the dismissal. It would at the most render the manager liable to be punished under Section 69 (2) of the Bombay Industrial Disputes Act. (Corresponding to Section 107 of this Act.)[2]

Bombay and others

24. Subject to the provisions of the Bombay Industrial Disputes Act, 1938, the decision of the Manager upon any question arising out of, in connection with, or incidental to these orders, shall be final, subject, however, to appeal to the Managing Agents and without prejudice to any right of an operative aggrieved by his or their decision to resort to legal proceedings in a Court of Law.

Ahmedabad and others

24. Subject to the provisions of the Bombay Industrial Disputes Act, 1938, the decision of the Manager upon any question arising out of, in connection with, or incidental to these orders, shall be final, subject, however, to appeal to the Managing Agents and to the machinery provided by collective agreements, if any, and without prejudice to any right of an operative aggrieved by his or their decision to resort to legal proceedings in a Court of Law.

25. When any probationer or permanent operative is summarily dismissed, suspended, or discharged, or leaves the services of the mill, or is granted leave of absence, he shall, except in cases of general retrenchment, closing down of departments, strike or lock-out, be given a written order in the form prescribed by the Company or the Mill-Owners' Association, Bombay/Ahmedabad, from time to time.

Every permanent employee shall be entitled to a service certificate at the time of leaving service, dismissal or discharge.

1. The Amalner Girni Kamgar Union Vs. The Pratap Spinning Weaving & Manufacturing Co. Ltd. Appln. No. 6/42 Bombay Labour Gazette (July 42) Vol. 21, page 1119.

2. Keshav Dharmayya Vs The Manager, The Laxmi Cotton Manufacturing Co. Ltd. Appln. No 15/1940. and 16/40 Bombay Labour Gazette (Aug. 1940) Vol. 19, page 1021.

COMMENTS

Discharge etc. of temporary worker :

Standing Order no. 25 does not contemplate giving of a written order of discharge to a temporary worker. For this order clearly provides that if a probationer or a permanent operative is summarily dismissed etc. then only it is obligatory on the company to give a written order about it [1]

Written order of discharge, dismissal, suspension or leaving of service :

This Standing Order enjoins that at the time an operative is summarily discharged, dismissed, suspended or leaves the service or is granted a leave of absence, a written order in the form prescribed must be given to him. This is a mandatory provision. So it was held, "It follows from necessary implication from the Standing Order no. 25 that in the case of a notice of discharge, a separate order of discharge is obligatory. A notice and a discharge order are distinct things. A notice of discharge and discharge order are separated by a span of 14 days. A notice of discharge is not analogous to a notice of forfeiture of tenancy under the Transfer of Property Act. In the case of a notice of forfeiture of tenancy, forfeiture takes place automatically on the expiry of the notice period, but in the case of a notice of discharge, a separate discharge order is necessary."[2] Where no separate discharge order on the date of expiry of the notice period was given, held that it was an illegal change. Standing Order no. 25 makes it peremptory that when a permanent operative leaves the service of the mills he shall be given a written order in certain form. Obviously this contemplates an order of discharge. This provision is obligatory. So, even if the employee abandons the employment voluntarily, he has got to be formally discharged by the mill.[3] Unless he is formally discharged his name will continue to be in the record of the Company. "Standing Order no. 25 lays down that the operative concerned shall be given a written order of punishment imposed on him" and therefore where it was proved that the dismissal slip was sought to be given to the applicant but he did not accept, held that there was no

1. Bai Nani Mani Vs. The Ahmedabad Shree Ramkrishna Mills Co. Ltd. Appln. No. 10/1945 Bombay Labour Gazette (Jan. 1946) Vol. 25, page 335.

2. Fakirram Lutairam Vs. The Bhalakia Mills Co. Ltd. Appln. No. 18/1944 Bombay Labour Gazette (May 1945) Vol. 24, page 549.

Rajebhai Rehmanbhai Vs. The Ahmedabad Cotton Manufacturing Co. Ltd Appln. No. 115/1944 Bombay Labour Gazette (June 1945) Vol. 24, page 620.

3. Krishnaji Yellappa Vs. The Shree Ambica Mills Ltd. Appln. No 72/1944 Bombay Labour Gazette (May 1945) Vol. 24, page 561.

Gulamrasul Valimahomed Vs. The New Maneckchowk Spinning & Weaving Co. Ltd. Appln. No. 47/1943 Bombay Labour Gazette (August 1943) Vol. 22, page 812.

illegal change.[1] Where the only written material given to the operative discharged was not signed by any body on behalf of the mills, the Court held that it could not amount to a written order contemplated by Standing Order no. 25 and therefore the discharge of the operative was in contravention of the Standing Order no. 25.[2] Whether it be a case of dismissal, discharge or voluntary giving up of work by the operative, it was obligatory on the Mill Company to give a written order to him within the meaning of Standing Order no. 25. As no such order has been given it amounts to an illegal change.[3]

Duty of the employer to give order :

It is not necessary that the applicant should have claimed such order (under Standing Order no. 25). The Standing Order leaves no option or descretion to the employer company in this respect. It appears to me that strict adherence to the very salutary provisions in this Standing Order should be insisted by the Court in order to put an effective check on the setting up of false or frivolous defences by the employer that the operative had voluntarily left work or had been granted leave. It is no answer that the employee or operative had not asked for such an answer.....Paragraph one makes it a duty of the employer to pass the relevant order and to give it to the employee.[4]

Refusal to accept order :

If the employee refuses to take the order (given under this Standing Order) it can be posted on the notice board and copies be sent to the Government Labour Officer and the employee by post.[5]

In the form prescribed :

" Standing Order no. 25 shows clearly that except in certain cases a permanent operative cannot be discharged from the employment of the mills unless a written order in the form prescribed by the Company or the Ahmedabad Mills Owners' Association is given to him. Obviously ex.

1. Mohanlal Manjibhai Mistri Vs. The Nagri Mills Co. Ltd. Appln. No. 202/1943 Bombay Labour Gazette (Jan. 1945) Vol. 24, page 293.

2. Mahomedkhan Ahmedkhan Vs. The Maheshwari Mills Co. Ltd. Appln. No. 113/1943, 114/1943, 115/1943, 116/1943 Bombay Labour Gazette (July 1943) Vol.23, page 694.

3. Gulam Mohmmad Mohmadkhan Vs. The National Mills Co. Ltd. Appln. No. 39/1945 Bombay Labour Gazette (Dec. 1946) Vol. 26, page 262.

Parsotam Kalidas Vs. The Nutan Mills Ltd. Appln. No. 59/1945 Bombay Labour Gazette (Dec. 1946) Vol. 26, page 263.

Maganlal Premchand Vs. The Shorrock Spinning & Manufacturing Co. Ltd. Appln. No. 80/1945 Bombay Labour Gazette (Dec. 1946) Vol. 26, page 268.

Amba Lakhai Vs. The New National Mills Ltd. Appln. No. 87/1945 Bombay Labour Gazette (Dec. 1946) Vol.26, page 272.

4. Soma Rama Vs. The Aryodaya Spinning & Weaving Co. Ltd., Appn. No. 36/1946 Bom. Govt. Gaz. Part I (12 June 1947). Page 2519.

5. Ibid.

3 is the form prescribed by the Company or the Ahmedabad Mills Owners' Association....We have to look at this form to convince ourselves that before a discharge order is given to a permanent employee it must be signed by the departmental head of the operative and the Manager of the mills. Incidentally it may be noted that there is no dispute in this case that the applicant is a permanent operative. It is therefore clear that he cannot be discharged from the employment without a written order in the prescribed form." (See Standing Order no. 25).

" As far as the signature of the departmental head is concerned it is admitted that the Weaving Master's signature is not found on this discharge order. There is only the signature or rather initials of the Assistant Weaving Master. The Assistant Weaving Master is after all an assistant. Therefore his signature or initials cannot take the place of the signature or initials of the departmental head. It is obvious that the discharge order contemplates that the departmental head should apply his mind to the question whether an operative should be discharged or not. It is not open to the departmental head to transfer that power to his assistant nor is it permissible to the assistant to attribute that power to himself. But really the most serious defect and it is a legal defect with this discharge order is that it does not bear the Manager's signature..... The provision for the Manager's signature on this form, exhibit 3, means that a discharge order cannot be given to an operative without the approval of the Manager. If the Manager's approval is not essential no separate space for the Manager's signature should have been reserved on this form. In this case the Manager's approval was certainly not taken. This is obvious from the fact that his signature does not appear on exhibit 3. These are serious defects. They invalidate the discharge order."[1] Where the alleged discharge order was not signed by any body on behalf of the mills, held it was not in accordance with the Standing Order no. 25.[2] But where the final order of dismissal was signed by the departmental head who made the inquiry and the Director of the mills who was in management of the mills, the contention that the order was not signed as required by the Standing Order no. 25 was overruled.[3]

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1. Asakalli Gulam Mahomed Vs. The Silver Cotton Mills Co. Ltd. Appln. No. 26/1943 Bombay Labour Gazette (Sept. 1943) Vol 23, page 27.

2. Mahomedkhan Ahmedkhan Vs. The Maheshwari Mills Co. Ltd. Appln. No. 113/1943, 114/1943, 115/1943 and 116/1943 Bombay Labour Gazette (July 1943) ol. 23, page 694.

3. Shanker Dayal Ayodhyaprasad Vs. The Simplex Mills Ltd. Appln. No. 112/1943 Bombay Labour Gazette (Nov. 1943) Vol. 23, page 201.

Jamaluddin Ghissu Vs. The Asarva Mills Appln. No. 146/1943, 154/1943, 155/1943 Bombay Labour Gazette (March 1944) Vol. 23, page 451.

Where the so called discharge slip is a printed form which is used by the mills on occasion of granting leave to its employees, it was held, "It is not a form for the discharge slip at all. It is not possible to hold that exhibit 4 is a form which the company has prescribed for the particular use of giving it to its employees who give up the service voluntarily. Besides, it does not bear the manager's signature or initials. In short giving of this slip is scarcely a compliance with the Standing Order no. 25." It was held to be not in accordance with Standing Order no. 25.[1]

Reasons of dismissal :

"Under Standing Order no. 25, no reasons are required to be given unless the form prescribed by the company or the Mill Owners' Association, Bombay, requires such reasons to be given. The form prescribed by the Mill Owners' Association, Bombay, does provide for reason of dismissal being mentioned therein. But as all the procedure required to be followed before passing an order of dismissal has been resorted to in this case, the mere failure to mention the reasons of dismissal can at the most be regarded as an irregularity which does not affect the validity of the dismissal order and cannot be said to have prejudiced the operative."[2]

26. Each Overseer, Jobber or Muccadam shall personally be held responsible for the proper and faithful observance of the Standing Orders and of the special rules made under the Factories Act and posted in the mill, particularly regarding the employment and working of women and children under him.

Bombay and others

27. A copy of these orders in English and also in the principal regional language of the local area in which the mill is situated shall be posted in the time-keeper's office and in all departments and in such other places in the mill premises as the Company may decide and shall be kept in a legible condition

Ahmedabad and others

27. Every permanent operative working in the mill shall be provided with a registration card.

28. A copy of these orders in English and also in the principal regional language of the local area in which the mill is situated shall be posted in the time-keeper's office and in all departments and in such places

1. Shivram Moti Vs. The Rajnagar Spinng Weaving & Manufacturing Co. Ltd. Appln. No. 70/1943 Bombay Labour Gazette (Sept. 1944) Vol. 24, page 49.

2. Baboo Jairam Vs. The Coorla Spinning & Weaving Co. Ltd. Appln. No. 102/1944 Bombay Labour Gazette (June 1945) Vol. 24 page 632.

Provided that in establishment where more than 20 percent of the total number of operatives employed speak a language other than the principal regional language, such Standing Orders shall be printed also in that language.

in the mill premises as the Company may decide and shall be kept in a legible condition.

Provided that in establishments where more than 20 percent of the total number of operatives employed speak a language, other than the principal regional language, such Standing Orders shall be printed also in that language.

28. The Standing Orders as settled by the Industrial Court under Section 26 (6) of the Bombay Industrial Disputes Act, 1938 on 2nd December 1939 shall apply to the operatives in the following cotton textile mills:

Schedule "A"

BOMBAY CITY.

1. The Appollo Mills Ltd.
2. The Bombay Dyeing & Mfg. Co. Ltd.
   The Spring Mill.
   The Textile Mill.
3. The Bombay Suryodaya Mills Ltd.
4. The Badbury Mills Ltd.
5. The Century Spg. & Mfg. Co, Ltd.
   The Century Mill.
   The Zenith Mill.
6. The Colaba Land & Mills Co., Ltd.
   The Colaba Mill.
   The Jehangir Wadia Mill.
7. The Crown Spg. & Mfg. Co., Ltd.
8. The David Mill Co., Ltd.
9. The Dawn Mills Co., Ltd.
10. The Dhanraj Mills Ltd.
11. The Digvijay Spg. & Wvg. Co., Ltd.
12. The E. D. Sassoon United Mills Ltd.
    The Alexandra Mill.
    The E. D. Sassoon Mill.
    The Jecob Sassoon Mill.
    The Manchester Mill.
    The Rachel Sassoon Mill.
13. The Edward Sassoon Mills Ltd.
14. The Elphinstone Spg. & Wvg. Mills Co., Ltd.
15. The Meyer Sassoon Mill Ltd.
16. The Finlay Mills Ltd.
17. The Gold Mohor Mills Ltd.
18. The Hindustan Spg., & Wvg., Mills Co., Ltd.,
19. The Indian Mfg. Co. Ltd.
20. The Jam Mfg. Co., Ltd. (Nos. 1-2)
21. The Kamala Mills Ltd.
22. The Kohinoor Mills Co. Ltd.
23. The Khatau Makanji Spg. & Wvg. Co., Ltd.
24. The Madhusudan Mills Ltd.

25. The Madhowji Dharamsi Wvg. Co., Ltd.
26. The Modern Mills Ltd. (Nos.1-2)
27. The Moon Mills Ltd.
28. The Morarjee Goculdas Spg. & Wvg., Co., Ltd.
29. The New City of Bombay Mfg. Co. Ltd.
30. The New China Mills Ltd.
31. The New Great Eastern Spg. & Wvg. Co. Ltd.
32. The New Kaiser-I-Hind Spg. & Wvg. Co. Ltd.
33. The New Union Mill Ltd.
34. The New Pralhad Mills Ltd.
35. The Phoenix Mills Ltd.
36. The Raghuvanshi Mills Ltd.
37. The Ruby Mills Ltd.
38. The Sassoon Spg. & Wvg.Co. Ltd.
39. The Shree Niwas Cotton Mills Ltd.
40. The Simplex Mills Co. Ltd.
41. The Shapurji Broacha Mills Ltd.
42. The Seksaria Cotton Mills Ltd.
43. The Standard Mills Co., Ltd.
44. The Swan Mills Ltd.
45. The Tata Mills Ltd.
46. The Podar Mills Ltd.
47. The Victoria Mill Ltd. (No. 1-2).
48. The Western India Spg. & Mfg. Co., Ltd.
49. Hirjee Mills Ltd.

KURLA.

1. The Coorla Spg. & Mfg. Co., Ltd.
2. The Swadeshi Mills Co. Ltd.

GOKAK.

1. The Gokak Mills Ltd.

POONA.

1. The Raja Bahadur Motilal Poona Mills Ltd.

SHOLAPUR.

1. The Luxmi Cotton Mfg. Co., Ltd.
2. The Vishnu Cotton Mills Ltd.
3. The Sholapur Spg. & Wvg. Co., Ltd.
4. The Jam Shri Kanjitsingji Spg. & Wvg. Mills Co., Ltd.
5. The Narsinggirji Mfg. Co. Ltd.

SCHEDULE "B"

AHMEDABAD.

1. The Ahmedabad Advance Mills Ltd.
2. The Ahmedabad Cotton & Waste Mfg. Co. Ltd.
3. The Ahmedabad Cotton Mfg. Co., Ltd.
4. The Ahmedabad Industrial Mills Co. Ltd.
5. The Ahmedabad Jaya Bharat Cotton Mills Ltd.
6. The Ahmedabad Jubilee Spg. & Mfg. Co., Ltd. (Nos. 1-2)
7. The Ahmedabad Jupiter Spg. Wvg. & Mfg. Co. Ltd.
8. The Ahmedabad Kaiser-I-Hind Mills Co Ltd.
9. The Ahmedabad Laxmi Cotton Mills Co., Ltd.
10. The Ahmedabad Mfg. & Calico Pringing Co., Ltd. (Nos.1-2).
11. The Ahmedabad New Textile Mills Co., Ltd. (Nos. 1-2)
12. The Ahmedabad New Cotton Mills Co., Ltd.
13. The Ahmedabad Sarangpur Mills Co., Ltd. (Nos. 1-2)
14. The Ahmedabad Shree Ram Krishna Mills Co., Ltd.
15. The Ajit Mills Ltd.
16. The Aruna Mills Ltd.
17. The Arvind Mills Ltd.
18. The Aryoda Spg. & Wvg. Co., Ltd. (Nos. 1-2).

19. The Aryodaya Ginning & Mfg. Co., Ltd.
20. The Asoka Mills Ltd.
21. The Bechardas Spg. & Wvg. Mills Co., Ltd.
22. The Bhalakia Mills Co., Ltd.
23. The Bharatkhand Cotton Mills Co, Ltd. (Nos. 1-2).
24. The Bharatkhand Textile Mfg. Co., Ltd.
25. The Bihari Mills Ltd.
26. The Commercial Ahmedabad Mills Co., Ltd.
27. The Fine Knitting Co., Ltd.
28. The Gujarat Spg. & Wvg. Co., Ltd.
29. The Girdhardas Harivallabhdas Mills Ltd.
30. The Gujarat Cotton Mills Co. Ltd.
31. The Harivallabhdas Mulchand Mills Co., Ltd.
32. The Hathising Mfg. Co, Ltd.
33. The Himabhai Mfg. Co., Ltd.
34. The Jehangir Vakil Mills Co., Ltd.
35. The Kalyan Mills Ltd.
36. The Lalbhai Tricumlal Mills Ltd.
37. The Manekchock & Ahmedabad Mfg. Co., Ltd. (Nos. 1-2).
38. The Maneklal Harilal Spg. & Mfg. Co., Ltd.
39. The Marsdon Spg. & Mfg. Co., Ltd.
40. The Monogram Mills Co, Ltd.
41. The Motilal Hirabhai Spg., Wvg., & Mfg. Co., Ltd. (Nos. 1-2)
42. The Nagri Mills Co., Ltd.
43. The National Mills Co., Ltd.
44. The New Commercial Mills Ltd.
45. The New Manekchock Mills Spg. & Wvg. Co. Ltd.
46. The New National Mills Ltd.
47. The New Raipur Mills Co., Ltd.
48. The New Swadeshi Mills of Ahmedabad, Ltd.
49. The Nutan Mills Ltd.
50. The Patel Mills Co. Ltd.
51. The Raipur Mfg. Co. Ltd.
52. The Rajnagar Spg. Wvg. & Mfg., Co., Ltd. (Nos. 1-2)
53. The Rohit Mills Ltd.
54. The Rustom Jahangir Vakil Mills Co., Ltd.
55. The Sarangpur Cotton Mfg. Co., No. 1.
56. The Sarangpur Cotton Mfg. Co. Ltd. No. 2.
57. The Saraspur Mills Ltd.
58. The Shorrock Spg. Co. Ltd.
59. The Shrinagar Wvg. & Mfg. Co. Ltd.
60. The Shri Vivekanand Mills Ltd.
61. The Silver Cotton Mills Ltd.
62. The Vijaya Mills Ltd.
63. The Vikram Mills Ltd.
64. The Ananta Mills Ltd.
65. The Asarva Mills.
66. The City of Ahmedabad Spg. & Mfg. Co. Ltd.
67. The Shree Laxmi Wvg. & Mfg. Co, Ltd.
68. The Shri Ambica Mills Ltd. (Nos. 1-2).

VIRAMGAM

1. The Chandrodaya Mills Ltd. (Nos. 1 & 2)
2. The Jayanti Mills Ltd.

NADIAD

1. The New Shorrock Spg. & Mfg. Co., Ltd.

SURAT

1. The Surat Cotton Spg. & Wvg. Mills Ltd.

APPENDIX II

Standing Orders For Clerks.

Areas:-Bombay City, Kurla, Gokak, Poona, Sholapur, Ahmedabad, Viramgam, Nadiad and Surat.

Standing Order as finally settled by the Industrial Court under section 26 (6) of the Bombay Industrial Disputes Act, 1938, for clerks in cotton textile mills mentioned in Schedule C.

1. These orders, shall come into force on and from the 12th December 1939.

2. In these Orders, unless there is anything repugnant in the subject or context:

(a) 'Employees" means clerks.

(b) "The company" means.....Mills Co., Ltd.

(c) "The Manager" means the Company's Manager, or Acting Manager for the time being.

(d) Masculine includes the feminine.

3. Employees shall be classed as (1) Permanent and (2) Temporary.

A 'permanent" employee is one whose appointment has been confirmed in writing by the Company.

A "temporary" employee is one whose appointment has not been confirmed in writing by the Company.

COMMENTS.

Confirmation in writing:

Although according to the definition as given in the Standing Order no. 3 a permanent employee is one whose appointment has been cofirmed in writing, yet in a case where the opponent mills did not observe the provisions of Standing Order no. 3, in that they never confirmed in writing the appointment of any employee, nor did they ever issue written confirmation orders, the Court rejected the contention of the mills that certain clerks whose services were terminated must be deemed to be temporary employees as their appointment was not confirmed in writing. The applicants had put in 16 years, two years and three months services respectively after completion of apprenticeship. The posts in which they were

working were permanent posts. They were not officiating in some body else's vacancies. The court held the clerks to be permanent employees.[1]

Where a clerk was shown in the muster roll for a certain month with the letter "A" (meaning acting) prefixed to his designation, but in the musters for the following months the letter " A " was not put, the Court inferred that he must have been made permanent even though the written order of confirmation was not forthcoming, the practice of the mills being not to pass confirmation orders.[2]

"The applicant must have been a permanent employee. Otherwise the opponent mill company would never have taken up the defence that a notice under Standing Order no. 10 of the Standing Orders for clerks was sought to be given to the applicant but was refused by him. No notice is necessary in the case of temporary employees."[3]

4. The periods and hours of work of all classes of employees shall be posted up on a notice board, provided that if any particular employee is required to work for a different period he shall be notified to that effect in advance.

5. Notices specifying (a) the days observed by the mill as holidays and (b) pay days, shall be posted up on a notice board, provided that if any particular employee is required to work on holidays he shall be personally notified to that effect in advance.

6. A register shall be maintained by the Manager specifying the wages and the scales of pay, if any, of all employees and the register shall remain open to inspection by the employees on two days in a month fixed for the purpose.

7. Service for a total period of 12 months in a mill shall qualify an employee, with or without pay, according to the terms of contract, custom or usage of the mill, for a total period of one month's leave. Grant of such leave shall depend on the exigencies of the mill and shall, be at the discretion of the Company.

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1. Dahyabhai Samaldas Vs. The Maheshwari Mills Ltd. Appln. No. 48/1942 Bombay Labour Gazette (April 1943) Vol. 22, page 524.

2. Marghabhai Bhulabhai Patel Vs. The Bharat Suryodaya Mills Co. Ltd. Appln. No. 90/1943 Bombay Labour Gazette (Oct. 1944) Vol. 24, page 109.

3. Dharamshi Hathising Vs. The Ahmedabad Laxmi Cotton Mills Co. Ltd. Appln. No 162/1943 Bombay Labour Gazette (Oct. 1944) Vol. 24, page 123.

Marghabhai Bhulabhai Patel Vs. The Bharat Suryodaya Mills Co. Ltd. Appln. No 90/1943 Bombay Labour Gazette (Oct. 1944) Vol. 24 page 109.

Any employee who desires to obtain leave of absence shall submit an application in writing to the Manager. A copy of the orders passed shall be given to the employee and if leave is refused or postponed the reasons for the refusal or postponement shall be recorded in writing. An employee shall lose his lien on his appointment if he fails to return on the expiry of any leave or any extension thereof which may have been granted to him. The Manager may, however, restore an employee's lien on his appointment if the employee gives an explanation to the satisfaction of the Company of his inability to return before the expiry of the leave.

8. An employee may be granted casual leave of absence not exceeding 10 days in the aggregate in a calendar year with or without pay according to the terms of contract, custom or usage of the mill. Such leave is intended to meet special circumstances such as sickness which cannot be foreseen. Ordinarily, the previous permission of the Manager shall be obtained before such leave is taken, but when this is not possible the M nager shall, as soon as may be practicable, be informed in writing of the absence from work and of the probable duration of such absence.

9. The number of holidays to be granted to the employees shall be regulated in accordance with the law for the time being in force and/or the custom or usage of the mill. If an employee is required to work on a holiday, he shall be granted a substitute holiday on such other day as may be agreed upon between him and the Company.

10. The employment of any permanent employee may be terminated by one month's notice or one month's pay in lieu of notice unless provided otherwise in a specific agreement. The reasons for the termination of service shall be recorded in writing and shall be communicated to the employee, if he so desires, at the time of the discharge unless such communication, in the opinion of the Manager, may directly or indirectly lay the Company and the Manager or the person signing the commu-

nication open to criminal or civil proceedings at the instance of the employee.

The services of any temporary employee may be terminated without notice or pay in lieu of notice.

COMMENTS

Notice :

No notice is necessary in the case of the discharge of temporary employees.[1]

The notice must be given before the discharge. Thus where no notice was given or sought to be given to a clerk before the termination of his employment, but was sent after the termination of his employment, it was held that it was no compliance with the Standing Order no. 10 and constituted an illegal change.[2]

If the employee refuses to accept the notice, the fact of such refusal would in the natural course be noted on the notice itself.[3]

Reasons :

Under this Standing Order it is necessary that the reasons for the termination of service shall be recorded in writing. But it is not necessary that they must be communicated *in writing* to the employee concerned. Thus where the reasons were recorded but communicated orally to the clerk discharged, held that there was no breach of the Standing Order no. 10.[4]

11. Any permanent employee desirous of leaving the Company's service shall give one month's notice in writing to the Manager unless he has a specific agreement providing for a longer or shorter notice.

If any permanent employee leaves the service of the Company without giving notice, he shall be liable to be sued for damages.

12. The following acts or omissions shall be treated as misconduct :—

1. Dharamshi Hathising Vs. The Ahmedabad Laxmi Cotton Mills Co. Ltd. Appln. No. 162/1943 Bombay Labour Gazette (Oct. 1944) Vol. 24 page 123.

2. Ibid.

3. Ibid.

4. Dhondappa Apparao Patil Vs. The Laxmi Cotton Manufacturing Co. Ltd. Appln. No. 45/1942 Bombay Labour Gazette (Nov. 1942) Vol. 22, page 186.

(a) Wilful insubordination or disobedience whether alone or in combination with another or others of any lawful and reasonable order of a superior.

(b) Striking work in contravention of the provisions of the Bombay Industrial Disputes Act, 1938.

(c) Inciting other operatives or employees to strike work in contravention of the provisions of the Bombay Industrial Disputes Act, 1938.

(d) Theft, fraud, or dishonesty in connection with the Company's business or property.

(e) Taking or giving bribes or any illagal gratification whatsoever.

(f) Habitual absence without leave or absence without leave for more than ten consecutive days.

(g) Habitual late attendance.

(h) Habitual breach of any Standing Orders.

(i) Collection of moneys within the mill premises for purposes not sanctioned by the Manager.

(j) Engaging in trade within the mill premises

(k) Drunkeness or riotous or disorderly behaviour within the mill premises or any act subversive of discipline.

(l) Habitual negligence or neglect of work.

(m) Habitual breach of any rules, or instructions for the maintenance and running of any department, or the maintenance of the cleanliness of any portion of the mill premises or mill compound.

(n) Frequent repetition of any act or omission for which a fine may be imposed under the Payment of Wages Act.

13. (i) An employee may be suspended for a period not exceeding four days or dismissed without notice or any compensation in lieu of notice if he is found guilty of misconduct.

The order of suspension shall be in writing and may take effect immediately on communication thereof to the employee.

Such order shall set out in detail the alleged misconduct and that the employee shall be given an opportunity of explaining the circumstances alleged against him. If on enquiry the order is confirmed or modified, the employee shall be deemed to be absent from duty for the period of suspension and shall not be entitled to any remuneration for such period. If, however, the order is rescinded the employee shall be deemed to be on duty during the full period of suspension and shall be entitled to the same wages as he would have received if he had not been suspended.

No order of dismissal shall be made unless the employee concerned is informed in writing of the alleged misconduct and is given an opportunity to explain the circumstances alleged against him.

In awarding punishment under this Standing Order, the Manager shall take into account the gravity of misconduct, the previous record, if any, of the employee and any other extenuating or aggravating circumstances that may exist.

(ii) A copy of the order made by the Manager shall be supplied to the employee concerned.

COMMENTS

Show cause notice:

Where no show cause notice was given immediately prior to the dismissal of a clerk, the mills relied upon a notice given ten months ago; the court held that that notice cannot be construed as a show cause notice, for, the clerk continued to work for 10 months after that notice. A notice immediately prior to the dismissal was necessary and as no such notice was given, the dismissal was illegal and constituted an illegal change.[1]

Voluntary abandonment of service:

"Let us assume the applicants themselves gave up service by not attending the mills from December 1942. Absence without leave for more than 10 consecutive days amounts to a misconduct under Standing Order no. 12. Therefore as soon as the applicant's absence without leave amounted to more than 10 days it was obligatory on the mills to treat it as a misconduct and proceed under Standing Order no. 15. ... Admittedly no

1. Punjalal Dholidas Patel Vs. The Rohit Mills Ltd. Appln. No. 21/1944 Bombay Labour Gazette (May 1945) Vol. 24, page 551.

charge sheet was given to them. They were offered no opportunity to explain the circumstances alleged against them. In other words the provisions of Standing Order No. 13 were broken by the authorities. Therefore according to this aspect of the case also the opponent company committed an illegal change by not complying with the imperative provisions of Standing Order no. 13."[1]

14. All complaints arising out of the employment including those relating to unfair treatment or wrongful exaction on the part of the employer or his agent or servant shall be submitted by an employee to the Manager. The Manager shall personally investigate the complaint at such time and places as he may fix and the complainant shall have the right to be present at such investigation. Where the complainant alleges unfair treatment or wrongful exaction on the part of his employer or his agent or servant, a copy of the order finally made shall be supplied to the complainant if he asks for one. In other cases the decision of the Manager and the action, if any, taken by him shall be intimated to the complainant.

15. Subject to the provisions of the Bombay Industrial Disputes Act, 1938, the decision of the Manager upon any question arising out of, in connection with, or incidental to these orders, shall be final, subject, however, to appeal to the Managing Agents, and without prejudice to any right of an employee aggrieved by his or their decision to resort to legal proceedings in a Court of Law.

16. When any permanent employee is summarily dismissed, suspended or discharged, or leaves the services of the Company, or is granted leave of absence, he shall, except in cases of general retrenchment, closing down of departments, strike or lock-out, be given a written order in the form prescribed by the Manager.

Permanent employees shall be entitled to a service certificate at the time of leaving service in every case other than that for which an employee has been dismissed for misconduct.

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1. Dahyabhai Samaldas Vs. The Maheshwari Mills Ltd. Applu. No. 48/1942 Bombay Labour Gazette (April 1943) Vol. 22, page 524.

17. A copy of these Orders in English and also in the principal regional language of the local area in which the mill is situated shall be posted in the mill office

Per Full Bench appeals Nos. 12, 14, 15 and 16 of 1939.

SCHEDULE "C"

The Standing Orders as settled by the Industrial Court under Section 26 (6) of the Bombay Industrial Disputes Act, 1938, on 2nd December 1939 shall apply to clerks in the following cotton textile mills:—

Bombay City.

1. The Appollo Mills Ltd.
2. The Bombay Dyeing & Mfg. Co. Ltd.
   The Spring Mill.
   The Textile Mill.
3. The Bombay Suryodaya Mills Ltd.
4. The Bradbury Mills Ltd.
5. The Century Spg. & Mfg. Co., Ltd.
   The Century Mill.
   The Zenith Mill.
6. The Colaba Land and Mills Co., Ltd.
   The Colaba Mill.
   The Jehangir Wadia Mill.
7. The Crown Spg. & Mfg. Co., Ltd.
8. The David Mill Co., Ltd.
9. The Dawn Mills Co., Ltd.
10. The Dhanraj Mills Ltd.
11. The Digvijay Spg. & Mfg. Co., Ltd.
12. The E. D. Sassoon United Mills Ltd.
    The Alexandra Mill.
    The E. D. Sassoon Mill.
    The Jacob Sassoon Mill.
    The Manchester Mill.
    The Rachel Sassoon Mill.
13. The Edward Sassoon Mills Ltd.
14. The Elphinstone Spg. & Wvg. Mills Co., Ltd.
15. The Meyer Sassoon Mills Ltd.
16. The Finlay Mills Ltd.
17. The Gold Mohor Mills Ltd.
18. The Hindustan Spg. & Wvg. Mills Co., Ltd.
19. The Indian Mfg., Co., Ltd.
20. The Jam Mfg. Co., Ltd. (Nos. 1 and 2.)
21. The Kamala Mills Ltd.
22. The Kohinoor Mills Ltd.
23. The Khatau Makanji Spg. & Wvg. Co., Ltd.
24. The Madhusudan Mills Ltd.
25. The Madhowji Dharamsi Wvg. Co., Ltd.
26. The Modern Mills Ltd. (Nos. 1 & 2).
27. The Moon Mills Ltd.
28. The Morarjee Gocuidas Spg. & Wvg. Co., Ltd.
29. The New City of Bombay Mfg. Co., Ltd.
30. The New China Mills Ltd.
31. The New Great Eastern Spg. & Wvg. Co., Ltd.
32. The New Kaiser-I-Hind Spg. & Wvg., Co., Ltd.
33. The New Union Mills Ltd.
34. The New Pralhad Mills Ltd.
35. The Phoenix Mills Ltd.
36. The Ruby Mills Ltd.
37. The Sassoon Spg. & Wvg. Co. Ltd.

38. The Shree Niwas Cotton Mills Ltd.
39. The Simplex Mills Co., Ltd.
40. The Shapurji Broacha Mills Ltd.
41. The Seksaria Cotton Mills Ltd.
42. The Standard Mills Co., Ltd.
43. The Swan Mills Ltd.
44. The Tata Mills Ltd.
45. The Podar Mills Ltd.
46. The Victoria Mill Ltd. (Nos. 1 & 2).
47. The Western India Spg. & Mfg. Co. Ltd.

Kurla.

1. The Coorla Spg. & Wvg. Co., Ltd.
2. The Svadeshi Mills Co., Ltd.

Gokak.

1. The Gokak Mills Ltd.

Poona.

1. The Raja Bahadur Motilal Poona Mills Ltd.

Sholapur.

1. The Laxmi Cotton Mfg. Co. Ltd.
2. The Vishnu Cotton Mills Ltd.
3. The Sholapur Spg. & Wvg. Co. Ltd.
4. The Jam Shri Ranjitsingji Spg. & Wvg. Mills Co. Ltd.
5. The Narsinggirji Mfg. Co. Ltd.

Ahmedabad.

1. The Ahmedabad Advance Mills Ltd.
2. The Ahmedabad Cotton & Waste Mfg. Co. Ltd.
3. The Ahmedabad Cotton Mfg. Co., Ltd.
4. The Ahmedabad Industrial Mill Co., Ltd.
5. The Ahmedabad Jaya Bharat Cotton Mills Ltd.
6. The Ahmedabad Jubilee Spg. & Mfg. Co. Ltd. (Nos. 1 & 2).
7. The Ahmedabad Jupiter Spg. Wvg. & Mfg. Co. Ltd.
8. The Ahmedabad Kaiser-I-Hind Mills Co. Ltd.
9. The Ahmedabad Laxmi Cotton Mills Co. Ltd.
10. The Ahmedabad Mfg. & Calico Printing Co. Ltd. (Nos. 1 & 2).
11. The Ahmedabad New Textile Mills Co, Ltd. (Nos. 1 & 2).
12. The Ahmedabad New Cotton Mills Co., Ltd.
13. The Ahmedabad Sarangpur Mills Co. Ltd., (Nos. 1 & 2),
14. The Ahmedabad Shree Ramkrishna Mills Co. Ltd.
15. The Ajit Mills Ltd.
16. The Aruna Mills Ltd.
17. The Arvind Mills Ltd.
18. The Aryodaya Spg. & Wvg. Co., Ltd. (Nos. 1 & 2)
19. The Aryodaya Ginning & Mfg. Co., Ltd.
20. The Asoka Mills Ltd.
21. The Bechardas Spg. & Wvg. Mills Co. Ltd.
22. The Bhalakia Mills Co. Ltd.
23. The Bharatkhand Cotton Mills Co. Ltd. (Nos. 1&2).
24. The Bharatkhand Textile Mfg. Co. Ltd.
25. The Bihari Mills Ltd.
26. The Commercial Ahmedabad Mills Co. Ltd.
27. The Fine Knitting Co. Ltd.
28. The Gujarat Spg. & Wvg. Co. Ltd.
29. The Girdhardas Harivallabhdas Mills Ltd.
30. The Gujarat Cotton Mills Co. Ltd.
31. The Harivallabhdas Mulchand Mills Co. Ltd.
32. The Hathising Mfg. Co. Ltd.
33. The Himabhai Mfg. Co. Ltd.

34. The Jehangir Vakil Mills Co. Ltd.
35. The Kalyan Mills Ltd.
36. The Lalbhai Tricumlal Mills Ltd.
37. The Maneckchok & Ahmedabad Mfg. Co. Ltd. (Nos. 1&2).
38. The Maneklal Harilal Spg. & Mfg. Co. Ltd.
39. The Marsden Spg. & Mfg. Co. Ltd.
40. The Monogram Mills Co. Ltd.
41. The Motilal Hirabhai Spg. Wvg. & Mfg. Co. Ltd. (Nos 1&2).
42. The Nagri Mills Co., Ltd.
43. The National Mills Co., Ltd.
44. The New Commercial Mills Ltd.
45. The New Maneckchock Mills Spg. & Wvg. Co., Ltd.
46. The New National Mills Ltd.
47. The New Rajpur Mills Co., Ltd.
48. The New Swadeshi Mills of Ahmedabad, Ltd.
49. The Nutan Mills Ltd.
50. The Patel Mills Co. Ltd.
51. The Raipur Mfg. Co. Ltd.
52. The Rajnagar Spg. Wvg. & Mfg. Co. Ltd. (Nos. 1&2)
53. The Rohit Mills Ltd.
54. The Rustom Jehangir Vakil Mills Co., Ltd.
55. The Sarangpur Cotton Mfg. Co., Ltd. No. 1
56. The Sarangpur Cotton Mfg. Co., Ltd. No. 2.
57. The Saraspur Mills Ltd.
58. The Shorrock Spg. Co. Ltd.
59. The Shrinagar Wvg. & Mfg. Co. Ltd.
60 The Shri Vivekanand Mills Ltd.
61. The Silver Cotton Mills Ltd.
62. The Vijaya Mills Ltd.
63. The Vikram Mills Ltd.

Viramgam.

1. The Chandrodaya Mills Ltd. (Nos. 1&2).
2. The Jayanti Mills Ltd.

Nadiad.

1. The New Shorrock Spg. & Mfg. Co. Ltd.

Surat.

1. The Surat Cotton Spg. & Wvg. Mills Ltd.

APPENDIX III.

NOTIFICATIONS

UNDER SECTION 2.

Cotton Textile Industries.

(1). In exercise of the powers conferred by sub-section 1 of section 2 of the Bombay Industrial Disputes Act, 1938 (Bom. XXV of 1938), the Government of Bombay is pleased to direct that the provisions of the said Act mentioned in Schedules I and II hereto appended shall extend to the whole of the Province of Bombay.

In exercise of the powers conferred by sub-section (2) of the said section 2, the Government of Bombay is further pleased to direct that the provisions of the said Act mentioned in Schedule I shall come into force from the 1st June 1939 and those mentioned in Schedule II shall come into force from the 1st August 1939 in the said Province.[1]

SCHEDULE I.

Sections 3 to 22, 24 to 27, 53, 54, 56 to 61, 64, 68, 70 to 72, 74 to 76, 78 to 82 and Schedule I to the said Act.

SCHEDULE II.

Sections 23, 28 to 52, 69, 73, 77, 83 and Schedule II to the said Act.

(2) In exercise of the powers conferred by sub-section (3) of section 2 of the Bombay Industrial Disputes Act, 1938 (Bom. XXV of 1938), and in supersession of Government Notification in the Political and Services Department, No. 2847/34/2, dated the 14th March 1939, the Government of Bombay is pleased to direct that the provisions of the Act which have been extended to the Province of Bombay under Government Notification in the Political and Services Department, No. 2847/34/1, dated the 14th March 1939, shall apply to the cotton textile industry as specified below:—

(a) All concerns using power and employing twenty or more workers which are engaged in cotton spinning;

(b) All concerns using power and employing twenty or more workers which are engaged in cotton weaving with or without an admixture of silk, rayon, artificial silk or one or more of these.[2]

(c) All mechanics' shops attached to and all dyeing, bleaching and

1. Notification No. 2847/34/1 dated 14th March 1939 as ameded on 3rd April 1939.

2. Notification No. 2847/34/A dated 30th May 1939 as amended on 10th June 1939, 21st July 1939 and as amended by No. 3269/34(b) dated 11th Jan. 1940.

printing departments in any of the concerns falling under clause (a) or (b).[1]

(3) In exercise of the powers conferred by sub-section (1) of section 2 of the Bombay Industrial Disputes Act, 1938 (Bom. XXV of 1938), the Government of Bombay is pleased to direct that the provisions of the said Act mentioned in the Schedule hereto shall extend to the whole of the Province of Bombay.

In exercise of the powers conferred by sub-section (2) of the said section 2, the Government of Bombay is further pleased to direct that the provisions of the said Act mentioned in the Schedule hereto shall come into force from the 20th August 1939 in the said Province.

In exercise of the powers conferred by sub-section (3) of the said section 2, the Government of Bombay is also pleased to direct that the provisions of the said Act mentioned in the Schedule hereto shall apply to the Cotton Textile Industry as specified in Government Notification, Political and Services Department, No. 2847/34/A, dated the 30th May 1939.[2]

SCHEDULE.

Sections 55, 62, 63, 65, 66 and 67.

(4) Silk Industry:

In exercise of the powers conferred by sub-section (3) of section 2 of the Bombay Industrial Disputes Act, 1938 (Bombay XXV of 1938), the Government of Bombay is pleased to direct that all the provisions of the said Act shall apply, with effect from the 1st day of October 1939, to the Silk Textile Industry in the City of Bombay, as specified below:—

(a) All Concerns, using power and employing twenty or more workers, which are engaged in waste silk spinning;

(b) All concerns, using power and employing twenty or more workers, which are engaged in silk, artificial silk or rayon weaving with or without an admixture of cotton or staple fibre and in all processes incidental or supplemental thereto;

(c) All mechanics' shops attached to, and all dyeing, bleaching and printing departments in any of the concerns falling under the above clause (a) or (b).[3]

(5) Woollen Industry:

In exercise of the powers conferred by sub-section (3) of section 2 of the Bombay Industrial Disputes Act, 1938 (Bombay XXV of 1938), the Government of Bombay is pleased to direct

1. Substituted by Notification No. 2847/34/I dated 17th July 1945.
2. Notification No. 2847/34 dated 20th August 1939.
3. Notification No. 3269/34, dated 30th September 1939.

that all the provisions of the said Act shall apply, with effect from the 15th day of January 1940, to the industries specified below in the City of Bombay and in the Thana Municipal Borough:

(a) All concerns, using power and employing twenty or more workers, which are engaged in spinning wool and / or worsted and in all processes incidental or supplemental thereto;

(b) All concerns, using power and employing twenty or more workers, which are engaged in woollen and / or worsted weaving and in all the processes incidental thereto with or without an admixture of cotton, silk, rayon, artificial silk or any other artificial or natural fibres or one or more of these provided such concerns use more than 50 percent of wool and/or worsted;

(c) All concerns, using power and employing twenty or more workers, which are engaged in wool and/or worsted knitting or the manufacture of wool and/or worsted hosiery with or without an admixture of cotton, silk, rayon, artificial silk or any other artificial or natural fibres or one or more of these provided such concerns use more than fifty percent of wool and/or worsted;

(d) All mechanics' shops attached to, and all dyeing, bleaching and printing departments in any of the concerns falling under clauses (a), (b) or (c).[1]

Hosiery Industry:

(6) In exercise of the powers conferred by sub-section (3) of section 2 of the Bombay Industrial Disputes Act, 1938 (Bombay XXV of 1938), the Government of Bombay is pleased to direct that with effect from 17th July 1945 all the provisions of the said Act shall apply to the following industries, in the City of Bombay, the Ahmedabad City Municipal Borough with the Ahmedabad Cantonment and village of Sabarmati, the Poona City Municipal Borough with the Poona Suburban Municipal Borough and Poona Cantonment, the Thana Municipal Borough and the notified area of Borivli, namely:–

(a) All concerns using power and employing twenty or more persons which are engaged in the manufacture of hosiery or other knitted articles made of cotton, wool, silk, artificial silk, or rayon or an admixture of two or more of them and in all processes incidental or supplemental thereto;

(b) All mechanics' shops attached to and all dyeing, bleaching and printing departments in the above concerns.[2]

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1. Notification No. 3269/34(a) dated 11th January 1940.

2. Notification No. 2847/34 II dated 17th July 1945.

(7) Banking Business:

Political And Services Department, Bombay Castle, 26th February 1947.

The Bombay Industrial Disputes Act, 1938.

No. 396/46-I.-In exercise of the powers conferred by sub-section (3) of section 2 of the Bombay Industrial Disputes Act, 1938 (Bom. XXV of 1938), and in supersession of Government Notification in the Political and Services Department, No. 396/46-I, dated the 26th September 1946, the Government of Bombay in pleased to direct that all the provisions of the said Act shall apply to the business of banking companies registered under any of the enactments relating to companies for the time being in force in any part of His Majesty's dominions or elsewhere or incorporated by an Act of Parliament or by an Indian Law or by Royal Charter or by Letters Patent.[1]

(8) Transport Services:

Political and Services Department, Bombay Castle, 4th December 1946.

The Bombay Industrial Disputes Act, 1938

No. 367/46.-In exercise of the powere conferred by sub-section (3) of section 2 of the Bombay Industrial Disputes Act, 1938 (Bombay XXV of 1938) the Government of Bombay is pleased to direct that with effect from the date of this notification all the provisions of the said Act shall apply to the following industries namely:—

(1) The conduct and maintenance of public passenger transport services by omnibus or tram within the Bombay Municipal Limits.

(2) The supply of electrical energy within the Bombay Municipal Limits by concerns or undertakings situated within the said limits.

EXPLANATION—For the purpose of this notification, all business, trade, manufacture, service and employment connected with the conduct of either of the above industries, shall be deemed to be part of the industry concerned when engaged in by an employer engaged in such industry.

Local Area:

(9) In exercise of powers conferred by clause (18) of section 3 of the Bombay Industrial Disputes Act, 1938 (Bombay XXV of 1938), and in supersession of Government Notification in the Political and Services Department, No. 2847/34/3, dated the 14th March 1939, the Government of Bombay is pleased to notify each of the following area to be a 'Local Area' for the purposes of the said Act:-

1. City of Bombay

1. Bombay Government Gazette Part I Page 711, dated 27-2-47

1. (a) Thana Municipal Borough.
2. Kurla Municipal Borough.
3. Ghatkoper – Kirol Municipal District.
3. (a) Borivali.
4. Bhiwandi Municipal District.
5. Ahmedabad City Municipal Borough.
   Ahmedabad Cantonment and the Notified Area of Sabarmati.
6. Viramgam Municipal Borough.
7. Revenue limits of Gogha.
8. Nadiad Municipal Borough.
9. Broach Municipal Borough.
10. Surat Municipal Borough.
11. Jalgaon Municipal Borough.
12. Chalisgaon Municipal Borough.
13. Amalner Municipal Borough.
14. Dhulia Municipal Borough.
15. Malegaon Municipal Borough.
16. Poona City Municipal Borough. Poona Suburban Municipal Borough and Poona Cantonment.
17. Karad Municipal Borough.
17. (a) Village Panichayat Limits of Limb, Satara Dist.
18. Sholapur Municipal Borough.
19. Baral Municipal Borough.
20. Revenue Limits of Tikekarwadi.
21. Belgaum Municipal Borough.
22. Revenue Limits of Gokak.
23. Hubli Municipal Borough.
24. Gadag – Bettigeri Muncipal Borough.[1]

(10) Whereas a public emergency has arisen in connection with the production of cloth, the Government of Bombay is pleased, in exercise of the powers conferred by Section 8 of the Factories Act 1934 (XXV of 1934) to exempt from the provisions of Section 34 of the said Act, Viz :–

All cotton spinning and weaving factories in the Province of Bombay.

A press note issued by the Government of Bombay states that the effect of the above Notification is that cotton spinning and weaving factories can work a six-day week of sixty hours instead of fifty four hours and that the workers will be paid overtime for the extra six hours at a time and a quarter the ordinary rate of pay.

The Government of Bombay by its above Notification had exempted for a period of six months, the cotton textile factories in the Province of Bombay from the provisions of section 34 of the Factories Act. The exemption was due to expire on 4th May 1942 but Government had granted further exemption from the operation of the Section until further orders. Similar exemption has been given to all the dyeing and bleaching factories in the Province.[2]

(11) In exercise of the powers conferred by Section 8 of the Factories Act, 1934 (XXV of 1934) the Government of Bombay is pleased to exempt

1. Notification No. 2847/34/B of 19-5-1939 under Section 3 (18) for 'Local Area.'

2 Notifications for increase of Hours of Work.

Notification issued by the Government of Bombay in the Political and Services Department dated 4th November 1941 in an Extraordinary Issue of the Bombay Govt. Gazette of the same date.

with effect from the 4th May 1942 pending further orders, the following factories from the provisions of Section 34 of the said Act, Viz.–

All cotton spinning and weaving factories in the Province of Bombay and all bleaching and dyeing Factories in the Province of Bombay.[1]

(12) In pursuance of the proviso to paragraph (ii) of the Government of India's Order in the Labour Department, dated the 21st August 1942, and published at pages 1409-1410 of part I of the Gazette of India, dated the 22nd August 1942, the Government of Bombay is pleased to specify–

(a) in the case of an undertaking situated in a district, the District Magistrate of the district; and

(b) in the case of an undertaking situated in the City of Bombay, the Commissioner of Labour, Bombay,

as the authorities to whom notices of lock-outs shall be sent.[2]

(13) In exercise of the powers conferred on me under section 5 of the Bombay Industrial Disputes Act, 1938, I hereby recognise the following sections of the Cotton Textile Industry as occupation in that Industry for the purposes of the Act:–[3]

List of Occupations for the Cotton Textile Industry with individual operations included under each occupation.

A:–Mixing, Blow Room, Carding, Frame Department and Combing operatives:–

1. Opener Attendants (including Lattice Feeder Men, Hopper Feeder Men, Porcupine Feeder Men, Exhaust openers, Crichton Openers, Buckley Openers, Breaker Scutchers, Lap Tenters and Double Cylinder Openers.)
2. Intermen.
3. Scutcher Tenters (including Finishermen.)
4. Willowmen.
5. Thread Extractors (including Hard Waste Machinemen and Roving and Waste Openers.) Cap-Breakers.
6. Strippers and Grinders.
7. Flat Grinders.
8. Card Flat Coverers (including Millers) Flat mounter.
9. Carding Machine attendants (including Line Men and Can Boys.)
10. Derby Doublers.
11. Josephy Waste Plant Men.
12. Silver Lap Machine Men.
13. Ribbon Lap Machine Men.
14. Comber Tenters.
15. Combing Can Boys.
16. Drawing Tenters.
17. Slubbing Tenters,

1. Notification No. 5295/34 dated 9th June 1942 which has been published in the Bombay Government Gazette dated 11th June 1942.

2. Government of Bombay's Notification No. 6226/34, dated 7-9-1942 under the Defence of India Rules. 81A.

3. Notification No. 1, dated 1-6-1939 for recognising Sections of the Cotton Textile Industry as occupation in that Industry.

18. Inter Tenters.
19. Roving Tenters, Roving Helpers.
20. Chapon Frame Tenters.
21. Creelers (Frame Department.)
22. Doffers (Frame Department.)

B. Spinners:-

1. Siders:-Warp and Weft Piecers.
2. Tarwallas or Followers or Gaiters.
3. Doffers (in Ring Spinning and Doubling Department.)
4. Doubling Tenters (including Ring and Flyer Doublers.)
5. Tubular Bonders.
6. Ballers (Cotton Thread Manufacturing).
7. Spoolers (Cotton Thread Manufacturing.
8. Polishers (Cotton Thread Manufacturing)
9. Spinners (in Mule Spinning side friecers in mule.)
10. Engine Piecers (in Mule Spinning)
11. Creed Coys (in Mule Spinning)
12. Yarn Bundle Wrappers.
13. Yarn Bundling Pressmen. (including Yarn Balers.)
14. Knotters.
15. Banders, Cotton Banders. Common Banders; Cotton banding manufacture.

C. Reelers.

D. Winders:-

1. Doubling Winders.
2. Grey Winders.
3. Grey Winders on High speed Machines.
4. Colour and Artificial Silk Winders
5. Hosiery Winders.

E. Warpers, Drawers-in, Sizers and Weavers.

1. Warpers.
2. Warping Creelers; Warping helpers.
3. Front Sizers.
4. Back Sizers.
5. Sizing Mixers, Boiling machineman; Mixing attendent in sizing.
6. Drawers-in.
7. Reachers.
8. Weft Distributors.
9. Lag Peggers ; Card Cutter, Doby Peggers.
10. Weavers (including smash Hands automatic loom Weavers and Tape Weavers.)
11. Whippers (Blanket Border Fringers.)
12. Automatic Loom Shuttle Boys, Battery Filler.
13. Tape Cleaners and Blookers.
14. Beam Carriers.
15. Knitters (in Hosiery Manufactures) Cheese Stocking Manufacturers.
16. Fringers (in Hosiery Manufacture.)
17. Darners and Menders (in Hosiery Manufacture.)
18. Heald and Reed-makers and Repairers.
19. Fancy Department operatives and Miscellaneous weaving operatives, Viz., Naksiwallas, Comber Board Fillers, Designers, Harness Builders, Loom Cleaners, Weaving Teachers, Wheelmen.

F. Bleachers, Dyers, Finishers, Printers, Folders and Calendermen:

1. Yarn Leasers and Dressers.
2. Kiermen.
3. Yarn Bleachers, Cheese Bleachers.
4. Cotton Dyers.
5. Hydro-Extractor Men.
6. Yarn and Cheese Dyers (including Turkey Red and Fancy Dyers, Yarn Oilers and Alamers.) Yarn Printers.
7. Yarn Drying Machinemen (including Cotton Drying Stovers.)
8. Yarn Polishers and Glazers.
9. Yarn Mercerisers.
10. Cloth Singers.
11. Cloth Dyers and Jiggermen; Washers;
12. Bleach Croft Machine Mindors (including scouring and chemicking,) Tank Men; cropping Machinemen.
13. Manglers.
14. Padding Machinemen.
15. Platers and Pilers, Cloth-Layers.
16. Starch Manglers.
17. Scutcher Machinemen, washing Machinemen.
18. Drying Machinemen, Cloth Dryer.
19. Breaking or Mellowing machinemen.
20. Beetlers.
21. Clip or Hot Air Stenters (including Belt stretchers, Dampers and Finishermen).
22. Cloth Mercerisers.
23. Raising Machinemen.
24. Printing shop Colour Mixers; Colour Roommen.
25. Spray Printers.
26. Machine Printers.
27. Assistant Machine Printers.
28. Brushing Machinemen.
29. Agers.
30. Felt Calendermen.
31. Calendermen (including Front Calendermen and Back Calendermen and Pressmen).
32. Calender Strichers.
33. Hand Ironing Men.
34. Bailing makers (including Number Markers and Top Printers)
35. Cut Lookers (including Pieces Sorters, Cloth Examiners, Hosiery Examiners, Bale Examiners and Checkers). Bundle Assorter, Deliverymen in piece dying, Linkers in ware house, stain removers; split cutters, Yard measurers, Yard counters.
36. Folders (including Hand and Machine Folders).
37. Pieces stichers (including Silkers). Tailors, Tape stichers.
38. Sewers and Thread Cutters (in Hosiery Manufacture).
39. Button Stichers. (in Hosiery Manufacture).
40. Cutters (including cloth samples Cutters).
41. Cloth Bundlers; Parcel-Boys in warehouse.
42. Cloth Balers.
43. Stampers.
44. Assistant Stampers. Label Boys; Pasters, Ticket-applier.
45. Cloth Bleachers (Dhobimen).

G. Jobbers and Mukkaddams:-

1. Jobbers (including Head Jobbers, Fancy, Line and Doffer Jo-

bbers, and Assistant Jobbers). Assistant in weaving Comber Ganger; Shed Supervisor; Line Tackler.
2. Women Supervisors. (Naikins).
3. Mukkadams.
4. Maistries.

H. Clerks:-

1. Cashiers.
2. Book-keepers
3. Head clerks.
4. Clerks. (including Departmental clerks.) Draftsmen; Planmakers.
5. Laboratory Assistants.
6. Stenographers and Typists.
7. Telephone Operators.
8. Time-keepers and Assistant Time-keepers.
9. Wrapping Boys.
10. Threads Counters.
11. Ticket Boys, Tally Boys and Production Checkers.
12. Store-keepers.
13. Gate Clerks.

I. Power Plant Operators and Mechanics.

1. Engine Drivers. (steam, oil and gas.)
2. Boiler Attendants. Assistant Engineers, sarengs.
3. Firemen.
4. Pump men.
5. Air Compresser Operators.
6. Cooling and Refrigeration Plant Attendants.
7. Humidifier Attendants and Sprinklers; Steaming men.
8. Oilmen (including Oilers from all Departments).
9. Ropemen (including Rope Spliicers).
10. Electric Motormen.
11. Turbine Drivers.
12. Stockers.
13. Switchboard Attendants.
14. Electricians (including Armature Winders and Wiremen).
15. Boilermakers.
16. Crane Drivers.
17. Patternmakers.
18. Moulders.
19. Turners (including Machinists).
20. Drillers and Welders.
21. Blacksmiths.
22. Hammermen or Strikers.
23. Tinsmiths.
24. Fitters (including Departmental and Erector Fitters and Line Levellers); Head Mechanic; Needlers.
25. Roller Coverers.
26. Painters; white washers.
27. Carpenters (including Departmental Carpenters and Slay Makers), Joiners.
28. Hoop Makers and Cutters.
29. Mochis or Cobblers.
30. Mechanical Apprentices.
31. Motor and Lorry Drivers; Steam Roller Drivers.
32. Other skilled artisans, Viz., Masons; Polishers; Polishmen, Mill wrights, Shafting Operaters; Electrolyser.

J. General Workers.

1. Hoistmen.
2. Weightmen and Scalemen.

3. Warehousemen.
4. Compounders, Dispensary Attendants and Ward Boys (including Creche Nurses and Ayahs.)
5. Nowghanies and Bale Stackers.
6. Engine, Turbines, Boiler and Machine Cleaners.
7. Motor and Lorry Cleaners.
8. Peons and Sepoys.
9. Cartmen.
10. Jamadars.
11. Watchmen.
12. Line Levelling Coolies.
13. Mechanics' Coolies.
14. Fire Servicemen.
15. Watermen (for supplying drinking water to employees.)
16. Lampmen.
17. Domestic servants (including Mallis and Mill canteen staff except the supervisor.)
18. Coolies (ordinary unskilled labourers including coal coolies, patiwallas, toplawallas, basket coolies, bobbin carriers, bobbin cleaners, bobbin cutters and operatives in mixing and waste departments of cotton mills such as cotton mixers, lap carriers, fly gatherers, dropping gatherers etc.) also include window cleaners, Tare and waste Pickers, Brushers, Pieces supplier, Bundle carrier; weft and cloth carrier, Injured men; Damping machine holder; cotton balers, cotton bundlers, Flywalla, Mixing chakuwalla in cotton mixing; attender in cotton mixing; waste cleaners;vacuum cleaners; machine operator (Ring Frame); Kharva.
19. Sweepers (including Departmental Sweepers, Bhangis, and Halalkhores.)

(13.) In exercise of the powers conferred on me under section 5 of the Bombay Industrial Disputes Act, 1938, I hereby recognise the following sections of the Silk Textile Industry as occupations in that industry for the purposes of the Act:-

List of occupations for the Silk Industry with the individual operations included under each occupation.

A. Process operatives :-

1. Silk Boiling Men. (including Hydro Extractor man.)
2. Openers (including softeners,)
3. Fillers.
4. Plate Dressers.
5. Silk Staple Folders.
6. Spreaders.
7. Lappers.
8. Sett Framers.
9. Drawing Tenters.
10. Single Rovers.
11. Dandy Rovers.
12. Spinners.
13. Doffers.
14. Doublers (including Doublers in waste silk spinning)
15. Cassers.
16. Reelers.
17. Yarn Pickers.
18. Bleachers.
19. Dyers.

20. Bundlers.
21. Neat Silk Winders.
22. Rayon Silk Winders.
23. Soft Silk Winders.
24. Spun Silk Winders.
25. Colour Yarn Winders.
26. Neat Silk Cleaners.
27. Neat Silk Doublers.
28. Neat Silk Spinners.
29. Neat Silk Throwers.
30. Knotters (including Hanks Preparers.
31. Leish Yarn Binders.
32. Pirn Winders (Neat Silk and Rayon).
33. Yarn and Bobbins Sorters.
34. Cop Distributors.
35. Hand Warpers.
36. Warp Dressers.
37. Bobbin Dressers.
38. Drawers-in.
39. Reachers.
40. Beamers.
41. Re-Beamers.
42. Warpers.
43. Warping Creelers.
44. Front Sizers.
45. Back Sizers.
46. Hank Sizers.
47. Size Mixers.
48. Selvedge Takers.
49. Beam Carriers.
50. Twisters.
51. Head Designers.
52. Designers.
53. Card Punching Overlookers.
54. Card Punchers.
55. Card Lacers.
56. Harness Builders.
57. Weavers.
58. Heald and Reed Makers and Repairers.
59. Folders (including Hand and Machine Folders.)
60. Dampers.
61. Finishers.
62. Fringers.
63. Felt Calendermen.
64. Calendermen.
65. Hand Ironing Men.
66. Baling Markers.
67. Cutlookers (including Pieces Sorters, Cloth Examiners, Bale Examiners and Checkers.)
68. Pieces Stitchers.
69. Cutters.
70. Calender Stichers.
71. Cloth Bundlers.
72. Cloth Balers.
73. Stampers.
74. Packers, Wrappers and Labellers.

B. Jobbers and Mukkadams:-

1. Jobbers (incuding Head Jobbers and Assistant Jobbers.)
2. Women Supervisors. (Naikins).
3. Mukkadams.
4. Maistries.

C. Clerks :-

1. Cashiers.
2. Book-keepers.
3. Head Clerks.
4. Clerks (including Departmental Clerks.)
5. Laboratory Assistants.
6. Stenographers and Typists.
7. Telephone Operators.
8. Time-keepers and Assistant Time-keepers.
9. Wraping Boys.
10. Thread Counters.

11. Ticket Boys, Tally Boys and Production Checkers.
12. Store-keepers.
13. Gate Clerks.

D. Power Plant Operators and Mechanics :—

1. Engine Drivers (Steam, Oil and Gas.)
2. Boiler Attendants.
3. Firemen.
4. Pumpmen.
5. Air Compressor Operators.
6. Cooling and Refrigeration Plant Attendants.
7. Humidifier Attendants and Sprinklers.
8. Oilmen (including Oilers from all Departments.)
9. Ropemen (including Rope Splicers.)
10. Electric Motormen.
11. Turbine Drivers.
12. Stockers.
13. Switchboard Attendants.
14. Electricians (including Armature Winders and Windermen.)
15. Boilermakers.
16. Crane Drivers.
17. Patternmakers.
18. Moulders.
19. Turners (including Machinists.)
20. Drillers and Welders.
21. Blacksmiths.
22. Hammermen or Strikers.
23. Tinsmiths.
24. Fitters. (including Departmental and Erector Fitters and Line Levellers.)
25. Roller Coverers.
26. Painters.
27. Carpenters (including Departmental Carpenters and Slaymakers.)
28. Hoop Makers and Cutters.
29. Mochis or Cobblers.
30. Mechanical Apprentices.
31. Motor and Lorry Drivers.

E. General Workers.

1. Hoistmen.
2. Weighmen and Scalemen
3. Warehousemen.
4. Compounders, Dispensary Attendants and Ward Boys (including Creche Nurses and Ayahs.)
5. Nowghanies and Bale. stackers.
6. Engine, Turbine, Boiler and Machine Cleaners.
7. Motor and Lorry Cleaners.
8. Peons and Sepoys.
9. Cartmen.
10. Jamadars.
11. Watchmen.
12. Line Levelling Coolies.
13. Mechanics' Coolies.
14. Fire Servicemen.
15. Waterman (supplying drinking water to employees.)
16. Lampmen.
17. Domestic Servants. (including Malis.)
18. Coolies (ordinary unskilled labourers including coal coolies, patiwallas, toplawalls, basket coolies, bobbin carriers, bobbin cleaners, bobbin cutters. etc.)
19. Sweepers (including Departmental Sweepers, Bhangis and Halalkhores.)[1]

1. Notification No. 4, dated 10th October 1939 for the Silk Textile Industry.

No. 14. In exercise of the powers conferred on me under section 5 of the Bombay Industrial Disputes Act, 1938, I hereby recognise the following sections of the Woollen Textile Industry as occupations in that industry for the purposes of the Act.

List of Occupations for the Woollen Textile Industry with the individual operations included under each occupation.

A. Process Operatives:-

1. Teazers.
2. Willow Machinemen.
3. Garnet Machinemen.
4. Rag Breaking Machinemen.
5. Blenders.
6. Card or Hopper Feeders, woollen.
7. Card or Hopper Feeders, worsted.
8. Lapmen.
9. Condensermen.
10. Petlers and Card Cleaners (Woolen and Worsted).
11. Can Minders.
12. First Preparers (indcluding Back Wash Minders.)
13. Second Preparers or Hank openers.
14. String Box Minders.
15. Punch Box Minders.
16. Combers.
17. Combing Finishers.
18. Top Box Minders.
19. Mixing Gill Box Minders.
20. Double Spindle Gill Box Minders.
21. Weight-Box-Minders.
22. Finishing Machine Attendants. (1st and 2nd Processes.)
23. Reducers.
24. Roving Machine Tenters.
25. Roller Coverers.
26. Mule Spinners.
27. Mule Piscers.
28. Tube Attendants.
29. Opener Tenter. (Wool Scouring)
30. Mixing Cutters. (Wool Scouring)
31. Scouring Tublers (Wool Scouring)
32. Tubler Dryers. (Wool Scouring)
33. Bobbinmen.
34. Counts Wrappers.
35. Side Piecers (Spinners.)
36. Doffers
37. Doublers and Twisters.
38. Realers (including Berlin wool Realers.)
39. Yarn Scourers and Dryers.
40. Hankers.
41. Bundlers.
42. Berlin Yarn Packers.
43. Winders.
44. Warpers.
45. Warping Creelers.
46. Drawers-in.
47. Reachers.
48. Weft Distributors.
49. Beam Carriers.
50. Sizers.
51. One Loom weavers (Dob Cross and Sowden.)
52. Two Loom Weavers. (Platts.)
53. Chain makers.
54. Darners.
55. Fringers.
56. Crabbers.
57. Washers.
58. Hydro Extractor Men.
59. Millers.
60. Tentering Machinemen.
61. Raising Machinemen (including Teazal Settlers.)
62. Colour Mixers.
63. Dye Vat Attendants.

64. Top Dyers.
65. Purchers (including Pickers.)
66. Cutting Machinemen.
67. Blowing Machinemen.
68. Brushing Machinemen.
69. Damping Machinemen.
70. Salvage Manders.
71. Calandermen (Rotary and Hydraulic.)
72. Cut Lookers (including Pieces Sorters and Cloth Examiners.)
73. Folders (Hand and Machine.)
74. Bailing Pressmen.
75. Stampers.

B. Jobbers and Mukkadams :-

1. Jobbers (including Head Jobbers, and Assistant Jobbers.)
2. Women Supervisors (Naikins.)
3. Mukkadams.
4. Maistries.

C. Clerks :-

1. Cashiers.
2. Book-keepers.
3. Head Clerks.
4. Clerks. (including Departmental Clerks).
5. Laboratory Assistants.
6. Stenographers and Typists.
7. Telephone Operators.
8. Time-keepers and Assistant Time-keepers.
9. Wrapping Boys.
10. Threads Counters.
11. Ticket Boys, Tally Boys and Production Checkers).
12. Store-keepers.
13. Gate Clerks.

D. Power Plant Operators and Mechanics :-

1. Engine Drivers (Steam, Oil and Gas).
2. Boiler Attendants.
3. Firemen.
4. Pumpmen.
5. Air Compressor Operators.
6. Cooling and Refrigeration Plant Attendants.
7. Humidifier Attendants and Sprinklers.
8. Oilmen (including Oilers from all Departments).
9. Ropemen (including Rope Splicers).
10. Electric Motormen.
11. Turbine Drivers.
12. Stockers.
13. Switchboard Attendants.
14. Electricians (including Armature Winders and Wiremen).
15. Boilermakers.
16. Crane Drivers.
17. Patternmakers.
18. Moulders.
19. Turners (including Machinists.)
20. Drillers and Welders.
21. Blacksmiths.
22. Hammermen or Strikers.
23. Tinsmiths.
24. Fitters (including Departmental and Erector Fitters and Line Levellers.)
25. Roller Coverers.
26. Painters.
27. Carpenters (including Departmental Carpenters and Slay Makers.)
28. Hoop Makers and Cutters.

29. Mochis or Cobblers.
30. Mechanical Apprentices.
31. Motor and Lorry Drivers.

E. General Workers :-

1. Hoistmen.
2. Weighmen and Scalèmen.
3. Warehousemen.
4. Compounders, Dispensary Attendants and Ward Boys (Including Creche Nurses and Ayahs).
5. Nowghanies and Bale Stackers.
6. Engine, Turbine, Boiler and Machine Cleaners.
7. Motor and Lorry Bleaners.
8. Peons and Sepoys.
9. Cartmen.
10. Jamadars.
11. Watchmen.
12. Line Levelling Coolies.
13. Mechanics' Coolies.
14. Fire Servicemen.
15. Watermen (for supplying drinking water to employees.)
16. Lampmen.
17. Domestic Servants (including Malis.)
18. Coolies (ordinary unskilled labourers including coal coolies, patiwallas, topla wallas, basket coolies, bobbin carriers, bobbin cleaners, bobbin cutters etc.
19. Sweepers (including Departmental Sweepers, Bhangis and Halaikhores.)

APPENDIX. IV

Rules of Procedure of the Bombay Industrial Disputes Act.

The following rules have been framed by the Industrial Court in its first meeting on 16th September 1938 in exercise of the powers conferred under section 24 (3) of the Bombay Industrial Disputes Act, 1938 and rule 66 of the Bombay Industrial Disputes Rules, 1939 :-

(1) In these rules the "Act" means The Bombay Industrial Disputes Act of 1938.

Benches.

2. The President of the Industrial Court may constitute a bench of one or more of its members to decide any of the matters mentioned in section 53 of the Act, and the bench so constituted shall exercise the jurisdiction and powers vested in the Industrial Court.

3 An application for review under section 27 shall ordinarily be disposed of by the same bench which heard the original matter sought to be reviewed, provided, however, that if any member or members of the bench which disposed of the original matter has or have ceased to be a member or members of the Court, it shall be disposed of by a bench consisting of the same number of members as the bench which made the order sought to be reviewed.

4. Any bench of one or more members of the Court hearing a matter may refer it to the full bench of the Court if, in its opinion, it involves complicated questions of law or fact.

Filing of Appeals, Applications, etc.

5. (*i*) Every memorandum of appeal, applications or submission shall contain the following particulars :-

(a) the names and postal addresses of the opponents on whom notices are to be served,

(b) where witnesses are to be examined, a list containing their full names and postal addresses.

(ii) Every memorandum of appeal shall be accompanied by a certified copy of the order appealed against.

6. An appeal filed under section 18 or 26 of the Act shall be accompanied by three extra copies.

Copies of Documents.

7. Certified copies of any exhibit or order, in a proceeding before the Court, containing the seal of the Court, will be supplied at the rate of two annas per folio of 100 words.

Deposits for Notices and Summonses.

8. A party applying for notices to opponents and summonses to witnesses shall deposit such sum of money as is necessary to cover postal registration charges.

Allowance to Witnesses.

9. The Court may direct any party calling a witness to pay such sum as in the opinion of the Court is a reasonable compensation to such witness, having regard to his position and calling and for his loss of time in attending the Court.

Affidavits.

10. All affidavits filed in any proceeding before the Court shall bear a stamp of one rupee.

Procedure in case of Application against Numerous Employees for declaring a strike illegal.

11. Where an application is filed by an employer for a decision of the Court that a strike of employees is illegal under the provisions of the Act and the employees affected are numerous persons having the same interest, one or more of such employees may, with the permission of the Court, be proceeded against or defend in such application on behalf of all employees so interested. The Court shall, in such cases, give, at the applicant's expense, notice of the filing of the application to all such employees, either by personal service or where from the number of employees or any other cause, such service is not reasonably practicable, by public advertisement and by causing the notice with its translation in the regional language or languages to be affixed by the applicant at the entrance through which the majority of the employees enter the premises for their work. The person affixing the notice shall file an affidavit in the Court of his having done so.

(ii) Any employee on whose behalf the application is defended under sub-rule (i) may apply to the Court to be made a party to such application. The Court may grant such application if it is satisfied that his interests will be seriously affected to his prejudice if he is not joined as a party.

APPENDIX V

BOMBAY INDUSTRIAL DISPUTES ACT

Bombay Act No. XXV of 1938.

(First published after having received the assent of the Governor General, in the "Bombay Government Gazette" on the 24th February 1939.)

(An Act to make provision for the promotion of peaceful and amicable settlement of industrial disputes by conciliation and arbitration and for certain other purposes.)

Whereas it is expedient to make provision for the promotion of peaceful and amicable settlement of industrial disputes by conciliation and arbitration and for certain other purposes hereinafter provided: It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. This Act may be called the Bombay Industrial Disputes Act, 1938.
Short title.

2. (1) Section 1 and this section extend to the whole of the Province of Bombay. The Provincial Government may, by notification in the *Official Gazette*, extend all or any of the remaining provisions of the Act to such area as may be specified in the notification.
Extent, commencement and application.

(2) Section 1 and this section shall come into force at once. The Provincial Government may, by notification in the *Official Gazette*, direct that all or any of the remaining provisions of this Act shall come into force in any area to which the said provisions extend or may have been extended under sub-section (1) on such date as may be specified in the notification.

(3) The Provincial Government may, by notification in the *Official Gazette*, direct that all or any of the provisions of this Act shall apply to such industry as may be specified in the notification.

3. In this Act unless there is anything repugnant in the subject or context—
Definitions.

(1) "Arbitration proceeding" means any proceeding under this Act before an arbitrator or where a dispute has been referred to the Industrial

Court for arbitration the proceedings before such Court in respect of such dispute.

(2) "Arbitrator" means an arbitrator to whom a dispute is referred for arbitration under the provisions of this Act and includes an umpire.

(3) "Association of employers" means any combination of employers, whether incorporated or not, which has for one of its objects the regulation of conditions of employment in the industry conducted or carried on by its members, and which is recognized by the Provincial Government under section 74.

(4) "Award" means any interim or final determination in an arbitration proceeding of any industrial dispute or of any question relating thereto and includes any award made by the Industrial Court under clause (5) or (6) of section 53.

(5) "Board" means the Board of Conciliation appointed under section 23.

(6) "Change" means a change in any industrial matter.

(7) "Commissioner of Labour" means an officer appointed by the Provincial Government for the time being to be the Commissioner of Labour.

(8) "Conciliation proceeding" means any proceeding held by a Conciliator or the Board under this Act.

(9) "Conciliator" means any Conciliator appointed under this Act and includes the Chief Conciliator or a Special Conciliator.

(10) "Employee" means any person employed to do any skilled or unskilled manual or clerical work for hire or reward in any industry and includes an employee discharged on account of any dispute relating to a change in respect of which a notice is given under section 28 whether before or after the discharge.

(11) "Employer" includes—

(*a*) an association or a group of employers;

(*b*) any agent of an employer.

(*c*) where an industry is conducted or carried on by a department of the Provincial Government, the authority prescribed in that behalf, and where no such authority has been prescribed, the head of such department;

(*d*) where an industry is conducted or carried on by or on behalf of a local authority, the Chief Executive Officer of such authority; or

(*e*) where the owner of any industry in the course of or for the purpose of conducting such industry contracts with any other person for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the said industry, the owner of such industry.

(12) "Industrial Court" means the Court of Industrial Arbitration appointed under section 24.

(13) "Industrial dispute" means any dispute or difference between an employer and employee or between employers and employees or between employees and employees and which is connected with any industrial matter.

(14) "Industrial matter" means any matter relating to work, pay, wages, reward, hours, privileges, rights or duties of employers or employees, or the mode, terms and conditions of employment or non-employment and includes—

(*a*) all matters pertaining to the relationship between employers and employees, or to the dismissal or non-employment of any person;

(*b*) all matters as to the demarcation of functions of any employees or classes of employees;

(*c*) all matters pertaining to any right or claim under or in respect of or concerning an agreement, submission or award made under this Act; and

(*d*) all questions of what is fair and right in relation to any industrial matter having regard to the interest of the person immediately concerned and of the community as a whole.

(15) "Industrial union" means a union the members of which belong to any industry generally and which is not an occupational union.

(16) "Industry" includes—

(*a*) any business, trade, manufacture or under-taking or calling of employers;

(*b*) any calling, service, employment, handicrait, or industrial occupation or avocation of employees; and

(*c*) any branch or section of industry recognised by the Registrar for the purposes of this Act or a group of industries.

(17) "Labour Officer" means an officer appointed to perform the duties of a Labour Officer under this Act.

(18) "Local area" means any area notified as such by the Provincial Government.

(19) "Lock-out" means the closing of a place or part of a place of employment or the total or partial suspension of work by an employer or the total or partial refusal by an employer to continue to employ persons employed by him, where such closing, suspension or refusal occurs in consequence of an industrial dispute and is intended for the purpose of compelling those persons or of aiding another employer in

compelling persons employed by him to accept any term or condition of or affecting employment.

(20) " Member " means a person who is an ordinary member of a union and who has been paying a subscription of not less than one anna per month and the term " membership " shall be construed accordingly.

(21) " Occupation " means any section of an industry recognised to be an occupation under section 5.

(22) " Occupational union " means a union the membership of which is confined to employees employed in a particular occupation or group of occupations in any industry.

(23) " Prescribed " means prescribed by rules made under this Act.

(24) " Qualified union " means any union declared to be a qualified union under section 11.

(25) " Recognised union " means a union which has been recognised in the prescribed manner by an employer or by an association of the employers in any industry.

(26) " Registered agreement " means an agreement registered under section 30 or 33.

(27) " Registered union " means a union registred under this Act.

(28) " Registrar " means the Registrar of Unions appointed under this Act.

(29) " Representative of employees " means—

(i) where the majority of employees directly affected by a change are members of a registered union, such registered union ; or

(ii) where some of the employees directly affected by the change belong to a representative union, that representative union ; or

(iii) in other cases such representatives not being more than five as may be elected in the manner prescribed by employees directly affected by the change from among themselves ; or

(iv) in cases where representatives are not elected under clause (*iii*), and in all other cases not falling under any of these clauses the Labour Officer.

(30) " Representative union " means a registered union declared to be a representative union under section 12.

(31) " Schedule " means schedule appended to this Act.

(32) " Settlement " means a settlement arrived at during the course of a conciliation proceeding.

(33) " Strike " means a total or partial cessation of work by employees employed in an industry acting in combination or a concerted refusal or a refusal under a common understanding of employees to continue to work or to accept work where such cessation or refusal is in consequence of an industrial dispute in any industry.

(34) " Union " means a Trade Union (other than a union formed for the purpose of regulating the relations between employers and employers) registered under the India Trade Unions Act, 1926.
XVI of 1926.

CHAPTER II.

REGISTRATION OF UNIONS.

Appointment, powers and duties of Registrars and Assistant Registrars.

4. (1) The Provincial Government shall, by notification in the *Official Gazette*, appoint a person to be the Registrar of Unions for the Province.

(2) The Provincial Government may, by a similar notification, appoint a person to be the Assistant Registrar of Unions for any local area and may, by a general or special order, confer on such person all or any of the powers of the Registrar of Unions under this Act.

Recognition of section of industry as occupation.

5. The Registrar may after making such enquiry as he deems fit recognise any section of an industry to be an occupation for the purposes of this Act.

Maintenance of registers of registered and representative unions.

6. It shall be the duty of the Registrar to maintain a register of registered and representative unions in such forms as may be prescribed.

Application for registration.

7. Any recognised union, which has for the whole of the period of six months next preceding the date of the application under this section a membership of not less than five per cent., or any other union which has for the said period a membership of twenty-five per cent. of the total number of employees employed in any industry or occupation, as the case may be, in the local area may apply in the prescribed form to the Registrar for registration under this Act.

8. On receipt of an application from a union for registration under section 7 and on payment of the fee prescribed, the Registrar shall hold such enquiry as he thinks fit and if he is satisfied that such union fulfils the conditions necessary for registration specified in section 7 and is not disqualified from registration under this Act, he shall enter the name of such union in the register maintained under section 6 and shall issue a certificate of registration in such form as may be prescribed:

Registration of a union.

Provided that—

(*a*) in any local area the Registrar shall not register more than one industrial union in respect of any industry and one occupational union in respect of each occupation in such industry;

(*b*) where two or more industrial or occupational unions fulfilling the conditions necessary for registration specified in section 7 apply for registration, the union which has the largest membership of the employees employed in the industry or occupation, as the case may be, shall alone be registered;

(*c*) if an industrial union has been registered in any local area no occupational union in respect of the same industry in such local area shall be registered unless such union has more than twenty-five per cent. of the total number of employees employed in that occupation in such local area;

(*d*) the Registrar shall not register a union as an industrial or an occupational union, as the case may be, if there is a qualified union in existence in respect of the same industry or occupation and if the union applying for registration has not for the whole of the period of six months next preceding the date of application, a membership exceeding that of such qualified union; and

(*e*) the Registrar shall not register any union, if he is satisfied that the application for registration is not made *bona fide* in the interests of employees but is made in the interests of the employer.

9. The Registrar shall cancel the registration of a union—

Cancellation of registration of a union.

(i) if, on an application made to him by any employer or any union concerned with the industry or occupation in which the members of the union, the registration of which is sought to be cancelled, are employed and after holding such enquiry as he deems fit, he is satisfied—

(*a*) that such union had not fulfilled the necessary conditions for registration under section 7 at the time of its registration or

that it was registered under a mistake, misrepresentation or fraud;

(*b*) that at the date of the application made under this section the union failed to satisfy the condition regarding the minimum membership necessary for registration specified in section 7;

(*c*) that its recognition by the employer had been withdrawn:

Provided that the registration of such union shall not be cancelled on this ground if its membership is more than twenty-five per cent. of the total number of employees employed in the industry or occupation, as the case may be;

(*d*) that in the case of an occupational union in any industry in any local area, an industrial union in respect of such industry is registered in such local area:

Provided that the registration of such occupational union shall not be cancelled if its membership is more than twenty-five per cent. of the total number of employees employed in the occupation in such local area; or

(*e*) that the union is not being conducted *bona fide* in the interests of employees but is being conducted in the interests of the employer; or

(ii) if the Industrial Court directs that the registration of such union shall be cancelled.

Registration of another union in place of existing registered union.

10. (1) If at any time any union (hereinafter referred to in this section as "applicant union") applies to the Registrar stating that it has a larger membership of employees employed in any industry or occupation in any local area than the one already registered (hereinafter referred to in this section as a "registered union") for such industry or occupation, as the case may be, for that local area, and that the registration of the registered union should be cancelled or that it should be registered in place of the registered union, the Registrar shall call upon the registered union by a notice in writing to show cause within one month of the receipt of such notice why its registration should not be cancelled or why the applicant union should not be registered in its place. An application made under this sub-section shall be accompanied by such fee as may be prescribed.

(2) The Registrar shall forward to the Labour Officer a copy of the said application and notice.

(3) If, on the expiry of the period of notice under sub-section (1) and after holding such enquiry as he deems fit, the Registrar is satisfied that the membership of the applicant union was during the whole of the period of six months immediately preceding the date of the application

under this section larger than the membership of the registered union, he shall cancel the registration of such union and if the applicant union satisfies the conditions necessary for registration specified in section 7, he shall register the applicant union.

Qualified unions.

11. (1) The Registrar shall maintain a list of qualified unions in such form as may be prescribed.

(2) If in any local area there is no registered union in respect of any industry or occupation, a union which has for a period of six months next preceding the application a membership of not less than five per cent. of the total number of employees employed in the industry or occupation, as the case may be, may on application and on payment of the fee prescribed be declared by the Registrar as a qualified union.

(3) The Registrar shall cancel the declaration of any such union as a qualified union as soon as any union in respect of the industry or occupation, as the case may be, is registered under section 8.

(4) The Registrar shall also cancel the declaration of a union as a qualified union—

(*i*) if, on an application made to him by an employer or any union concerned with the industry or occupation in which the members of the union, the declaration of which as a qualified union is sought to be cancelled, are employed and after making such enquiry as he thinks fit, he is satisfied—

(*a*) that such union had not at the time when it was declared a qualified union fulfilled the necessary conditions for its being so declared or that such declaration was made under a mistake, misrepresentation or fraud.

(*b*) that at the date of the application made under this sub-section the membership of such union fell below five per cent. of the employees employed in the industry or occupation, as the case may be, in the local area ;

(*ii*) if the Industrial Court directs that the declaration of such union as a qualified union shall be cancelled.

Representative unions.

12. (1) Any registered union in a local area, which has for the whole of the period of six months next preceding the date of application under this section a membership of not less than twenty-five per cent. of the total number of employees employed in the industry or occupation, as the case may be, in such local area, may apply to the Registrar for being declared a representative union.

(2) If the Registrar is satisfied, on making such enquiry as he thinks fit, that the union fulfils the conditions specified in sub-section (1) he shall declare such union to be a representative union, and shall issue a certificate in such form as may be prescribed.

(3) The Registrar shall cancel the declaration of a union as a representative union—

(*i*) if, on application made to him by an employer or any union concerned with the industry or occupation in which the members of the union, the declaration of which as a representative union is sought to be cancelled, are employed and after making such enquiry as he thinks fit, he is satisfied—

(*a*) that such union had not at the time when it was declared a representative union fulfilled the necessary conditions for its being so declared or that such declaration was made under a mistake, misrepresentation or fraud ;

(*b*) that at the date of the application made under this sub-section the membership of such union fell below twenty-five per cent. of the employees employed in the industry or occupation as the case may be, in the local area ;

(*c*) that the registration of such union has been cancelled ;

(*ii*) if the Industrial Court directs that the declaration of such union as a representative union shall be cancelled.

Application for fresh registration or declartion.

13. (1) Any union the registration of which has been cancelled by the Registrar or by the Industrial Court on the ground that it was registered under a mistake, or on any of the grounds specified in clause (*b*) or (*c*) of sub-section (*i*) of section 9 or any union the declaration of which as a qualified union or as a representative union has been cancelled on the ground that such declaration was made under a mistake, or under clause (*i*) (*b*) of sub-section (4) of section 11 or under clause (*i*) (*b*) of sub-section (3) of section 12, as the case may be, may at any time, after six months from the date of such cancellation apply again for registration or declaration, as the case may be. Such application shall be disposed of in the manner laid down in section 8, 11 or 12, as the case may be.

(2) A union the registration of which or a union the declaration of which as a qualified union or as a representative union has been cancelled on any other ground shall not be entitled to apply again for registration or declaration.

Liability of a union or members not relieved by cancellation.

14. Notwithstanding anything contained in any law, the cancellation of registration of a registered union or the cancellation of the declaration of a union as a qualified union or as a representative union shall not relieve the union or any member thereof from any penalty or liability incurred under this Act prior to such cancellation.

Periodical returns to be submitted to the Registrar.

15. Every registered union and every qualified union shall submit to the Registrar periodical returns of its membership at such times, on such dates and in such manner as may be prescribed.

Powers of Registrar to summon witnesses, etc.

16. For the purpose of holding an enquiry under this Chapter,—

(*i*) the Registrar shall have the same powers as are vested in Courts in respect of the following matters under the Code of Civil Procedure, 1908, in trying a suit, namely:— V of 1908.

(*a*) proof of facts by affidavits ;

(*b*) summoning and enforcing the attendance of any person and examining him on oath ; and

(*c*) compelling the production of documents ;

(*ii*) the Registrar shall have also such other powers as may be prescribed.

Appearance before Registrar.

17. Every employer in the industry concerned and every representative of employees whose interests may be affected shall be entitled to appear at any enquiry made by the Registrar under this Chapter.

Appeal to Industrial Court from orders of the Registrar cancellig registration of unions.

18. (1) Any person entitled to appear before the Registrar may appeal to the Industrial Court against any order passed by the Registrar under this Chapter within 30 days from the date of such order.

(2) The Industrial Court in appeal may confirm, modify or rescind any order passed by the Registrar and may pass such consequential orders as it may deem fit. A copy of the orders passed by the Industrial Court shall be sent to the Registrar.

Reference to Industrial Court and any order of Registrar to be in accordance with such decision.

19. The Registrar may refer any matter arising before him in any proceeding under this Act to the Industrial Court for its decision and any order passed by the Registrar in such proceeding shall be in accordance with such decision.

Publication of application and orders of cancellation in *Official Gazette.*

20. (1) Every application made under section 10 shall be published in the *Official Gazette* not less than a fortnight before the application is heard.

(2) Every order passed under section 8, 9, 10, 11 or 12 and every order passed in appeal against such order shall be published in the *Official Gazette.*

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CHAPTER III.

AUTHORITIES TO BE CONSTITUTED OR APPOINTED UNDER THIS ACT.

Conciliators.

21. (1) The Commissioner of Labour shall be *ex-officio* Chief Conciliator. His jurisdiction shall extend throughout the Province.

(2) The Provincial Government may, by notification in the *Official Gazette*, appoint any person to be a Conciliator for such local area as may be specified in the notification.

(3) The Provincial Government may, by notification in the *Official Gazette*, appoint any person to be a Special Conciliator for such local area or such industry in any local area or for such industrial dispute or class of disputes as may be specified in the notification.

Labour Officer.

22. The Provincial Government may, by notification in the *Official Gazette*, appoint any person to be a Labour Officer for such local area or such industry as may be specified in the notification.

Board of Conciliation.

23. (1) When an industrial dispute arises the Provincial Government may, by notification in the *Official Gazette*, constitute a Board of Conciliation for promoting a settlement of such dispute.

(2) The Board shall consist of a Chairman and an equal number of members selected by the Provincial Government from panels representing the interests of the employers and employees respectively. Such panels shall be constituted in the manner prescribed. The Chairman and members of the Board shall be independent persons.

Explanation.—For the purposes of this section a person shall be deemed to be independent if he is unconnected with the dispute with reference to which the Board is constituted and the industry directly affected by the dispute.

(3) If any vacancy in the membership of the Board arises before the Board has completed its work, such vacancy shall be filled up in the manner prescribed and the proceedings shall be continued before the Board so reconstituted from the stage at which they were when the vacancy occurred.

Court of Industrial Arbitration.

24. (1) The Provincial Government may constitute a Court of Industrial Arbitration for determining industrial disputes and for dealing with other matters under the provisions of this Act and the rules made thereunder.

(2) The Industrial Court shall consist of two or more members, one of whom shall be its President. Every member of the Industrial Court shall be a person—

(*a*) who is not connected with any industry, and

(*b*) who is or has been a Judge of a High Court or is eligible for being appointed a Judge of such Court.

(3) The Industrial Court may make rules providing for the formation of Benches consisting of one or more of its members and for the exercise by each such Bench of the jurisdiction and powers vested in the Industrial Court.

(4) The Industrial Court may hold its sittings at such place or places as the President may direct.

CHAPTER IV

POWERS AND DUTIES OF THE LABOUR OFFICER.

25. (1) A Labour Officer shall exercise the powers conferred and perform the duties imposed on him by or under this Act.

Powers and duties of Labour Officer.

(2) For the purpose of exercising such powers and performing such duties a Labour Officer may, after giving reasonable notice, enter any place used for the purpose of any industry or as the office of any union and shall be entitled to call for and inspect all relevant documents which are necessary for the due discharge of his duties and powers under this Act. A Labour Officer may for the same purpose enter, after giving reasonable notice, any premises provided by an employer for the purpose of residence of his employees.

(3) All particulars contained in or information obtained from any document inspected or called for under sub-section (2) shall, if the person in whose possession the document was so requires, be treated as confidential.

(3. A) A Labour Officer may, after giving reasonable notice, convene a meeting of the employees of an employer for any of the purposes of this Act on the premises where the employees are employed for work and may require the employer to affix a written announcement of the meeting at such conspicuous places in the premises as he may order. The announcement shall specify the date, time and place of meeting, the employees for which the meeting is convened:

Provided that during the continuance of a lock-out which is not illegal, no such meeting on the premises of the employer continuing the lock-out shall be convened of any employees affected by the lock-out without the consent of the employer.[1]

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1. Inserted by Bombay Act No. XIX on 1945.

(4) A Labour Officer shall be entitled to appear in any proceeding under this Act.

CHAPTER V

Standing orders regarding industrial matters and change in such standing orders.

26. (1) Every employer in respect of any industry or occupation to which this section has been made applicable shall within two months from the date of such application submit to the Commissioner of Labour for approval in such manner as may be prescribed standing orders regulating the relations between him and his employees with regard to all industrial matters mentioned in Schedule 1.

(2) On receipt of such standing orders the Commissioner of Labour shall, after making such enquiry as he deems fit and after consulting all interests concerned in the industry, settle the said standing orders.

(3) The Commissioner of Labour shall forward a copy of the standing orders so settled to the Registrar who shall record them in the register to be kept for the purpose. The standing orders so settled and recorded in the register shall come into operation from the date of their record in the register or after 10 days from the decision of the Commissioner of Labour whichever is later.

(4) Any person aggrieved by any of the standing orders so settled and recorded by the Commissioner of Labour may within 15 days from the date on which such standing orders come into operation under sub-section (3) appeal to the Industrial Court.

(5) On an appeal being filed, the Industrial Court may on the application of any party to such appeal stay the operation of the standing orders objected to until the appeal is decided on such conditions as it may think fit.

(6) The Industrial Court in appeal may confirm, modify or rescind any standing order settled by the Commissioner of Labour under sub-section (2) and may pass such consequential orders as it may deem fit. A copy of the orders passed by the Industrial Court shall be sent to the Registrar who shall record them in the register referred to in sub-section (3).

(7) The Industrial Court may also fix the date on which the standing orders as revised or confirmed by it shall come into operation.

(8) The standing orders settled by the Commissioner of Labour under sub-section (2) or by the Industrial Court under sub-section (6) shall be determinative of the relations between the employer and his employees in the industry or occupation concerned in regard to all industrial matters mentioned in Schedule I and shall not be liable to be altered for a period of six months from the date on which they come into operation except on a review by the Industrial Court under section 27.

Review.

27. (1) Any person aggrieved by the decision of the Industrial Court under section 26 may apply to the Industrial Court for a review of the said decision.

(2) The Industrial Court shall not grant such application unless it is satisfied that there has been a discovery of new and important matter of evidence which after the exercise of due diligence was not within the knowledge of the party making the application or could not be produced by him at the time when its decision was made, or that there has been some mistake or error apparent on the face of the record or that there is any other sufficient reason for granting such application.

(3) The provisions of sub-sections (6), (7) and (8) of section 26 shall apply to the proceedings under this section.

Employers or employees desiring change in standing orders and other industrial matters to give notice.

28. (1) Any employer intending to effect any change " not being a change the effecting of which has, for the purposes of the Factories Act, 1934, become lawful by reason of a notification issued under section 8 thereof," in any standing order settled under section 26 or 27 or in respect of an industrial matter mentioned in Schedule II shall give notice of such intention in the prescribed form to the representative of the employees. He shall send a copy of such notice to the Commissioner of Labour, the Chief Conciliator, the Registrar, the Labour Officer and to such other person as may be prescribed. He shall also affix a copy of such notice at a conspicuous place in the premises where the employees affected by the change are employed for work and at such other place as may be directed by the Chief Conciliator in any case.

XXV of 1934.

(2) Any employee desiring a change in any such standing order or in respect of any other industrial matter shall give notice in the form prescribed to the employer through the representative of the employees who shall also forward a copy of the notice to the Commissioner of Labour, the Chief Conciliator, the Registrar, the Labour Officer and to such other person as may be prescribed.

(3) After conciliation proceedings in regard to any industrial dispute arising out of a notice relating to any change given under sub-section (1) or (2) have been completed, no notice with regard to the same change shall be given before the expiry of two months from the date of such completion. If, at any time after the expiry of the said period of two months, any employer or employee again desires the same change, he shall give fresh notice in the manner provided in sub-section (1) or (2), as the case may be.

Notice of change when to be deemed general notice.

29. (1) Where an employer gives notice of a proposed change under sub-section (1) of section 28 and such change affects only some of the employees engaged in an industry or occupation, the registered or qualified union in respect of such industry or occupation in that local area, as the case may be, may, within seven days from the date of service of such notice, intimate in writing to other employers or an association of employers engaged in such industry or occupation that the employees employed in such industry or occupation by such employers and mentioned in such intimation are affected by such change.

(2) Where an employee gives notice of a proposed change under sub-section (2) of section 28 and such change affects only one employer or some of the employers engaged in an industry or occupation, the other employers or an association of employers engaged in such industry or occupation in that local area, as the case may be, may within seven days from the date of service of such notice, intimate in writing to the representative of the employees, engaged in such industry or occupation, that the other employers engaged in such industry or occupation and mentioned in such intimation are affected by such change.

(3) A copy of an intimation under sub-sections (1) and (2) shall be sent to the Commissioner of Labour, the Chief Conciliator, the Registrar, the Labour Officer and such other person as may be prescribed and shall also be affixed at a conspicuous place in the premises where the employees concerned are employed for work and at such other places as may be prescribed.

(4) On an intimation being given under sub-section (1) or (2), the other employees or employers, as the case may be, mentioned in such intimation, shall also, for the purposes of this Act, be deemed to be affected by such change.

Agreement regarding change.

30. (1) If during fifteen days from the date of service of the notice under section 28 or within 7 days from the date of intimation given under section 29 to the representative of employees or the employer or the employers, as the case may be, an agreement is arrived at in regard to the proposed change between the employer or the employers and the representative of the employees, a memorandum of such agreement signed by the employer or the employers as well as by the representative of the employees shall be forwarded by them to the Commissioner of Labour, the Registrar and the Labour Officer.

(2) On receipt of such memorandum of agreement the Registrar shall enter the same in a register maintained for the purpose unless on enquiry

he is satisfied that the agreement was the result of mistake, misrepresentation, fraud, undue influence, coercion or threat.

(3) The agreement so recorded by the Registrar shall be called a registered agreement.

Labour Officer to put the change to the meeting of employees.

31. In any case where the Labour Officer is a representative of the employees, the Labour Officer shall, before entering into any agreement with the employer, place the terms of such agreement before a meeting of the employees concerned. Such meeting shall be convened by the Labour Officer in the manner prescribed and the terms of the agreement so placed before such meeting shall be deemed to have been accepted if the majority of the employees present at such meeting accept them. If the majority of the employees present at the meeting do not accept the terms of the agreement placed before them, the Labour Officer shall not enter into such agreement with the employer.

Agreement when to come into force.

32. If an agreement is arrived at and registered under section 30 the changes referred to in the agreement shall come into operation from the date stated in the agreement or if no date is stated therein from the date on which it is recorded by the Registrar.

Agreement arrived at before coming into force of this Act.

33. The Registrar may, on an application made within 6 months from the date of the coming into force of this section by an employer or a registered union and with the consent of the other party, register any agreement relating to any industrial matter arrived at before the coming into force of this section, unless on enquiries he is satisfied that such agreement was the result of mistake, misrepresentation, fraud, undue influence, coercion or threat.

CHAPTER VI.

CONCILIATION PROCEEDINGS.

Report of industrial dispute to be sent to Registrar, Chief Conciliator and the Conciliator.

34. If any change in respect of which notice is given under section 28, or an intimation is given under section 29 is objected to by the employer or the employee, as the case may be, the party who gave such notice or intimation shall, if he still desires that the change should be effected, forward to the Registrar, the Chief Conciliator and the Conciliator of the local area a full statement of the case in the prescribed form within twenty-one days from the date of service of such notice or intimation to the other party.

Explanation.—For the purpose of this section the change shall be deemed to be objected to by the employer or employee, as the case may be, if within fifteen days from the date of service of such notice or intimation a memorandum of agreement has not been forwarded to the Registrar under sub-section (1) of section 30.

Commencement of conciliation proceeding.

35. On receipt of the statement of the case under section 34 the Conciliator shall enter the industrial dispute in the prescribed register and the conciliation proceedings shall be deemed to have commenced from the date of such receipt.

Conciliation proceedings.

36. (1) The Conciliator shall then hold the conciliation proceedings in the prescribed manner.

(2) It shall be the duty of the Conciliator to endeavour to bring about a settlement of the industrial dispute and for this purpose the Conciliator shall enquire into the dispute and all matters affecting the merits thereof and may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute and may adjourn the conciliation proceeding for any period sufficient in his opinion to allow the parties to arrive at a settlement.

Power of Chief Conciliator to intervene.

37. It shall be lawful for the Chief Conciliator to intervene or to direct a Special Conciliator to intervene at any stage in any conciliation proceedings held by another Conciliator, and thereafter the Chief Conciliator or the Special Conciliator so directed shall hold the conciliation proceedings with or without the assistance of the Conciliator who was previously holding the same.

Settlement and report.

38. (1) If a settlement of an industrial dispute is arrived at in a conciliation proceeding, a memorandum of such settlement shall be drawn up in the prescribed form by the Conciliator and signed by the employer and the representative of employees. The Conciliator shall send a report of the proceedings along with a copy of the memorandum of settlement to the Registrar and the Chief Conciliator. The Registrar shall record such settlement in the register of agreements and shall then publish it in such manner as may be prescribed. The change, if any, agreed to by such settlement shall come into operation from the date agreed upon in such settlement and where no such date is agreed upon from the date on which it is recorded in the register.

(2) If no such settlement is arrived at, the Conciliator shall, as soon as possible, after the close of the proceedings before him, send a full report

to the Chief Conciliator or if the conciliation proceedings are held by the Chief Conciliator, the Chief Conciliator shall send such report to the Provincial Government. Such report shall set forth the steps taken by the Conciliator or the Chief Conciliator, as the case may be, for the purpose of ascertaining the facts and circumstances relating to the dispute and the reasons on account of which, in his opinion, a settlement could not be arrived at.

(3) The Chief Conciliator shall forward the reports submitted to him under sub-sections (1) and (2) to the Provincial Government with such remarks as he deems fit.

(4) The Provincial Government shall publish the report of the Conciliator submitted to it under sub-section (2) or forwarded to it under sub-section (3) except in cases in which the dispute is referred to the Board of Conciliation.

(5) In any case where the Labour Officer is a representative of the employees and where a settlement of an industrial dispute is arrived at in any conciliation proceeding, the Labour Officer shall convene a meeting of the employees concerned as laid down in section 31 and place the terms of the settlement before such meeting. The Labour Officer shall not sign the memorandum of such settlement under sub-section (1) unless a majority of the employees present at such meeting accept the terms of such settlement.

Reference to Board.

39. (1) During the pendency of any proceedings before the Conciliator under the foregoing provisions the Provincial Government may, and if both the parties agree either prior to the commencement of such proceedings or after the failure of the Conciliator to bring about a settlement shall refer the dispute to a Board of Conciliation.

(2) On such reference being made, the Board shall give notice in the prescribed manner to the parties to the dispute to appear before it at such time and place as may be specified in the notice. A copy of such notice shall be sent to the Labour Officer.

(3) On the date specified in the notice or on such other date as may be fixed by the Board, the Board shall hold the conciliation proceedings. It shall be the duty of the Board to endeavour to bring about a settlement of the industrial dispute and the provisions of sections 35 and 36 shall, so far as may be, apply to the proceedings before the Board.

(4) On the conclusion of the proceedings before the Board, the Board shall, whether a settlement is arrived at or not, send a report of the proceed-

ings to the Provincial Government. The Provincial Government shall then publish such report.

Procedure and powers of Conciliator and the Board.

40. (1) A Conciliator or the Board, as the case may be, shall, subject to the provisions of this Act, follow in a conciliation proceeding such procedure as may be prescribed.

(2) For the purpose of holding a conciliation proceeding,—

(*i*) a Conciliator or the Board, shall have the same powers as are vested in Courts under the Code of Civil Procedure, 1908, in respect of the following matters when trying a suit:— V of 1908.

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

(*b*) compelling the production of documents;

(*c*) issuing commissions for the examination of witnesses;

(*d*) proof of facts by affidavits;

(ii) the Conciliator or the Board shall have such further powers as may be prescribed.

(3) The proceedings before a Conciliator shall be held *in camera* and the proceedings before the Board in public:

Provided that the Board may at any stage direct that any particular witness be examined or its proceeding be held *in camera*.

(4) If a party to an industrial dispute giving any information or producing any document in a conciliation praceeding makes a request in writing to the Conciliator or the Board, as the case may be, that such information or the contents of such document may be treated as confidential, the Conciliator or the Board shall direct that such information or document be treated as confidential:

Provided that the Conciliator or the Board may permit the information or contents of the document in respect of which a request has been made under this sub-section to be disclosed to the other party.

(5) Save as provided in sub-section (4), the Conciliator or any member of the Board or any person present at or concerned in the conciliation proceeding shall not disclose any information or the contents of any document in respect of which a request has been made under sub-section (4) without the consent in writing of the party making the request under the said sub-section.

(6) Nothing in this section shall apply to disclosure of any information or the contents of any document for the purpose of a prosecution under this Act or under any other law for the time being in force.

Time limit for stages in conciliation proceedings.

41. (1) The Provincial Government shall by a general or special order fix a time limit for each stage of the conciliation proceedings provided for under this Chapter:

Provided that the total period of time limit fixed for all stages of the conciliation proceedings shall not exceed two months from the date on which the dispute is entered by the Conciliator in the register under section 35:

Provided further that the Provincial Government may extend the said period of two months by a further period of a fortnight at a time not exceeding, in any case, two months in the aggregate.

(2) Notwithstanding anything contained in sub-section (1), the parties to any industrial dispute may, in any case by mutual agreement, agree to extend the period of time limit fixed for any stage of a conciliation proceeding by any further period and such further period shall be excluded in computing the period of time limit referred to in the said sub-section.

Completion of conciliation proceedings.

42. The conciliation proceedings shall be deemed to have been completed when a settlement arrived at in such proceedings is registered or if no settlement is arrived at, when the report of the Conciliator or the Board of Conciliation is published by the Provincial Government or when the time limit fixed for the completion of such proceedings under section 41 has expired.

CHAPTER VII.

ARBITRATION.

Submission.

43. (1) Any employer and a registered union may, by a written agreement, agree to submit any present or future industrial dispute or any classes of such disputes to arbitration of any person whether such arbitrator is named in such agreement or not. Such agreement shall be called a submission.

(2) Any such agreement arrived at before the coming into force of this Chapter between an employer and a union shall also be deemed to be a submission.

(3) Such submission may provide that the dispute shall be referred to arbitration of the Industrial Court.

(4) A copy of every such submission shall be sent to the Registrar who shall register it in the register to be maintained for the purpose and shall publish it in the *Official Gazette*.

Submission when to be revocable.

44. In the absence of an agreement to the contrary, every submission shall be irrevocable:

Provided that the submission to refer future disputes to arbitration may at any time be revoked by any of the parties to such submission by giving the other party six months' notice in writing:

Provided further that before the expiry of the said period or six months the parties may agree to continue the submission for such further period as may be agreed upon between them.

Proceedings in arbitration.

45. The proceedings in arbitration under this Chapter shall be in accordance with the provisions of Schedules II in the Code of Civil Procedure, 1908, in so far as they are applicable and the powers which are exercisable by a civil court under the said provisions shall be exercisable by the Industrial Court.

V of 1908.

No Conciliation where arbitration is provided.

46. No Conciliation proceedings shall be commenced in respect of any dispute if—

(*a*) the majority of the employees directly affected by such dispute are members of a registered union which is a party to a submission relating to such dispute, or

(*b*) Some of the employees directly affected by such dispute are members of a representative union which is a party to such submission.

Special case to be stated to Industrial Court.

47. The arbitrator may refer any matter in which a decision on any question of law is required to the Industrial Court for its decision. Any award made by the arbitrator shall be in accordance with such decision.

Award by the Arbitrator.

48. The Arbitrator shall, after hearing the parties concerned, make an award which shall be signed by him.

Dispute to be referred to Industrial Court, if no Arbitrator is appointed, etc.

49. Notwithstanding anything contained in this Chapter if no provision has been made in any submission for the appointment of an Arbitrator or where by reason of the act of parties or any circumstances, the appointment of an Arbitrator or an umpire is not possible, such dispute shall be referred to the arbitration of the Industrial Court.

Provincial Government may refer an industrial dispute to the Industrial Court for arbitration.

49 A. Notwithstanding anything hereinbefore contained the Provincial Government may, at any time, refer any industrial dispute to the arbitration of the Industrial Court, if it is satisfied that :—

(1) a serious outbreak of disorder or a breach of the public peace is likely to occour, or

(2) serious or prolonged hardship, to a large section of the community is likely to be caused by reason of the continuance of the industrial dispute ; or

(3) the industry concerned is likely to be seriously affected and the prospects and scope for employment curtailed as a result of the continuance of the industrial dispute.

50. (1) The arbitrator or the Industrial Court shall give notice of the award made by him or it to the parties and forwa

Notice of award to parties.

a copy of the award to the Registrar and the Labour Officer.

(2) On receipt of such award, the Registrar shall enter it in a register kept for the purpose and shall publish it in the *Official Gazette*.

Date on which the award shall come into operation.

51. The award shall come into operation on the date stated in the award or where no such date is stated therein on the date on which it is registered under section 50.

Completion of arbitration proceedings.

52. The arbitration proceedings shall be deemed to have been completed when the award is published under section 50.

CHAPTER VIII.

COURT OF INDUSTRIAL ARBITRATION.

Duties of Industrial Court.

53. It shall be the duty of the Industrial Court:—

(1) to decide appeals from the orders passed by the Registrar under this Act;

(2) to decide all matters which may be referred to it by the Registrar under section 19 or by an arbitrator under section 47;

(3) to decide appeals from the decision of the Commissioner of Labour under section 26 regarding standing orders;

(4) to decide all applications for review made to it under section 27;

(5) to decide industrial disputes referred to it in accordance with submissions registered under section 43 and which provide for such reference to the Industrial Court;

(6) to decide industrial disputes referred to it under section 49;

(7) to decide matters referred to it under section 56;

(8) to decide whether a strike or lock-out or a change is illegal under the provisions of this Act; and

(9) to decide such other matters as may be referred to it under this Act or the rules.

Cancellation of registration or declaration of any union as a qualified or as a representative union.

54. If in any proceeding, the Industrial Court finds that the registration of any union or the declaration of any union as a qualified union or as a representative union was obtained under a mistake, misrepresentation or fraud, or that such union has contravened any of the provisions of this Act, the Industrial Court may direct that the registration of such union or the declaration of such union as a qualified union or as a representative union shall be cancelled.

Industrial Court to decide whether any strike or lock-out or change is illegal.

55. The Industrial Court may, on the application of any employer or employee concerned or a representative of the employees concerned or the Labour Officer, decide whether any strike or lock-out or any change made is illegal.

Civil Court may refer any matter relating to an industrial dispute to Industrial Court.

56. A Civil Court may refer any matter or any issue in any suit or proceeding before it relating to an industrial dispute to the Industrial Court for its decision. Any order passed by the Civil Court in such suit or proceeding shall be in accordance with such decision.

Procedure before an Industrial Court.

57. (1) The Industrial Court shall, subject to the provisions of this Act, follow such procedure as may be prescribed.

(2) (*i*) The Industrial Court shall have the same powers as are vested in Courts under the Code of Civil Procedure, 1908, in respect of the following matters when trying a suit :—

V of 1908.

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

(*b*) compelling the production of documents ;

(*c*) issuing commissions for the examination of witnesses ;

(*d*) proof of facts by affidavits.

(*ii*) The Industrial Court shall have such further powers as may be prescribed.

(3) Every proceeding before the Industrial Court shall be deemed to be a judicial proceeding within the meaning of sections 192, 193 and 228 of the Indian Penal Code.

XLV of 1860

(4) The Industrial Court shall have power to direct by whom the whole or any part of costs of any proceeding before it shall be paid :

Provided that no such costs shall be directed to be paid for the services of any legal adviser engaged by any party.

Execution of order as to costs.

58. An order made by the Industrial Court regarding the costs of a proceeding may be produced before the principal civil court of original jurisdiction within the local limits of whose jurisdiction any person directed by such order to pay any sum of money has a place of residence or business or where such place is within the local limits of the ordinary civil jurisdiction of the High Court before the Court of Small Causes of Bombay and such court shall execute such order in the same manner and by the same procedure as if it were a decree for the payment of money made by itself in a suit.

59. The order of the Industrial Court shall be binding on:—

The parties on whom order of Industrial Court will be binding.

(*a*) all parties to the industrial dispute who appeared or were represented before such Court;

(*b*) all parties who were summoned to appear as parties to the dispute whether they appeared or not, unless the Industrial Court is of opinion that they were improperly made parties;

(*c*) in the case of an employer who is a party to the proceedings before such Court in respect of the undertaking to which the dispute relates, his successors, heirs or assigns in respect of the undertaking to which the dispute relates; and

(*d*) in the case of a union which is a party to the proceedings before such Court, all persons who were members of such union on the date of the dispute or who become members of the union thereafter.

The order of Industrial Court not liable to appeal or review.

60. No order passed by the Industrial Court shall be called in question in any civil or criminal court.

Provincial Government may direct Advocate General or any other Officer to appear in any proceeding before Industrial Court.

61. The Provincial Government may direct the Advocate General or any other officer to appear in any proceeding before the Industrial Court by giving notice to such Court and on such notice being given the Advocate General or such officer shall be entitled to appear in such proceeding.

CHAPTER IX.

ILLEGAL STRIKES AND LOCK-OUTS.

Illegal strikes.

62. (1) A strike shall be illegal if it is commenced or continued—

(*a*) in cases where it relates to any industrial matter mentioned in Schedule I, before the standing orders relating to such matter and submitted to the Commissioner of Labour under section 26 are settled by him or by the Industrial Court, as the case may be, or before the expiry of six months from the date on which such standing orders come into operation under section 26;

(*b*) without giving notice in accordance with the provisions of section 28;

(*c*) only for the reason that the empoyer has not carried out the provisions of any standing order or has made an illegal change;

(*d*) in cases where notice of the change is given in accordance with the provisions of section 28 and where no agreement in regard to such change is arrived at, before the statement of the case referred to in section 34 is received by the Registrar ;

(*e*) in cases where conciliation proceedings in regard to the industrial dispute to which the strike relates have commenced, before the completion of such proceedings ;

(*f*) in cases where a submission relating to such dispute or such kinds of dispute is registered under section 43, until such submission is lawfully revoked ;

(*ff*) in cases where an industrial dispute has been referred to the arbitration of the Industrial Court under Section 49 A, before or until the date on which the award of the Industrial Court comes into operation whichever is later ; or,

(*g*) in contravention of the terms of a registered agreement, settlement or award.

(2) In cases where conciliation proceedings in regard to any industrial dispute have been completed, a strike relating to such dispute shall be illegal if it is commenced at any time after the expiry of two months after the completion of such proceedings.

Illegal lock-outs.

63. (1) A lock-out shall be illegal if it is declared, commenced or continued:—

(*a*) in cases where it relates to any industrial matter mentioned in Schedule I, before the standing orders relating to such matter and submitted to the Commissioner of Labour under section 26 are settled by him or by the Industrial Court, as the case may be, or before the expiry of one year from the date on which such standing orders come into operation under section 26 ;

(*b*) without giving notice in accordance with the provisions of section 28 ;

(*c*) in cases where notice of the change is given in accordance with the provisions of section 28 and where no agreement in regard to such change is arrived at, before the statement of the case referred to in section 34 is received by the Registrar ;

(*d*) in cases where conciliation proceedings in regard to the industrial dispute to which the lock-out relates have commenced, before the completion of such proceedings ;

1 Inserted by Act No. X of 1941.

(*d*) in cases where notice of the change is given in accordance with the provisions of section 28 and where no agreement in regard to such change is arrived at, before the statement of the case referred to in section 34 is received by the Registrar ;

(*e*) in cases where conciliation proceedings in regard to the industrial dispute to which the strike relates have commenced, before the completion of such proceedings ;

(*f*) in cases where a submission relating to such dispute or such kinds of dispute is registered under section 43, until such submission is lawfully revoked ;

(*ff*) in cases where an industrial dispute has been referred to the arbitration of the Industrial Court under Section 49 A, before or until the date on which the award of the Industrial Court comes into operation whichever is later ; or,

(*g*) in contravention of the terms of a registered agreement, settlement or award.

(2) In cases where conciliation proceedings in regard to any industrial dispute have been completed, a strike relating to such dispute shall be illegal if it is commenced at any time after the expiry of two months after the completion of such proceedings.

Illegal lock-outs.

63. (1) A lock-out shall be illegal if it is declared, commenced or continued:—

(*a*) in cases where it relates to any industrial matter mentioned in Schedule I, before the standing orders relating to such matter and submitted to the Commissioner of Labour under section 26 are settled by him or by the Industrial Court, as the case may be, or before the expiry of one year from the date on which such standing orders come into operation under section 26 ;

(*b*) without giving notice in accordance with the provisions of section 28 ;

(*c*) in cases where notice of the change is given in accordance with the provisions of section 28 and where no agreement in regard to such change is arrived at, before the statement of the case referred to in section 34 is received by the Registrar ;

(*d*) in cases where conciliation proceedings in regard to the industrial dispute to which the lock-out relates have commenced, before the completion of such proceedings ;

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1 Inserted by Act No. X of 1941.

(*e*) in cases where a submission relating to such dispute or such kinds of dispute is registered under section 45, until such submission is law-fully revoked ;

(ee) in cases where an industrial dispute has been referred to the arbitration of the Industrial Court under section 49A, before or until the date on which the arbitration proceedings are completed or the date on which the award of the Industrial Court comes into operation, whichever is later[1]; or

(*f*) in contravention of the terms of a registered agreement, settlement or award.

(2) In cases where conciliation proceedings in regard to any industrial dispute have been completed, a lock-out relating to such dispute shall be illegal if it is commenced at any time after the expiry of two months after the completion of such proceedings.

CHAPTER X.

Penalties.

Employer not to dismiss, reduce or punish an employee.

64. (1) No employer shall dismiss or reduce any employee or punish him in any other manner by reason of the circumstance that the employee—

(*a*) is an officer or member of a registered union or of a qualified union or of a union which had applied for being registered or declared as a qualified union under this Act ; or

(*b*) is entitled to the benefit of a registered agreement, submission or award ; or

(*c*) has appeared or intends to appear as a witness or has given any evidence or intends to give evidence in a proceeding under this Act ; or

(*d*) is an officer or member of an organisation the object of which is to secure better industrial conditions ; or

(*e*) is an officer or member of an organisation which is not declared unlawful ; or

(*f*) is a representative of employees ; or

(*g*) has gone on or joined a strike which is not illegal under the provisions of this Act.

(2) Whoever contravenes the provisions of sub-section (1) shall, on conviction, be punishable with fine which may extend to Rs. 1,000.

(3) The Court trying any offence under this section may direct that out of the fine recovered, such amount as it deems fit shall be paid to the employee concerned as compensation.

1 Inserted by Act No. X of 1941

Penalty for obstructing any person from carrying out duties imposed under this Act.

70. Any person who wilfully refuses entry to a Labour Officer to any place which he is entitled to enter under section 25 or who fails to produce any document which he is required to produce, or who fails to comply with any requisition or order issued to him by or under the provisions of this Act shall, on conviction, be punishable with fine which may extend to Rs. 500.

Penalties for offences not provided for elsewhere.

71. Whoever contravenes any of the provisions of this Act or of any rule made thereunder shall, on conviction, if no other penalty is elsewhere provided by or under this Act for such contravention, be punishable with fine which may extend to Rs. 100 and, in the event of such person having been previously convicted of an offence under this Act or any rule made thereunder with fine which may extend to Rs. 200.

CHAPTER XI.

Miscellaneous.

Modifications in Schedules.

72. The Provincial Government may, by notification in the *Official Gazette*, at any time, make any additions to or alterations in the industrial matters specified in Schedule I or II or may delete therefrom any such matter :

Provided that before making any such addition, alteration or deletion, a draft of such addition, alteration or deletion shall be published for the information of all persons likely to be affected thereby and the Provincial Government shall consider any objection or suggestion that may be received by it from any person with respect thereto.

Illegal changes.

73. (1) No employer shall make any change not being a change the effecting of which has, for the purposes of the Factories Act, 1934, become lawful by reason of a notification issued under section 8 thereof in any industrial matter in regard to which a standing order has been settled under section 26 or which is mentioned in Schedule II before the agreement referred to in sub-section (1) of section 30 is arrived at or where no such agreement is arrived at before the conciliation proceedings are completed or in cases where there is a registered submission before the arbitration proceedings are comple-

ted or in cases where any dispute relating to such industrial matter has been referred to the Industrial Court for its decision before such decision is given.

(2) No employer shall make any such change in contravention of the terms of a registered agreement, a settlement or an award.

(3) Any change made in contravention of the provisions of sub-section (1) or (2) shall be illegal.

Association of Employers may represent any of its members.

74. (1) The Provincial Government may from time to time by notification in the *Official Gazette* recognise any combination of employers as an association of employers for the purposes of this Act or may revoke any such recognition.

(2) In any proceeding under this Act, an association of employers shall be entitled to represent any employer who is a member of the association.

Representation of employees.

75. (1) Save with the permission of the authority holding any proceedings under this Act, no employee shall be allowed to appear in such proceedings except through the representative of employees.

(2) Notwithstanding anything contained in sub-section (1), if in any conciliation or arbitration proceedings or in any proceedings before the Industrial Court the majority of employees directly concerned in or affected by such proceedings are members of a qualified union, such qualified union shall also be entitled to appear in such proceedings.

Agreement etc, on whom binding.

76. (1) A registered agreement, a settlement, a submission or an award shall be binding upon all persons who are parties thereto :

Provided that—

(*a*) in the case of an employer, who is a party to such agreement, settlement, submission or award, his successors, heirs or assigns in respect of the undertaking as regards which the agreement, settlement, submission or award is made;

(*b*) in the case of a union which is a party to such agreement, settlement, submission or award, all persons who were members of such union at the date of such agreement, settlement, submission or award or who become members of the union thereafter,

shall be bound by such agreement, settlement submission or award.

(2) In cases in which a representative union is a party to any agreement, settlement, submission or award the Provincial Government may, after giving the parties affected an opportunity of being heard, by notification in the *Official Gazette*, direct that such agreement, settlement, submission or award shall be binding upon such other employers and employees in such industry or occupation in that local area as may be specified in the notification:

Provided that before giving a direction under this section the Provincial Government may in such cases as it deems fit, make in the prescribed manner a reference to the Industrial Court for its opinion.

Period for which agreement, etc., to remain in force.

77. (1) A registered agreement, settlement or award shall cease to have effect on the date specified therein, or if no such date is specified therein, on the expiry of the period of six months from the date on which notice in writing to terminate such agreement, settlement or award, as the case may be, is given by any of the parties thereto to the other party.

(2) Nothing in this section shall prevent the terms of a registered agreement being changed or modified by mutual consent of the parties affected thereby.

(3) Notwithstanding anything contained in sub-section (1) or (2), if a registered agreement provides that it shall remain in force for a period exceeding two years, such agreement may after the expiry of eighteen months from the date of commencement of such agreement be terminated by either party thereto by giving six months' notice.

(4) The party giving notice under sub-section (1) or (3) shall send a copy of it to the Ragistrar and the Labour Officer of the local area concerned.

Liability of the executive of a union.

78. Where anything is required to be done by any union by or under any provision of this Act, the person authorised in this behalf by the executive of the union or if no person is so authorised every member of the executive of the union shall be bound to do the same and shall be personally liable if default is made in the doing of any such thing.

Explanation.—For the purposes of this section, executive of a union means the body by whatever name called to which the management of the affairs of the union is entrusted.

79. No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try an offence under this Act.

Jurisdiction of Courts.

80. A Registrar, an Assistant Registrar, a Conciliator, a Labour Officer, an Arbitrator, a member of the Board, a member of the Industrial Court and its staff shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Conciliator and Labour Officer to be public servants.

81. No suit or proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

Persons acting in good faith not to be sued

82. Nothing in this Act shall affect any of the provisions of the Trade Disputes Act, 1929, and no conciliation or arbitration proceeding VII of 1929 shall be held under this Act relating to any matter or trade dispute which has been referred to and is pending before a Court of Enquiry or Board of Conciliation under the said Act.

Provisions of Act VII of 1929 not to be affected.

83. The Bombay Trade Disputes Conciliation Act, 1934, shall cease to apply to any area in which the provisions of Chapters II, III, IV, V and VI of this Act have been brought into force.

Repeal of Bom. IX of 1934.

84. (1) The Provincial Government may make rules to carry out the purposes of this Act.

Rules.

(2) In particular and without prejudice to the generality of the foregoing power such rules may be made for all or any of the following matters, namely:—

(*a*) the manner in which an employer or an association of employers may recognise any union under clause (25) of section 3;

(*b*) the manner in which the representatives of employees are to be elected under sub-clause (*iii*) of clause (29) of section 3;

(*c*) the forms of register of registered and representative unions to be maintained under section 6;

(*d*) the form in which an application may be made under section 7;

(*e*) the form in which a certificate of registration may be issued under section 8;

(*f*) the form in which a list of qualified unions is to be maintained under section 11;

(*g*) the fee to be paid on applications made under section 8,10 or 11

(*h*) the form in which a certificate may be granted to a representative union under section 12;

(*i*) the time, date and manner of submitting periodical returns under section 15;

(*j*) the manner in which the total number of employees is to be computed for the purposes of this Act;

(*k*) the other powers of the Registrar under section 16;

(*l*) the manner in which the panels representing the interests of employers and employees shall be constituted under section 23.

(*m*) the manner in which vacancies in the Board of Conciliation shall be filled up under section 23;

(*n*) the manner in which standing orders may be submitted under section 26;

(*o*) the form in which notice of change is to be given and the persons to whom copies of such notice are to be sent under section 28;

(*p*) the other places at which the copy of the intimation shall be affixed under sub-section (3) of section 29;

(*q*) the manner of convening meetings under section 31;

(*r*) the form in which a statement of the case is to be forwarded under section 34;

(*s*) the register in which industrial disputes are to be entered under section 35;

(*t*) the manner of holding conciliation proceedings under section 36;

(*u*) the form in which the memorandum of settlement shall be drawn up and the manner in which it shall be published by the Registrar under section 38;

(*v*) the manner of giving notice under section 39;

(*w*) the procedure to be followed by a Conciliator or the Board and the further powers of the Conciliator or the Board under section 40;

(*x*) the procedure to be followed by the Industrial Court and the further powers of such Industrial Court under section 57.

(3) The Provincial Government may also prescribe fine not exceeding five hundred rupees for a breach of any such rule.

(4) The rules made under this section shall be subject to the condition of previous publication in the *Official Gazette*.

SCHEDULE I.

(Section 26.)

1. Classification of employees, e g., permanent, temporary, apprentices, probationers, badlis, etc.

2. Manner of notification to employees of periods and hours of work, holidays, pay days and wage rates.

3. Shift working.

4. Attendance and late coming.

5. Leave and holidays: Conditions, procedure and authority to grant.

6. Liability to search and entry into premises by certian gates.

7. Temporary stoppages of work and right and liabilities of employers and employees arising therefrom.

8. Termination of employment. Notice to be given by employer and employee.

9. Suspension or dismissal for misconduct and the acts or omissions which constitute misconduct.

10. Means of redress for employees against unfair treatment or wrongful exaction on the part of the employer or his agent or servant.

SCHEDULE II

(Section 28.)

1. Reduction intended to be of permanent or semi-permanent character in the number of persons employed or to be employed not due to *force majeure.*

2. Demands for permanent or semi-permanent increase in the number of persons employed or to be employed in any department or departments.

3. Dismissal of any employee except in accordance with law or as provided for in the standing orders framed under section 26 of this Act.

4. Introduction of rationalisation or other efficiency systems of work.

5. Starting, alteration or discontinuance of shift working otherwise than in accordance with the standing orders.

6. Withdrawal or granting of recognition to unions of employees.

7. Withdrawal of any customary concession or privilege or change in usage.

8. Introduction of new rules of discipline or alteration of existing rules and their interpretation.

9. Wages and total weekly hours of work.

RULES UNDER
THE INDUSTRIAL RELATIONS ACT.
POLITICAL AND SERVICES DEPARTMENT.

Bombay Castle, 20th September 1947.

BOMBAY INDUSTRIAL RELATIONS ACT, XI OF 1947.

No. 1237/46.—In exercise of the powers conferred by section 123 of the Bombay Industrial Relations Act, 1946 (Bom. XI of 1947), the Government of Bombay is pleased to make the following rules, namely :—

1. *Short title.*—These rules may be called The Bombay Industrial Relations Rules, 1947.

2. *Definitions.*—(*1*) In these rules unless there is anything repugnant in the subject or context,—

(*i*) " Act " means the Bombay Industrial Relations Act, 1946;

(*ii*) " Form " means a form appended to these rules ;

(*iii*) " Schedule " means a Schedule appended to the Act ;

(*iv*) " Section " means a section of the Act ;

(*2*) Words and expressions not defined in these rules shall have the meanings assigned to them under the Act.

3. The Provincial Government shall maintain two separate panels of an equal number of persons representing the interests of employers and employees for the purposes of appointment on Boards of Conciliation constituted under section 7. Before making appointments to these panels, the Provincial Government shall invite such organizations of employers and workers and such other bodies and persons as it may deem fit to recommend the names of suitable persons for this purpose. The members of the panels shall be selected from the names so recommended.

4. The list of panels constituted under rule 3 shall be published in the *Official Gazette.*

5. The name of any member of a panel who has been adjudged a bankrupt, or has been declared insane, or who has been convicted in a criminal proceeding, for an offence involving moral turpitude shall be removed from the panel.

6. Any vacancy on these panels which may have been caused by resignation, death or by virtue of rule 5 shall be filled in the manner provided for in rule 3. The appointment of a person in every vacancy so filled shall be notified in the *Official Gazette.*

7. Any vacancy which has been created on a Board shall be filled by the Provincial Government in the case of a member either by an independent person or from the panel concerned according as the original member was an independent person or a person from the panel and in the case of the Chairman by an independent person. The name of the person so appointed shall be notified in the *Official Gazette.*

8. If a Chairman or any member of a Board is adjudged a bankrupt or is declared insane or is convicted in any criminal proceeding for an offence involving moral turpitude, he shall cease to be a member of such Board and the vacancy so created shall be filled in the manner laid down in rule 7.

9. A person shall not be eligible to be appointed to preside over a Labour Court unless he is or has been a Civil Judge or possesses the following qualifications :—

(*a*) He has practised as an advocate or pleader in the High Court of Bombay or in the Civil or Criminal Courts subordinate to it for at least 7 years and either—

(*1*) is a Bachelor of Laws of the University of Bombay, or

(*2*) has passed the examination for Pleaders held by the High Court, or

(*3*) has passed the Advocates' Examination conducted by the Bombay Bar Council, or

(*4*) has been admitted to the Bar of England, Northern Ireland or Scotland.

(*b*) He has sufficient knowledge of any one of the following regional languages of this Province, viz. Gujarati, Marathi and Kannada, to enable him to speak, read and write and translate with facility from the written character into English and *vice versa* and,

(*c*) He has had practical experience of labour and industrial problems or has done research in such problems or made a study of labour and industrial law.

10. The registers of unions referred to in section 12 shall be maintained in Forms A, B and C.

11. The list of approved unions referred to in section 12 shall be maintained in Form D.

12. Applications by unions for registration under section 13 shall be in Form E.

13. The fee payable for registration of a union under section 14 shall be rupee one.

14. The certificate of registration issued by the Registrar under section 14 shall be in Form F.

15. The fee payable by a union which makes an application to the Registrar under section 16 shall be Rs. 10.

16. Every application made by a union under section 16 shall be published by the Registrar in the *Official Gazette*.

17. Any union making an application for re registration under section 17 shall apply in Form G.

18. The fee payable by a union for re-registration under section 17 shall be rupee one.

19. Any change in the address of the head office of a registered union shall be communicated in writing to the Registrar within seven days of such change, and the changed address shall be recorded in the appropriate register maintained under section 12.

20. (*1*) Any change in the name of a registered union shall be communicated in writing to the Registrar within seven days of the registration of such change

under the Indian Trade Unions Act, 1926. The change in name shall be recorded by the Registrar in the appropriate register maintained under section 12 and notified in the *Official Gazette*.

(*2*) The Registrar shall certify under his signature at the foot of the certificate issued under rule 14 that the new name has been registered.

21. (*1*) Every employer in any industry in any local area to which the Act applies under sub-section (*3*) of section 2 shall within seven days of the date on which the Act comes into force and every employer in any industry in any local area to which all or any of the provisions of the Act have been applied under sub-section (*4*) of section 2 shall also within seven days of the date on which such provisions of the Act have been applied to that industry and thereafter on or before the tenth day of every month forward by registered letter to the Registrar a statement in such form as the Registrar may require, showing correctly the number of employees employed by him on the first working day of the month. In all cases where work is done in two or more shifts, the employees in all the shifts shall be included in the number of employees for whom the return is to be made, but the figure for each shift shall be shown separately.

(*2*) Every employer of an undertaking in any such industry shall also forward to the Registrar such statement in the manner provided in sub-rule (1) within seven days of the date on which such undertaking was started by him after the coming into force of the Act or, as the case may be, after the application of all or any of the provisions of the Act to such industry and thereafter on or before the tenth day of every month.

22. Every registered union shall, on or before the twentieth day of every month, forward by registered letter to the Registrar a statement in such form as the Registrar may require. Such statement shall, in the case of a union other than a Representative Union, show correctly the number of members the union had in each occupation on the first day of the month separately for each undertaking of each employer, within the local area for which the union is registered, with whom the members of the union were employed. In the case of a Representative Union such statement shall show correctly the total number of members the Union had in the industry concerned on the first day of the month within the local area for which the Union is registered. Where the Union is registered for more local areas than one there shall be a separate statement for each such local area.

23. The Registrar may call upon any employer or any union to produce such documents and supply such further information as he may deem necessary to prove that the information supplied under rules 21 and 22 is correct.

24 (*1*) The Registrar shall forward in the month of January, April, July and October every year a consolidated statement for the three previous months for every industry separately to the Labour Officer of each local area containing—

(*i*) where there is no Representative Union for an industry in a local area—

(*a*) the number of members each registered union has in each occupation in each undertaking in the local area, and

(*b*) the number of employees employed in each occupation in each undertaking in the local area ; and

(*ii*) where there is a Representative Union for an industry in a local area—

(*a*) the number of members of the Representative Union in the industry in the local area and

(*b*) the total number of employees in the industry in the local area

(*2*) Such statements shall be open to inspection by any employer or any union in the industry in the local area.

25. (*1*) Where no Representative Union exists for an industry in a local area any employer or any union in such industry may call upon the Registrar in writing for information in connection with the total number of employees in any occupation or undertaking in such industry and the number of members each registered union has in any occupation in such industry.

(*2*) Where a Representative Union exists for an industry in a local area any employer or union may call upon the Registrar in writing for information in connection with the total number of employees employed in the industry in the local area and the total numbers of members of the Representative Union in the industry in the local area.

26. Every order passed under section 14, 15 or 16 and every order passed in appeal under section 20 shall be published by the authority making the order in the *Official Gazette* and a copy of the same shall be forwarded to the Director on Labour Information for publication in the *Labour Gazette*.

27. Any union desirous of being registered for an industry for more than one local area shall apply in Form E and the provisions of rules 13 and 14 shall apply to such registration.

28. An application by a union for being entered in the approved list shall be in Form H.

29. The President, the Vice-President when carrying on duties of the President during his absence, the General Secretary, the Secretary, the Joint Secretary, the Assistant Secretary and the Treasurer of an approved union shall, subject to the following conditions, be entitled to collect sums payable by its members on the premises of an undertaking where wages are paid to them :

(*a*) the name or names of the officer or officers authorised in this behalf shall be intimated in advance to the employer and changes, if any, therein shall be communicated to the employer at least 24 hours before the date of collection;

(*b*) the officers visiting the undertaking for this purpose shall carry a letter of authority in Form I-A ;

(*c*) no coercion or force shall be used on any employee ;

(*d*) the collection shall be made without causing hindrance to the staff of the undertaking or interference in the management's work ;

(*e*) not more than 25 employees at a time shall be allowed to gather at the place where such sums are collected ;

(*f*) collections shall be made on the usual pay day or days and the subsequent three days and the day or days on which unclaimed wages are paid :

Provided that (*i*) on the usual pay day or days the collection shall be made during the hours of payment, and (*ii*) on any other days the collection shall be made during such hours as may be mutually agreed upon between the employer and the union subject to the condition that the period shall not be more than three hours on each of such days.

30. The President, the Vice-President when carrying on duties of the President during his absence, the General Secretary, the Secretary, the Joint Secretary, the Assistant Secretary and the Treasurer of an approved union, shall be entitled to put up or cause to be put up a notice board outside the time-keeper's office or at any other conspicuous place mutually agreed upon between the employer and the union and affix notices thereon during the hours the undertaking is open :

Provided that—

(*a*) the notice board to be put up shall be of a reasonable size ;

(*b*) the notices to be affixed shall be signed either by the President, the Vice-President when carrying on duties of the President during his absence, the General Secretary, the Secretary, the Joint Secretary, the Assistant Secretary or the Treasurer ; such notices shall relate to lawful activities of the union and shall not be of an offensive or provocative nature.

31. Subject to the provisions of rules 32, 33 and 34, the President, the Vice-President, the General Secretary, the Secretary, the Joint Secretary, the Assistant Secretary and the Treasurer of an approved union shall, for the purpose of the prevention or settlement of an industrial dispute, have a right and shall be permitted by the employer to do all or any of the acts mentioned in sub-clauses (*i*), (*ii*) and (*iii*) of clause (*c*) of section 25.

32. The officers specified in rule 31 shall have a right and shall be permitted by the employer to hold discussions on the premises of the undertaking with the employees concerned who are members of the approved union :

Provided that—

(*a*) the union shall intimate in advance to the employer the name or names of the officer or officers authorised for the purpose and the name of the department or departments in which the members concerned are employed ; and

(*b*) the discussions shall be held in such manner as not to interfere with the working of the undertaking.

33. The officers of an approved union specified in rule 31 shall have a right to meet and discuss with an employer or any person appointed by him for the purpose the grievances of its members employed in his undertaking subject to the following conditions, namely :

(*a*) the discussion shall ordinarily be held on two days in a week during such hours as may be fixed by agreement between the employer and the union except in urgent cases when it may be held on any day and at any time by previous appointment;

(*b*) the union shall ordinarily communicate in advance the nature of the grievances which it desires to discuss :

(*c*) the name of the officer authorised in this behalf shall either be communicated to the employer in advance or such officer shall carry a letter of authority in Form I-B.

34. Any of the officers specified in rule 31 shall have a right and shall be permitted by the employer to inspect in any undertaking any place where any member of the union is employed provided he carries with him a letter of authority in Form I-C and informs the employer beforehand which place in the undertaking he desires to inspect.

35. (*1*) The following shall be the fees for the purposes of sub-section (*6*) of section 26 :—

Table of Maximum Fees for Legal Aid.

	Industrial Court	Labour Court.
	Rs.	Rs.
(1) For each conference with legal adviser ...	40	20
(2) For drawing up an application, written statement, memorandum of appeal, or petition of more than 15 foolscap typed pages.	50	25
(3) For drawing up an application, written statement, memorandum of appeal, or petition of less than 15 foolscap typed pages.	30	15
(4) For appearance in Court (per day)	80	40
(5) For opinion of legal adviser in writing ...	60	30
(6) For appearance in Chamber matter or for appearance before the officer of the Court.	20	10
(7) Fees for retainer	30	30

(2) Fees in excess of those prescribed in sub-rule (1) may be given to senior counsels or legal practitioners of high standing in matters of importance or difficulty before the Industrial Court.

36. Any association of employers desiring recognition as an association of employers under the Act shall apply to the Registrar in Form J. On receipt of such application, which shall be in duplicate, the Registrar shall forward a copy of the application to the Provincial Government with such remarks as he may deem necessary.

37. (*i*) Every association of employers which has been recognised by the Provincial Government under section 27 shall notify to the Registrar of every change which occurs in its name, Memorandum of Association or Constitution or membership within seven days of such change.

(*ii*) Any such change in the name of an association of employers shall be notified in the *Official Gazette*.

38. Any employer in an industry, not being a member of an association of employers connected with that industry, who has agreed to be represented in any proceeding under the Act by such association, shall send intimation in writing to that effect to the Registrar and shall send copies of such intimation to the Labour Officer for the local area, to the authority holding the proceeding and to the representative union for the industry, if any.

39. (*1*) Where more employers than one are affected or under any of the provisions of the Act deemed to be affected and no association of employers is under sub-section (*2*) of section 27 entitled to represent all of them, the representative determined in the following manner shall be entitled to act as their representative :—

(*a*) Where there is an association of employers and two-thirds or more of the employers who are not members of the association agree to be represented by the association, that association ;

(*b*) Where there is an association of employers but less than two-thirds of the employers who are not members of the association are in favour of their being represented by the association, not more than five representatives elected from among all the employers at a meeting held by the Labour Officer for the purpose, provided that at least one of the representatives shall be from among the employers who have not agreed to be represented by the association ;

(*c*) In all other cases, not more than five representatives elected by the employers at a meeting held by the Labour Officer for the purpose :

Provided that where the number of employers affected or deemed to be affected does not exceed five no election shall be held and all the employers concerned shall be entitled to act as the representative.

(*d*) Any vacancy in the representatives elected under clause (*b*) or (*c*) shall be filled by election at a meeting of the employers held by the Labour Officer for the purpose.

(*2*) The names of persons elected as representatives shall be communicated by the Labour Officer to the Registrar and the authority holding the proceeding.

40. (*1*) Where there is no Representative Union in respect of any industry in any local area the Labour Officer for the local area or any person deputed by him for the purpose shall hold meetings of the employees in each undertaking in the industry and each occupation therein at such place and time as he deems fit. At such meetings the employees may elect five representatives from among themselves.

(*2*) Where an election has been held under sub-section (*1*) of section 28, within twelve months from the date on which such election is held and within each succeeding twelve months thereafter the Labour Officer or any person deputed by him for the purpose shall hold meetings of the employees for the purpose of electing fresh representatives from among themselves.

(*3*) After the election of the representative of employees the Labour Officer shall intimate the names of the persons elected to the employer concerned. Copies of such intimation shall be sent to the Registrar, the Chief Conciliator and the Conciliator for the industry in the local area.

41. Subject to the provision of sub-section (*4*) of section 28, the persons elected under rule 40 shall function as the representative of employees until such time as fresh elections are held by the Labour Officer and the names of the persons so elected are communicated by him to the employer concerned.

42. Copies of the intimation referred to in sub-rule (3) of rule 40 shall be affixed by the employer prominently outside the time keeper's office and at the entrance through which the majority of the employees enter the undertaking

43. (*1*) The employees in an occupation or undertaking desiring to recall a representative of employees shall send a requisition in writing to the Labour

Officer for the local area. Such requisition shall be signed by at least twenty per cent. of the employees in the occupation or undertaking as the case may be and shall state the reasons for the recall.

(2) On receipt of such a requisition the Labour Officer shall as soon as may be hold a meeting of the employees in the occupation or undertaking as the case may be and explain to them the object of the meeting. If the majority of the employees present at the meeting decides to recall the representative or representatives mentioned in the requisition the person or persons so recalled shall be deemed to have ceased to represent the employees concerned.

(3) The Labour Officer shall intimate to the employer concerned, the Chief Conciliator for the industry in the local area and the Registrar the name or names of the persons who have been so recalled.

44. Any vacancy in the representatives elected under sub-section (1) or (3) of section 28 shall be filled by election in the manner prescribed in rule 40 :

Provided that when the vacancy is caused by a recall under sub-section (4) of section 28 the Labour Officer may call upon the same meeting as the one called for the purpose of recalling to elect fresh representative or representatives as the case may be in place of the person or persons recalled.

45. Employees desiring to authorise under clause (*iii*) of section 30 any Qualified or Primary Union in the industry in which they are employed shall do so through their elected representatives who shall inform in writing to that effect the employer concerned, the Registrar, the Conciliator for the industry in the local area and the Labour Officer for the local area :

Provided that where there are no elected representatives of the employees concerned such authority and intimation shall be given through the employees, not exceeding five, selected by them for the purpose.

46. Where the Labour Officer is the representative of employees, the Labour Officer, shall, before entering into any agreement under section 44 or settlement under section 58, place the terms of such agreement or settlement before a meeting of the employees concerned. Such meeting shall be convened by the Labour Officer or any person deputed by him for the purpose at such place and time as the Labour Officer may decide and in such manner as he deems fit. If the majority of the employees present at the meeting accept the terms of agreement or settlement, all the employees affected shall be deemed to have accepted the terms of such agreement or settlement.

47. (1) Where in any proceeding the persons entitled to act under clause (*v*) of section 30 are more than five the Labour Officer or any person deputed by him for the purpose shall hold a meeting of such persons at such place and time as he deems fit. The persons elected at the meeting shall be entitled to act as the representative of employees in that proceeding and their names shall be communicated by the Labour Officer to the employers and association of employers concerned, the Chief Conciliator, the Registrar and the authority holding the proceeding.

(2) The number of persons to be elected under sub-rule (1) shall be

determined in the follcwing manner :—

Number of persons entitled to act under clause (v) of section 30.	Number of persons to be elected to act instead.
Less than 15	5
15 to 50	9
51 to 100	13
101 to 200	17
201 to 400	21
401 and above	25

48. Within six weeks of the date of the application of the Act or any provisions thereof to any industry in any local area and in the case of an undertaking started after the application of the Act or any provisions thereof to such industry within six months of the starting of the undertaking, every employer in the industry concerned shall forward by registered letter to the Commissioner of Labour, Bombay, three copies of the draft standing orders which he proposes to adopt for regulating the relations between him and his employees:

Provided, that where an employer, who is a member of an association of employers, notifies the Commissioner of Labour in writing that he has agreed to the association submitting such standing orders on his behalf and the association submits the standing orders within the period specified in sub-section (*1*) of section 35 he shall be deemed to have complied with the provisions of that sub-section.

49. (*1*) The Commissioner of Labour shall forward a copy of the draft standing orders to the representative of employees of the undertaking concerned and to such other interests concerned in the industry as he may deem fit to consult and ask them to send their views thereon within 30 days of the date on which the copy of such orders was forwarded to them.

(*2*) On receipt of the views of the representative of employees and the interests concerned or on the expiry of the period of 30 days of the date of despatch of the draft standing orders whichever is earlier, the Commissioner of Labour shall call a conference of the representatives of employees and employers and such other interests in the industry as may have been addressed by him under sub-rule (1) for consultation and then settle the standing orders finally.

50. (*1*) The Commissioner of Labour after he has settled the standing orders, shall forward a copy of such standing orders to the Registrar, and shall also send copies of the same to the Labour Officer for the local area. the employer or the association of employers as the case may be, the representative of employees concerned, the Industrial Court and the Labour Court concerned.

(*2*) The Registrar shall, as soon as the standing orders have been recorded, intimate to the employer or the association of employers as the case may be and to the representative of employees concerned the date on which the standing orders were recorded.

(*3*) After the expiry of a period of 30 days from the date of their coming into operation the employer concerned shall, unless an appeal has been filed under sub-section (*1*) of section 36, print the standing orders settled and forwarded to him by the Commissioner of Labour in English and also in the principal regional language of the local area in which the undertaking to such employer issituated :

Provided that in undertakings where more than twenty per cent. of the total number of employees employed are Mussalmans such standing orders shall also be printed in Urdu.

(*4*) Where an appeal has been filed under sub-section (*1*) of section 36 the standing orders as settled by the Industrial Court shall be printed by the employer in the same manner as prescribed by sub-rule (3).

(*5*) Every set of standing orders printed as required by sub-rule (3) or (4) shall be posted by the employer concerned prominently on a special board to be maintained for the purpose outside the time-keeper's office or at the entrance through which the majority of the employees enter the undertaking and also in all the departments where the employees concerned are working.

51. Any employer intending to effect any change in respect of an indurtrial matter mentioned in Schedule II shall give notice of such intention to the representative of employees in Form K.

52. Any employee who desires a chagne in respect of an industrial matter not specified in Schedule I or III shall give notice to the employer through the representative of employees in Form L.

53. (*1*) Any employee desiring a change in respect of (*i*) any order passed by his employer under Standing Orders, or (*ii*) any industrial matter arising out of the application or interpretation of Standing Orders, or (*iii*) an industrial matter specified in Schedule III shall make an application in writing to the employer either direct or through the Labour Officer for the local area or the representative of employees concerned. A copy of the application shall be forwarded to the Commissioner of Labour and in cases where such application is not made through the Labour Officer for the local area to that officer.

(*2*) On an application being made under sub-rule (1) the employer and the employee may arrive at an agreement within fifteen days of the receipt of the application by the employer or within such further period as may be mutually fixed by the employer and the employee or the Labour Officer for the local area or the representative of employees as the case may be.

54. The agreement referred to in sub-section (*1*) of section 44 shall be sent to the Registrar by registered letter and to the other officers specified therein by ordinary post.

55. (*1*) The Joint Committee shall consist of ten members of whom five shall be nominated by the registered union and five appointed by the employer concerned.

(*2*) Within 30 days of the decision to constitute a Joint Committee for an undertaking or occupation and every 12 months thereafter the employer and the registered union shall appoint or nominate persons to represent them on the committee.

(*3*) Before making such nominations the registered union shall call a meeting and consult the employees of the undertaking or occupation concerned as the case may be.

56. In the event of a member of the Joint Committee ceasing to be employed in the undertaking or occupation or retiring or ceasing in any other

way to be a member of such a Committee, the vacancy shall be filled by nomination in the manner prescribed in rule 55 by the registered union or appointment by the employer according as the person who has ceased to be a member was nominated by the union or appointed by the employer.

57. (*1*) The Chairman of a Joint Committee shall be appointed by the members of the Committee from among themselves at its first meeting which will be convened by the employer.

(*2*) If the members cannot agree upon the person to be appointed as Chairman the employer and the registered union which nominated the members of the Joint Committee shall be entitled to appoint by agreement the Chairman from among the members.

(*3*) Failing agreement between the employer and the union the Chairman shall be appointed by the employer and the union respectively in rotation for a period of six months.

58. The Chairman, who shall convene and preside over the meetings of the Joint Committee, shall circulate the agenda of the meeting to the members along with the notice of the meeting, except in the case of a special meeting, at least 48 hours before the meeting. He shall cause the minutes of every meeting to be recorded and get them confirmed at the next meeting. He shall also communicate, as required by sub-section (*2*) of section 51, the decisions of the Joint Committee to the registered union and the employer as well as the Labour Officer and the Commissioner of Labour.

59. (*1*) The Joint Committee may meet as often as convenient but not less than once a month. In cases of urgency, a special meeting of the Committee may be called by giving not less than six hours' notice at the request of either side. The meetings shall be held during working hours unless otherwise agreed upon between the two sides.

(*2*) No business other than that appearing on the agenda, shall be transacted at any meeting unless both sides agree to its introduction.

(*3*) The presence of three-fifths of the members from each side of the Committee shall be necessary to form a quorum.

(*4*) The decision of the Committee shall be arrived at by agreement between the two sides, but if no such agreement is possible the decision shall be taken by vote of the majority of the members present. The Chairman shall have one vote and in case of a tie a casting vote.

60. The agreement referred to in sub-section (*1*) of section 52 shall be sent to the Registrar by registered letter and to the Labour Officer by ordinary post.

61. The special intimation referred to in sub-section (*2*) of section 52 shall be sent in Form M.

62. The statement of the case referred to in section 54 shall be in Form N.

63. On receipt of the statement of the case under section 54 the Conciliator for the industry in the local area shall send an intimation to the parties to the dispute to appear before him at such time and place as may be specified in the intimation. He shall hold discussions, either jointly or separately, with the employer

and the representative of employees at such places and at such times as he may deem fit, and shall endeavour to bring about a settlement of the dispute.

64. The memorandum of settlement referred to in sub-section (*1*) of section 58 shall be drawn up in Form O.

65. The memorandum of settlement drawn up under rule 64 shall be published by the Registrar in the *Official Gazette* and a copy of the same shall also be forwarded to the Director of Labour Information for publication in the *Labour Gazette.*

66. The notice referred to in sub-section (*2*) of section 59 shall be served on the parties concerned by registered letter.

67. (*1*) When an industrial dispute has been referred to a Board under sub section (*1*) of section 59, the Board shall at its first sitting call upon the parties in such order as it thinks fit to state their case.

(*2*) Any member of a Board may administer an oath.

68. A submission entered into by the parties under section 66 shall be published by the Registrar in the *Official Gazette* and a copy of the same shall be forwarded to the Director of Labour Information for publication in the *Labour Gazette*, and also to the arbitrator, Labour Court and the Industrial Court as the case may be.

69. Where an industrial dispute between employees and employees has been referred by the Provincial Government under sub-section (*1*) of section 72 to the arbitration of the Industrial Court or the Labour Court, the Industrial Court or the Labour Court as the case may be shall send a notice to the employers of such employees that they have been made parties to such arbitration.

70. On receipt of a copy of an award forwarded under sub-section (*1*) of section 74 the Registrar shall publish it in the *Official Gazette* and shall forward a copy of the same to the Director of Labour Information for publication in the *Labour Gazette.*

71. Every application under sub-section (*1*) of section 79 shall be made in Form P and shall be forwarded to the Labour Court for the local area concerned by registered post or be presented to the Clerk of the Court or any other subordinate officer authorised by the Court in this behalf.

72. (*1*) Before deciding to maintain a record of industrial matters covered by the Schedules in respect of any industry the Provincial Government may if it deems fit, consult the employers and the registered unions in the industry regarding the industrial matters for which a record should be maintained.

(*2*) The record of such industrial matters shall be maintained separately for each such industry.

(*3*) The officer responsible for maintaining such record may require the employers in such industry to supply information necessary for maintaining such record.

(*4*) The record in respect of each industry shall be maintained in such Form as the Provincial Government may decide.

73. Before proceeding to hold an inquiry under sub-section (*1*) of section 112 the officer authorised by the Provincial Government shall give at least three clear days' intimation to the employer concerned. He shall also specify in the intimation the particular records which he desires to verify.

74. The notices under section 116 shall be given in Form Q and shall be sent by registered post.

75. (1) If in any proceeding before the Registrar a Conciliator or a Board the authority holding the proceeding requires any information in connection with such proceeding in a particular form he may call upon the party concerned to submit such information in that form.

(2) A Conciliator or a member of a Board shall have power, after giving reasonable notice, to enter the place or places where the employees concerned are employed or the office of any union or the premises provided by an employer for the residence of his employees for the purpose of holding a proceeding under the Act.

76. Whenever any letter, notice, statement or intimation is required to be forwarded or sent under any of these Rules by registered post to any person it shall be deemed to be sufficient compliance with these Rules if such letter, notice, statement or intimation is delivered by hand and an acknowledgment in writing, by or on behalf of such person, is obtained in respect of such delivery.

FORM A.

[Section 12 (*a*) and rule 10.]

Register of Representative Unions

Name.	Address of head office.	Date of registration.	Registered for		Date of being entered in the approved list.	Remarks.
			Industry.	Local area.		

FORM B.

[Section 12 (*a*) and rule 10.]

Register of Qualified Unions

Name.	Address of head office	Date of registration.	Registered for		Date of being entered in the approved list.	Remarks.
			Industry.	Local area.		

FORM C.

[Section 12 (*a*) and rule 10.]

Register of Primary Unions

Name.	Address of head office.	Date of registration.	Registered for		Date of being entered in the approved list.	Remarks.
			Industry.	Local area.		

FORM D.

[Section 12 (*b*) and rule 11.]

List of Approved Unions

Name of the union.	Address of head office	Date of entering in the approved list.	Date of removal from the approved list.	Remarks.

FORM E.

[Sections 13 and 22 and rules 12 and 27.]

Application for Registration of Union.

Name of Union Address,

Dated the day of 194

To

The Registrar,
Bombay Industrial Relations Act,
Bombay.

Dear Sir,

I beg to inform you that at a $\frac{\text{general meeting of the members}}{\text{meeting of the executive}}$ of the above union which was held at , on the day of 19 it was decided that the union should apply to you for registration as a $\frac{\text{Representative}}{\text{Qualified}}$ $\frac{}{\text{Primary}}$ Union for the industry in the local area of . A copy of the resolution signed by the $\frac{\text{President}}{\text{Chairman}}$ of the union is attached and I have to request that the union may be registered accordingly.

*2. The union is registered as a Representative / Qualified / Primary Union for the industry in the local area/areas of under certificate No. dated

3. The union is registered under the Indian Trade Unions Act, 1926, on the day of 19 under certificate No. issued by the Registrar of Trade Unions for the Province of Bombay.

4. The union has members in the †/in the industry in the local area of and represents per cent. of the total number of employees employed in the industry† in that local area.

5. A copy of the constitution of the union is attached.

6. The address of the Head Office of the union to which all communications and notices may be addressed is

Yours faithfully,

General Secretary/Secretary.

FORM F.

(Section 14 and rule 14)

BOMBAY INDUSTRIAL RELATIONS ACT, 1946.

Certificate of Registration

Name of Union—

Registration Number—

OFFICE OF THE REGISTRAR,
Bombay Industrial Relations Act,
Bombay.

It is hereby certified that the Union has been registered under the Bombay Industrial Relations Act, 1946, this day of 19 as a union for the industry in the local area of

Registrar,

Bombay Industrial Relations Act.

---

*To be struck off in the case of unions which have not been previously registered for any local area.

†Here insert the name of the industry.

‡Here insert the name of the undertaking.

FORM G.

(Section 17 and rule 17)

Application for re-registration of a Union

Name of Union— Address—

Dated the day of 19

To

THE REGISTRAR,

Bombay Industrial Relations Act,

Bombay.

Dear Sir,

I beg to inform you that at a general meeting of the members / meeting of the executive of the above Union which was held at on the day of 19 it was decided that the union whose registration as a Representative/Qualified/Primary Union was cancelled on the day of 19 should apply to you for re-registration as a Representative/Qualified/Primary Union for *industry in the local area of under section 17 of the Bombay Industrial Relations Act, 1946. A copy of the resolution signed by the President / Chairman of the union is attached and I have to request that the union may be re-registered accordingly.

2. The union was registered under the Indian Trade Unions Act, 1926, on the day of 19 under Certificate No. issued by the Registrar of Trade Unions for the Province of Bombay.

3. The union has members in the —— † *industry / in the industry in the local area of , and represents per cent. of the total number of employees employed in the —— *industry / † in that local area.

4. A copy of the constitution of the union is attached.

5. The address of the head office of the union to which all communications and notices may be addressed is

Yours faithfully,

General Secretary/Secretary,

---

*Here insert the name of the industry. † Here insert the name of the undertaking.

FORM H.

[Section 23 (*1*) and rule 28]

Application for being entered in the approved list

Name of Union— Address—

Dated the day of 19

To

THE REGISTRAR,
Bombay Industrial Relations Act,
Bombay.

Dear Sir,

I beg to state that at a $\frac{\text{general meeting of the members}}{\text{meeting of the executive}}$ of the above union which was held at on the day of 19 it was decided that the union should apply to you for being entered in the approved list of unions under section 23 of the Bombay Industrial Relations Act, 1946. A copy of the resolution signed by the $\frac{\text{President}}{\text{Chairman}}$ of this union is attached and the union may be entered in the approved list for the *industry in the local area of

2. The union was registered under the Indian Trade Unions Act, 1926, on the day of 19 under Certificate No. issued by the Registrar of Trade Unions for the Province of Bombay.

3. The union has members in the *industry in the local area of

4. The constitution of the union provides for the matters mentioned in clauses (*i*) to (*vi*) of sub-section (*1*) of section 23 of the Bombay Industrial Relations Act, 1946. A copy of the constitution of the union is attached.

†5. The union is registered as a Representative/Qualified/Primary union under the Bombay Industrial Relations Act, 1946.

6. The address of the head office of the union to which all communications and notices may be addressed is

Yours faithfully,
General Secretary/Secretary.

FORM I-A.

[Rule 29 (*b*)]

Letter of Authority.

Date.

Mr. who is

of the Union, which is an approved union under the Bombay Industrial Relations Act, 1946, is authorised by the Union

*Here insert the name of the industry. †To be struck off in the case of a union not so registered.

to collect sums payable by members to the Union on the premises of the following undertaking / undertakings :—

1.

2.

3.

4.

General Secretary/Secretary.

FORM I-B.

[Rule 33 (*a*)]

Letter of Authority.

Date

Mr. who is of the Union, which is an approved union under the Bombay Industrial Relations Act, 1946, is authorised by the Union to meet and discuss with the employer / employers of the following undertaking / undertakings or any person appointed for the purpose the grievances of its members :—

1.

2.

3.

4.

General Secretary/Secretary.

FORM I-C.

[Rule 34]

Letter of Authority.

Date

Mr. who is of the Union, which is an approved union under the Bombay Industrial Relations Act, 1946, is authorised by the Union to visit the *

to inspect the † where a member / members of the Union is / are employed.

General Secretary/Secretary.

* Here insert the name of the undertaking. † Here indicate the place to be inspected.

FORM J.

(Section 27 and rule 36.)

Application for recognition of Association of Employers.

Name of Association Address

Dated the day of 19

To

THE REGISTRAR,
Bombay Industrial Relations Act,
Bombay.

Dear Sir,

I beg to inform you that at a meeting of the *Managing Committee of this Association which was held at on the day of 19 it was decided that this Association should apply to Government for recognition as an association of employers for the †industry for the local area/areas of for the purposes of the Bombay Industrial Relations Act, 1946.

2. The Association has for one of its objects the regulation of the conditions of employment in the industry conducted or carried on by its members. The names of the members in the industry in the local area/areas for which the application is made together with their addresses are given in the Annex. attached to this application.

3. I enclose a copy of the Constitution/Memorandum of Association of the Association.

Yours faithfully,

Secretary.

*or the body by whatever name called, to which the management of the affairs of the Association is entrusted.

†Here insert the name of the industry.

ANNEX.

List of members of the Association.

Name of employer.	Address.	Name of the undertaking.	Address of the undertaking.
1	2	3	4

FORM K.

(Section 42 (*1*) and rule 51.)

Notice of change to be given by an employer

Name of employer Address

Dated the day of 19

To

(The representative of employees)

Dear Sir/Madam,

In accordance with the provisions of sub-section (*1*) of section 42 of the Bombay Industrial Relations Act, 1946, I/we beg to inform you that it is my/our intention to effect the change/changes specified in the Annex. to this letter.

Yours faithfully

(*)

---

*Here insert the position which the person who signs this letter holds with the employer issuing this letter.

ANNEX.

Statement of the case.

FORM L.

(Section 42 (*2*) and rule 52.)

Notice of change to be given by employee to employer

Name of the representatitve of employees

Address

Dated the day of 19

To

(The name of the employer)

Dear Sir/Sirs,

In accordance with the provisions contained in sub-section (*2*) of section 42 of the Bombay Industrial Relations Act, 1946, I/we hereby beg to give you notice that I/we desire a change/changes specified in the Annex. to this letter.

Yours faithfully,

Representative of employees.

ANNEX.

Statement of the case.

FORM M.

(Section 52 (2) and rule 61.)

Special intimation to the Conciliator

Name of the employer / registered union

Address Date

The Conciliator for the industry for the local area of

Dear Sir,

I / We beg to inform you that the change mentioned in Annex. I, being change in respect of a matter not specified in Schedule I or III of the Act, was proposed in the Joint Committee but no agreement has been arrived at in respect thereof. I / We desire that the change as proposed in Annex. I / now modified and shown in Annex. II should be made.

2. A full statement of the case is given in Annex. III.

3. The number of employees likely to be affected by the dispute is

Yours faithfully,

Annex. I.	*Annex. II.*	*Annex. III.*
Change proposed in the Joint Committee.	Change as modified,	Full statement of the case.

FORM N.

(Section 54 (1) and rule 62.)

Report of industrial dispute.

Name of the employer
Name of the representative of employees

Address

Dated the day of 19

To

The Conciliator for the local area for the industry concerned.
The Chief Conciliator, Bombay Industrial Relations Act, Bombay.
The Registrar, Bombay Industrial Relations Act, Bombay.

Dear Sir,

In continuation of the copy of the notice which I / We forwarded to you on the

day of 19 I/we beg to inform you that it has not been possible to reach an agreement with the representative of employees (the name of the employer concerned) and that I/we still desire that the change/changes proposed by that notice should be effected.

2. A full statement of the case is given in the Annexure.

3. The number of employees likely to be affected by the dispute is

Yours faithfully,

*

Representative of employees.

---

*Here insert the position which the person who signs this letter holds with the employer or association of employers.

ANNEX.

Full statement of the case.

FORM O.

(Section 58 (1) and rule 64.)

Memorandum of Settlement,

(1) Representing Employers :

(2) Representing employees :

Short recital of the case

Terms of Settlement

Signatures of the parties.

Signature of the Conciliator.

FORM P.

[Section 79 (2) and rule 71]

Application under section 79 (1)

[Except in the case of special application under sub-section (3) of section 52.]

In the Labour Court at.....

Application No. of 19 .

Name of the employer / registered union / employee / Labour Officer ... ... Applicant;

Postal address :

versus

Name of the employer / registered union / employee / Labour Officer ... ... Opponent.

Postal address :

In the matter of ——————————————————

The applicant respectfully submits :

(1) That

(2) That

(3) That

The applicant, therefore, prays that the Court may be pleased to decide—

(1)

(2)

(3)

The applicant begs leave to amend or add to or make alterations in the application if and when necessary.

Dated

Signature or thumb impression of applicant.

The applicant does solemnly declare that what is stated above is true to the best of his knowledge, belief and information.

This verification is signed at on

Signature or thumb impression of applicant.

FORM Q.

[Section 116 (*1*) and rule 74.]

Notice of termination of $\frac{\textit{Agreement}}{\textit{Settlement}}$ / $\frac{}{\textit{Award}}$

To

Date

Dear Sir/Sirs,

$\frac{\text{I}}{\text{We}}$ hereby give you notice that $\frac{\text{I}}{\text{We}}$ propose to terminate $\frac{\text{Agreement}}{\text{Settlement}}$ / $\frac{}{\text{Award}}$

dated regarding on the expiry of two months from the date of the notice.

Yours faithfully,

*

*Here insert the position which the person who signs this letter holds with the employer or name or names of the representative of employees as the case may be.

By order of the Governor of Bombay,

M. G. MONANI,
Joint Secretary to Government.

IN THE INDUSTRIAL COURT, BOMBAY.

THE INDUSTRIAL COURT REGULATIONS, 1947.

The following regulations have been made by the Industrial Court in exercise of the powers conferred under section 92 of the Bombay Industrial Relations Act, No. XI of 1947 :—

CHAPTER I.

General.

1. These regulations may be cited as "The Industrial Court Regulations, 1947" and shall come into force on the day the Bombay Industrial Relations Act (No. XI of 1947), comes into force by virtue of a notification issued by the Provincial Government under section 2 (*2*) of the said Act.

2. (*1*) In these regulations unless the context otherwise requires—

(*a*) "*Act*" means the Bombay Industrial Relations Act (No. XI of 1947).

(*b*) "*Appeal*" means a Memorandum of Appeal filed by an appellant indicating the grounds of appeal and relief claimed against the decision or an order of a lower court or authority where such appeal is permissible under the Act.

(*e*) "*Application*" means any application made to the Court under the Act or these regulations.

(*d*) "*Court*" and "*This Court*" mean the Industrial Court as constituted under section 10 of the Act and includes President or Member thereof.

(*e*) "*Lower Court*" means a Labour Court as constituted under section 9 of the Act.

(*f*) "*Matter*" means any application, appeal, petition, reference or submission filed in or made to the Industrial Court under the provisions of the Act.

(*g*) "*Order*" means any order made by the Industrial Court in any proceedings before it; other than an award.

(*h*) "*Party*" means the applicant, petitioner, appellant, opponent, respondent or any employer or employee concerned in any application, petition, appeal, submission or reference.

(*i*) "*Petition*" means any petition made to the Court under the Act or these regulations.

(*j*) "*Registrar*" means the Registrar of the Industrial Court.

(*k*) "*Registrar of Unions*" means the Registrar as defined in section 3 (*31*) of the Act and appointed under section 5 of the Act.

(*l*) "*Section*" means a section of the Act.

(*m*) "*Statement of Claim*" means a statement filed by or on behalf of a party on whose claim a submission or reference arises.

(*n*) "*Written Statement*" means a statement filed by an opponent in reply to a statement of claim or to an application or petition.

(*2*) Words and expressions not defined in there regulations shall have the same meanings assigned to them under the Act.

CHAPTER II.

Sittings, Benches and Vacations.

3. Subject to the provisions of section 92 (*2*) the President may constitute a Bench of one or more members to decide any of the matters filed in or referred to the Court and the Bench so constituted shall exercise the jurisdiction and the powers vested in the Court.

4. An application for review under section 37 shall ordinarily be disposed of by the same Bench which heard the original matter sought to be reviewed, provided, however, that if any member or members of the Bench which disposed of the original matter has or have ceased to be a member or members of the Court, it shall be disposed of by a Bench consisting of the same number of members as the Bench which made the order sought to be reviewed.

5. The Court may, with the consent of the parties act notwithstanding any vacancy or absence of any member in any Bench constituted by the President to decide any matter after the commencement of proceedings and no act, proceeding or determination of the Court shall be called in question or invalidated by reason of any such vacancy or absence, provided such consent has been first obtained; and provided, further that if any of the

parties does not give such consent, the President may constitute another Bench to hear the matter *de novo*.

6. Any Bench of one or more members of the Court hearing a matter may refer it to a Full Bench of the Court, if in its opinion, it involves important questions of law or fact. The President may constitute a Full Bench of two or more members.

7. A Bench constituted under any of the regulations 3, 4, 5 and 6 may hold its sittings at such place or places as the President may direct.

8. The Court may, with the approval of the President, in any matter in which it appears expedient to do so, call in the aid of one or more assessors, and may settle the matter wholly or partially with the assistance of such assessor or assessors.

9. The assessor or assessors may be paid such remuneration as the Government may fix by a general or special order on the recommendation of the President having regard to the status, position and calling of such assessor or assessors.

10. The Court shall ordinarily sit on week days, except Saturdays, from 11 a.m. to 5 p.m. with lunch interval from 2 p.m. to 3 p.m., subject to such alterations as the presiding member may direct on any particular day or days.

11. Subject to such general or special order as the President may pass, the Court shall observe the following vacations :—

(1) The summer vacation for six weeks ordinarily commencing from the last of April and ending with the first week of June ;

(2) The October vacation for two weeks ordinarily commencing from the second week and ending with the third week of October.

12. The Court will be closed on (1) such holidays as are declared by Government under the Negotiable Instruments Act, and (2) Christmas holidays ordinarily commencing on 24th of December and ending with 2nd of January.

13. The dates of vacations and holidays shall be notified in the *Bombay Government Gazette*.

14. The President may appoint one or more members of the Court for hearing and disposal of urgent matters during vacations.

15. The dates of hearing during the vacations shall be fixed by the members appointed.

CHAPTER III.

Officers and Office hours.

16. The Registrar shall have the custody of the records of the Court and shall exercise such functions as are assigned to him by these Regulations or by the President.

17. The Registrar may with the permission of the President assign such function or functions to any of the officers or members of the office staff subordinate to him.

18. The office of the Court for the purpose of admitting any business shall be open ordinarily, except on Sundays and close holidays, on Monday to Friday from 10-30 a.m. to 5-30 p.m. but no work unless of an urgent

nature shall be admitted after 4-30 p. m. On Saturdays the office shall remain open between 10-30 a. m. to 2 p. m. but no work unless of an urgent nature shall be admitted after 1 p. m.

19. During vacations and Christmas Holidays the office shall observe such hours as may be fixed by the President.

20. The Court shall have an official seal of its own, which shall be kept in the custody of the Registrar.

CHAPTER IV.

Appearance in Court.

21. Subject to the provisions of section 33, in any proceedings before the Court parties may appear in person or through any other person or by a duly authorised counsel, attorney, advocate, pleader, representative or by an officer of a representative union, qualified union, primary union or approved union or the Government Labour Officer of the local area concerned or by an officer of an employers' association, as the case may be.

22. Every person except a counsel authorised to appear under regulation 21 shall file a warrant of authority in Form 1 signed by the person authorising him.

CHAPTER V.

Applications to the Registrar.

23. Applications in the following matters shall be made to the Registrar by a praecipe in Form 2 or a letter addressed to him—

(i) for certified copies of documents;

(ii) for extension of time to file a written statement, statement of claim, any other statement or document;

(iii) for issue of summonses to witnesses and notices for appearance in any matter filed in or referred to the Court;

(iv) for inspection of documents filed in the Court;

(v) for withdrawal of matters filed in the Court before these are placed for hearing on the board;

(vi) for return of exhibits.

24. The Registrar may in his discretion make any order on such applications or may submit the same to the President or Member for orders.

CHAPTER VI.

Business in Chambers.

25. The following matters shall be disposed of by any Member in chamber:—

(i) petition for adding any parties to the appeal, application, submission, reference, etc.

(ii) petition for bail;

(iii) application for stay order;

(iv) application for adjournment by consent of both the parties for any matter placed for hearing on the board;

(v) applications for condoning delay in presenting appeals within the period of limitation prescribed.

(vi) application under section 33 (c) for permission to appear in proceedings other than proceedings before a Labour Court or this Court ;

(vii) all other applications of a miscellaneous nature.

26. Any of the chamber matters may be decided either *ex-parte* or after hearing the other side as the Member in chamber may think fit.

27. Where bail is granted, the person concerned shall execute a Bail Bond in Form 6.

CHAPTER VII.

Filing of Appeals, Applications, Petitions or Statements in Submissions and References.

28. (i) In any matter where the persons or the parties affected are numerous having the same interest, one or more of such parties may with the permission of the Court proceed or defend in such matter on behalf of or for the benefit of all persons so interested The Court shall in such cases direct notice to be given to all such persons at the expense of the party filing the matter either by personal service or where from the number of parties or, any other cause such service is not reasonably practicable, by public advertisement and by causing the notice with its translation in the regional language or languages to be affixed by the party filing the matter at the entrance of the last known place of employment of such persons or parties. The person affixing the notice and putting up the advertisement shall file an affidavit in the Court of his having done so.

(ii) Any person on whose behalf the matter is filed or defended under sub-regulation (i) may apply to the Court to be joined as a party to such matter. The Court may grant such application if it is satisfied that his interests will be seriously affected to his prejudice if he is not joined as a party.

29. Every application, petition, appeal, written statement or statement of claim to be made to the Court under the Act or directed to be filed under these Regulations shall be drawn up in the relevant Forms 3, 4 or 5 prescribed in Schedule I, and four copies thereof shall be filed in the office or sent to the Registrar by registered post.

30. The memorandum of appeal shall be filed within the period of limitation prescribed in section 84 (2) on working days, during the business hours, specified in regulations 18 and 19.

31. The memorandum of appeal shall be accompanied by a certified copy of the order or decision appealed against.

32. Every application, petition or appeal shall be scrutinised by the Registrar and if it is in order shall be admitted to the file, entered in the register, and given the case number.

33. If the application, petition or appeal is not in order by reason of any formal defect, it shall be returned by the Registrar for remedying the defect, if any, within a specified time.

34. If the Registrar thinks that any application, petition or appeal may be fixed for preliminary hearing, the Registrar may subject to such order as may be made by the President or by a Member send notice in Form 7 to the applicant, petitioner or appellant to appear before the Court at the time and place mentioned therein to show cause why the application, petition or appeal may not be summarily dismissed.

35. If any of the parties applies for determining certain matter on preliminary issues, the President or a member may proceed to determine such issues after issuing notice to the opposite party.

36. If the application or petition is not summarily dismissed the Registrar shall cause a notice in Form 8 to be given to the opponent directing him to file a written statement within a specified time.

37. After any appeal is filed in or any submission or reference is made to the Court, the Registrar shall cause a writ in Form 9 to be issued to the Provincial Government, the Labour Court, the Civil or Criminal Court, the Commissioner of Labour, the Registrar of Unions, the Conciliator, or any other officer or authority concerned as the case may be and shall call for the original records and proceedings of the case.

38. As soon as any submission or reference is admitted to the file, the Registrar shall give notices in Forms 10, 11, 12 or 13 to the parties to file their statement of claim or written statement as the case may be within the time stated in the notice.

39. The statement of claim and the written statement referred to in regulation 38 shall be drawn up in Forms 4 and 5 respectively.

40. After all the statements required to be filed by the parties are received, or after the expiry of the date for filing the statements, the matter shall be set down for hearing before a Bench constituted by the President, and the Registrar shall give notice thereof in Form 14 to the parties to appear before the Court at such time and place mentioned therein.

CHAPTER VIII.

Issue of Summonses, Notices, Other process, etc.

41. When in any matter it appears necessary that Government should be represented and heard on any point arising therein, the Court shall direct the Registrar to give intimation of the matter to the Chief Secretary to the Provincial Government in Form 15.

42. In every matter coming before the Court a notice in Form 16 shall be given to the Government Labour Officer of the local area concerned requiring him or his deputy to attend the Court at such time and place as mentioned therein.

43. Every writ, summons, notice, warrant or other mandatory process and every order, award or certified copy of any document shall be signed by the Registrar with the day and year of signing and shall be sealed with the official seal of the Court.

44. The service of every writ, summons, notice, warrant or other mandatory process and of every order or award shall be effected either by hand delivery or through registered post or as provided in the Order V of the Civil Procedure Code, 1908, as may be expedient.

CHAPTER IX.

Procedure in the Court.

45. The Court shall call upon the parties in such order as it may think fit to state their case.

46. Each witness shall give his evidence on oath or on solemn affirmation as the Court may require, and shall give the following particulars, namely, (1) his name, (2) age, (3) occupation and (4) religion, if any.

47. The Court may accept, admit or call for any evidence at any stage and in any manner it thinks fit.

48. A memorandum of the substance of a witness' testimony shall be made in such manner as the Court may order.

49. The Court may require any fact to be proved by affidavits.

50. In any matter, on the application of either party or otherwise the Court may direct the issue of a commission in Form 17 for recording oral evidence or for conducting any local inquiry or investigation.

51. The Court may direct any party to pay such costs of the commission as it considers reasonable.

52. Where a party desires to rely upon any statistical statement the party shall supply one copy each to the members of the Bench, one copy to the office of the Court and one copy to each representative appearing for the other side.

53. Where statistical statements are to be filed as exhibits, on each such statements shall be put the following particulars, namely (1) the source from which the figures have been compiled and (2) the name of the party submitting the exhibit.

CHAPTER X.

Execution of order of Costs, Fine and Imprisonment.

54. The Registrar shall be the taxing officer of the Court.

55. Subject to any provision of any statute or of these Regulations, the costs of or incidental to all proceedings shall be in the discretion of the Court.

56. The order of costs made by the Court in any matter shall be drawn up by the Registrar in Form 18.

57. Any order of fine or compensation directed by the Court shall be drawn up in Form 19 and a copy thereof together with warrant in Form 20 shall be forwarded to the Collector of the District concerned for the purpose of execution as if it were recovery of arrears of land revenue under section 110.

58. Where the Court makes any order of imprisonment the accused shall be immediately apprehended by the police officer on duty who on obtaining a Jail Warrant in Form 21 signed by the Registrar shall deliver the accused to Jail authority to be taken in the custody of the Jail.

59. One party on either side in any matter, and the Labour Court, Civil or Criminal Court, Commissioner of Labour, Registrar of Unions or any other authority wherever concerned, shall be supplied by the Registrar with one copy of the order or award made therein by the Court free of charge and any additional copy of the order or award required by the parties shall be supplied at the cost prescribed for certified copies of documents in Schuedle II.

CHAPTER XI.

Miscellaneous.

60. Where any fact is to be proved by affidavit, it shall be drawn up in Form 22, shall bear the stamp prescribed in schedule II and shall be sworn or affirmed in the presence of the Registrar.

61. The Court may correct in any award or order that it issues any clerical mistake or error arising from an accidental slip or omission.

62. If any question arises as to the interpretation of any order made by the Court in any matter, the Provincial Government or any party to the order may apply to the Court for a decision on such question and the Court may decide the matter after hearing the parties.

63. The Court or any other person authorised in writing by it in this behalf may at any time during the pendency of the dispute enter any building, factory, workshop or other places or premises whatsoever and inspect the same or any work, machinery, appliances or articles therein or interrogate any person therein in respect of anything situated therein or any matter relating to the subject matter of the dispute.

64. The Forms set out in Schedule I to these Regulations or forms substantially to the like effect with such variations as the circumstances of each case may require, shall be used for all cases where the forms are appropriate.

65. Nothing in these Regulations shall be deemed to limit or otherwise affect the power of the Court to make such order as may be necessary for the ends of justice or to prevent an abuse of the process of the Court.

SCHEDULE I.

FORMS.

Form No. 1.

(*Warrant of Authority*).

IN THE INDUSTRIAL COURT, BOMBAY.

No. of

In the matter of

Address :

Date :

To

The Registrar,
Industrial Court,
Bombay.

Dear Sir,

Be pleased to note that I/we have appointed Mr.

to appear for me/us

in the above matter.

Dated this day of 19 .

Accepted

Yours faithfully,

(Signature)

(Signature)

Form No. 2.

(*Application for certified copy of documents*).

Address :

To

The Registrar,
Industrial Court, Bombay.

Subject.—Application / Petition / Appeal / Submission / Reference No. of 19 .

Dear Sir,

Be pleased to supply the undersigned with certified copy/copies of in the above matter. The copy may be sent by V. P. P. (or delivered to me) at the above address and I undertake to pay for the same.

Dated this day of 19 .

Yours faithfully,

(Signature)

(This form may be adopted with suitable alterations in making applications for extension of time to file statement for withdrawal of matters, for adjournment, for inspection of documents, etc. or for any application mentioned in Regulation 23.)

From No. 3.

(*Application, Petition or Memorandum of Appeal*).

IN THE INDUSTRIAL COURT, BOMBAY.

Application / Petition / Appeal No. of 19 .

(1) A ... } Applicant/s.
(2) B ... } Petitioner/s.
(3) C ... } Appellant/s.

Address :

versus

(1) X
(2) Y
(3) Z

} Opponent/s. Respondent/s.

Address :

Application/Petition/Appeal under section of the Bombay Industrial Relations Act, No. XI of 1947, read with

In the matter of

May it please the Honourable Court,

The applicant/s petitioner/s appellant/s abovenamed beg/s respectfully to submit as follows :

(1) That
(2) That
(3) That

Certified copy of the order appealed against is enclosed herewith.

The applicant/s petitioner/s appellant/s therefore pray/s that the Court may be pleased to decide

(1) That
(2) That
(3) That

The applicant/s petitioner/s appellant/s beg/s to amend or add to or make alterations in the application/ petition/appeal if and when necessary.

Date

Signature or thumb impression of applicant/petitioner/appellant.

The applicant/s petitioner/s appellant/s does/do solemnly declare that what is stated above is true to the best of his/their knowledge, belief and information. This verification is signed at on day of 19 .

Signature or thumb impression of applicant/s petitioner/s appellant/s.

Drafted by

Place.

Form No. 4.

(*Statement of Claim*)

IN THE INDUSTRIAL COURT, BOMBAY.

Reference/Submission No. of 19

BETWEEN

(*a*) (*b*) (*c*)

Address :

} First Party.

AND

(*x*) (*y*) (*z*)

Address

} Second Party.

Reference/Submission under section of the Bombay Industrial Relations Act, No. XI of 1947.

In the matter of

May it please the Honourable Court,

The abovenamed beg/s respectfully to submit the statement of claim as follows :—

(1) That
(2) That
(3) That

The beg/s to amend, add to or make alterations in the statement of claim if and when necessary.

Date.

Signature or thumb impression.

The does/do solemnly declare that what is stated above is true to the best of his/their knowledge, belief and information. This verification is signed at on day of 19

Signature or thumb impression.

Drafted by

Place.

Form No. 5.

(*Written Statement.*)

IN THE INDUSTRIAL COURT, BOMBAY.

Application / Petition / Submission / erence No. of 19 .

(1) A
(2) B
(3) C
... Applicant(s) / Petitioner(s) / First Party.

Address :

versus

(1) X
(2) Y
(3) Z
Opponent(s) / Second Party

Address :

In the matter of

May it please the Honourable Court,

The opponent(s) / second party abovenamed beg(s) respectfully to submit his/their written statement as under :

(1) That
(2) That
(3) That

The Opponent(s) / Second Party beg(s) to amend or add to or make alterations in the written statement if and when necessary.

Signature or thumb impression
Date of opponent(s)/second party.

The opponent(s)/second party does/do solemnly declare that what is stated above is true to the best of his/their knowledge, belief and information. This verification is signed at on day of 19 .

Signature or thumb impression
of opponent(s)/second party.

Drafted by
Place

Form No. 6.

(*Bail Bond.*)

IN THE INDUSTRIAL COURT, BOMBAY.

Appeal No. of 19 .

Appellant (Original)

versus

Respondent (Original)

In the matter of conviction by
and sentence of

I having been convicted by of the offence of and sentenced to have filed the above appeal in the Industrial Court, Bombay, and have been granted bail, do hereby bind myself to attend the Industrial Court, whenever required to do so until the said appeal is finally decided and/or this Bail Bond is cancelled, in witness whereof I offer Mr. to stand as a surety for me.

Signature or thumb impression.

Date : Address.

I do hereby declare that I stand surety for the abovenamed and that he shall attend the Industrial Court whenever required until the appeal (No. of 19) filed by him is finally decided and/or this Bail Bond is cancelled, and in case of his making default therein, I hereby bind myself to forfeit to Government the amount of Rs.

Signature or thumb impression.

Date : Address :

In the presence of

(1)

(2)

Witnesses.

Before me,

Registrar.

Form No. 7.

(*Notice of Preliminary Hearing*).

IN THE INDUSTRIAL COURT, BOMBAY.

No. of 19 .

In the matter of

NOTICE.

PLEASE TAKE NOTICE that the above matter will be taken up for preliminary hearing by the Court at or at such time immediately thereafter according to the convenience of the Court on in

You are hereby required to appear in person or through any other person or by a duly authorised counsel, advocate, attorney, pleader or a representative, as the case may be, at the aforesaid time and place and to show cause, if any, why the above matter should not be summarily dismissed.

By order of the President,

Seal.

Registrar,
Industrial Court.

No.

Office of the Industrial Court,
High Court, Bombay,
day of 19 .

To

Form No. 8.

(Notice to file Written Statement in Application or Petition, etc.)

IN THE INDUSTRIAL COURT, BOMBAY.

Application / Petition No. of 19 .

(1) A
(2) B
(3) C
... } Applicant/s / Petitioner/s

Address :

versus

(1) X
(2) Y
(3) Z
... } Opponent/s

Address :

Application/Petition under section of the Bombay Industrial Relations Act, No. XI of 1947, read with

In the matter of

NOTICE.

WHEREAS abovenamed has filed in this Court, a copy whereof is enclosed herewith, NOTICE is hereby given to you that if you so desire, four copies of your written statement may be filed in this office on or before and that a copy thereof may be supplied to the abovenamed and to inform the undersigned that this has been done.

2. The time and the place of hearing will be announced later.

Seal.

By order of the President,

Registrar,
Industrial Court.

No.
Office of the Industrial Court,
High Court, Bombay,
day of 19 .

To

Form No. 9.

(*Writ of records and proceedings*)

No. of 19

In the matter of

To

Greeting :

WHEREAS the above matter has been admitted to the file AND WHEREAS it is necessary to look into the original papers, records and proceedings, etc. relating thereto, before the final order or award is made, you are requested to send to this Court all the books, papers, documents, records, proceedings, exhibits, files, etc., connected with the above matter, on or before together with this Writ under your hand and seal.

By order of the President,

Seal.

Registrar.
Industrial Court.

No.
Office of the Industrial Court,
High Court, Bombay.
day of 19 .

No.
Date :

The undersigned presents compliments to the Registrar, Industrial Court, and sends herewith the records, files, etc., as per the particulars given below.

Signature

Designation

Particulars of records.

No.

OFFICE OF THE INDUSTRIAL COURT,
High Court, Bombay.

The matter having been finally decided by the Court, the undersigned presents compliments to and is directed to return the above-mentioned records, files, etc.

Registrar,
Industrial Court.

To

Form No. 10.

(*Notice to file statement of claim in a Submission.*)

IN THE INDUSTRIAL COURT, BOMBAY.

Submission No. of 19 .

BETWEEN

AND

In the matter of

NOTICE

WHEREAS the parties abovenamed have submitted the above dispute to the arbitration of this Court, PLEASE TAKE NOTICE that you are hereby required to file a statement of claim (in four copies) in connection with the said dispute on or before the and that a copy of the same may be handed over by you simultaneously to the other side and to inform the undersigned that this has been done.

2. The time and place of hearing will be announced later.

By order of the President,

Seal.

Registrar,
Industrial Court.

No.
Office of the Industrial Court,
High Court, Bombay.
day of 19

To

Form No. 11.

(Notice to file written statement in Submission).

IN THE INDUSTRIAL COURT, BOMBAY.

Submission No of

BETWEEN

AND

In the matter of

NOTICE.

WHEREAS the parties abovenamed have submitted the above dispute to the arbitration of this Court, AND WHEREAS has been directed to file a statement of claim in this office on or before a copy whereof will be handed over to you simultaneously by him/them on or before that day, PLEASE TAKE NOTICE that you are hereby required to file in this office on or before the four copies of the written statement in reply to the statement of claim that you may receive and that a copy of the same may be handed over by you simultaneously to the other side and to inform the undersigned that this has been done.

2. The time and the place of hearing will be announced later.

By order of the President,

Seal.

Registrar,

Industrial Court.

No.
Office of the Industrial Court,
High Court, Bombay.

day of 19

To

Form No. 12.

(Notice to file statement of claim in a Reference).

IN THE INDUSTRIAL COURT, BOMBAY.

Reference No. of 19 .

BETWEEN

AND

In the matter of

NOTICE.

WHEREAS by Government Notification, Political and Services Department No. dated the the above matter has been referred to the arbitration of this Court, PLEASE TAKE NOTICE that you are hereby required to file a statement of claim (in four copies) in this office on or before in connection with the said dispute and that a copy of the same may be handed over by you simultaneously to the other side and to inform the undersigned that this been done.

2. The time and the place of hearing will be announced later.

By order of the President,

Seal.

Registrar,
Industrial Court.

No.
Office of the Industrial Court,
High Court, Bombay.

day of 19

To

Form No. 13.

(Notice to file written statement in a Reference.)

IN THE INDUSTRIAL COURT, BOMBAY.

Reference No. of 19

BETWEEN

AND

In the matter of

NOTICE.

WHEREAS by Government Notification, Political and Services Department, No. dated the the above matter has been referred to the arbitration of this Court, AND WHEREAS has/have been directed to file a statement of claim in this office on or before a copy whereof will be handed over to you simultaneously by him/them on or before that day, PLEASE TAKE NOTICE that you are hereby required to file in this office on or before the four copies of the written statement in reply to the statement of claim that you may receive and that a copy of the same may be handed over by you simultaneously to the other side and to inform the undersigned that this has been done.

2. The time and the place of hearing will be announced later.

By order of the President.

Seal.

Registrar,
Industrial Court.

No.
Office of the Industrial Court,
High Court, Bombay.
day of 19

To

Form No. 14.

(*Notice of hearing.*)

IN THE INDUSTRIAL COURT, BOMBAY.

No. of 19 .

In the matter of

NOTICE.

WHEREAS the above matter has been admitted to the file, PLEASE TAKE NOTICE that the said matter will be taken up for hearing at or at such time immediately thereafter according to the convenience of the Court on in You are hereby required to appear in person or through any other person or by a duly authorised counsel, advocate, attorney, pleader or a representative or by an officer of a representative union, qualified union, primary union or approved union or the Government Labour Officer of the local area concerned, as the case may be, at the aforesaid time and place and to continue to remain present until the said matter has been finally disposed of and to produce before the said Court on those days all books, documents, etc, which may be in your possession or under your control and in any way relating to the matters in dispute and witnesses, if any.

By order of the President,

Seal.

Registrar,
Industrial Court.

No.
Office of the Industrial Court,
High Court, Bombay.

day of 19

To

Form No. 15.

(Intimation to Government for appearance).

IN THE INDUSTRIAL COURT, BOMBAY.

No. of 19 .

In the matter of

INTIMATION.

WHEREAS the above matter will be taken up for hearing at or at such time immediately thereafter according to the convenience of the Court on in AND WHEREAS it appears necessary that Government should be represented and heard on points arising therein, arrangement may kindly be made to engage the Advocate General, Government Pleader or any other officer as Government may consider proper in order to place the Government's case before the Court at the aforesaid time and place.

By order of the President,

[Seal.

Registrar,
Industrial Court.

No.
Office of the Industrial Court,
High Court, Bombay.
day of 19

To

Form No. 16.

(Notice to Government Labour Officer for appearance).

IN THE INDUSTRIAL COURT, BOMBAY.

NOTICE.

WHEREAS the matters mentioned on the reverse will be taken up for hearing at

or at such time immediately thereafter according to the

convenience of the Court, on in

AND WHEREAS your presence is necessary PLEASE TAKE NOTICE that you

or your deputy is required to attend the Court at the aforesaid time and place.

By order of the President,

Seal.

Registrar.
Industrial Court.

No.
Office of the Industrial Court,
High Court, Bombay.
day of 19

To

The Government Labour Officer,

Form No. 17.

(Commission.)

IN THE INDUSTRIAL COURT, BOMBAY.

No. of 19

In the matter of

COMMISSION.

WHEREAS the Court was pleased to direct the issue of a Commission by an order made on for examination of witnesses and for inquiry and/or investigation of the matter mentioned in the Schedule overleaf, KNOW YOU that pursuant to the said order you are hereby appointed Commissioner for that purpose wherein you are authorised and empowered to command the attendance of the said witnesses and to cause such witnesses to be examined, cross-examined and re-examined upon oath or on solemn affirmation as the case may be and to record their evidence in writing in the presence of the parties or their counsel, advocates, attorneys, pleaders or representatives and to conduct inquiry and investigation at and you are further directed to send the complete record of the evidence, report of your inquiry and investigation under your hand and seal together with this commission to the undersigned not later than

Given under my hand and seal of the Court.

Bombay, dated this day of 19 .

Seal.

By order of the President,

Registrar,
Industrial Court.

No.

Office of the Industrial Court,

High Court, Bombay.

To

Form No. 18.

(Order of Costs.)

IN THE INDUSTRIAL COURT, BOMBAY.

Before

No. of 19 .

Industry.

Amount Rs.

The said Court doth hereby ORDER that the abovenamed shall pay to the abovenamed the sum of Rupees being cost in the above matter, as detailed on the reverse.

Given under the Seal of the Court,

This day of 19 .

(True copy)

Registrar,

Industrial Court,

(Reverse)

Particulars.	Amount. Rs. a. p.
Total ...	

Form No. 19.

(Order of Fine and/or Compensation.)

IN THE INDUSTRIAL COURT, BOMBAY.

Before

No. of

The said Court doth hereby CONVICT Mr. of the offence of under Section of the Bombay Industrial Relations Act (No. XI of 1947), and ORDER him to pay a fine of Rs. and/or compensation amounting to Rs. and DIRECT that out of the amount recovered from him, Rs. shall be paid to

Given under the Seal of the Court.

The day of 19 .

By order of the Court,

(True copy.)

Registrar,

Industrial Court.

Form No. 20.

(Warrant for recovery of fine and compensation imposed by the Industrial Court.)

IN THE INDUSTRIAL COURT, BOMBAY.

WHEREAS by an order (copy enclosed) made on the day of 19 (Name) in No. of 19 was convicted by this Court of the offence of under section of the and was ordered to pay a fine of Rs. and/or compensation amounting to Rs. to be paid to you are hereby directed under saction 110 of the Bombay Industrial Relations Act to recover the said amount of fine and/or compensation from the said person as arrears of land revenue and to pay Rs. to and to certify to this Court that the said order has been executed according to law.

Given under my hand and Seal of the Court.

This day of 19 .

By order of the President,

Seal.

Registrar,

Industrial Court.

No.

Office of the Industrial Court,
High Court, Bombay,
day of 19

To

Form No. 21.

(Warrant of commitment on a sentence of imprisonment passed or confirmed by the Industrial Court.)

IN THE INDUSTRIAL COURT, BOMBAY.

WHEREAS on the day of 19 (Name) in No. of 19 was convicted by Court of the offence of under section of the and was sentenced to

AND WHEREAS the said sentence is confirmed/modified by this Court, this is to authorise and require you to receive the said person into your custody and put him in jail together with this warrant and thereafter carry the aforesaid (remaining) sentence into execution according to law.

Given under my hand and Seal of the Court.

This day of 19 .

Seal.

By order of the President,

Registrar,
Industrial Court.

No.
Office of the Industrial Court,
High Court, Bombay.
day of 19 .

To

Form No. 22.

(Form of Affidavit.)

IN THE INDUSTRIAL COURT, BOMBAY.

No. of 19 .

I (Name)
beg to state on oath/solemn affirmation as follows :—

(1)
(2)
(3)
(4)

Signature.

Identified by

Before me,

Registrar,
Industrial Court.

Form No. 23.

(*Summons to Witness.*)

IN THE INDUSTRIAL COURT, BOMBAY.

No. of

In the matter of

SUMMONS

WHEREAS the above matter will be taken up for hearing at or at such time immediately thereafter according to the convenience of the Court, on in

AND WHEREAS your presence is necessary, you are hereby SUMMONED to appear in person before the said Court at the aforesaid time and place to give evidence, to answer all material questions and to produce all books, documents, etc. which may be in your possession or under your control and in any way relating to the matters in dispute, and to continue to remain present until you are discharged.

By order of the President,

Seal.

Registrar,
Industrial Court.

No.
Office of the Industrial Court,
High Court, Bombay.
day of 19 .

To

SCHEDULE II.

Table of Fees, Charges, etc.

	Rs.	a.	p.
(1) Affidavit as provided in Schedule I to the Stamp Act ...	1	0	0
(2) Process fees for each witness summons	0	6	0
(3) Type copying and comparing charges of certified copies of documents (per folio of 100 words)	0	8	0
(4) Inspection and Search of documents in the possession of Court (per day for each document)	0	12	0

N. B.—Fees for items 3 and 4 are payable in cash and in respect of other items, in court fee stamps.

By order of the President,
K. R. WAZKAR,
Registrar,
Industrial Court,

Bombay. 1st 1947.

THE LABOUR COURTS (PRACTICE AND PROCEDURE) RULES.

In exercise of the powers conferred under section 85 of the Bombay Industrial Relations Act (No. XI of 1947), the Industrial Court has framed the following rules for regulating the practice and procedure of Labour Courts :—

CHAPTER I.

General.

1. These rules may be called " The Labour Courts (Practice and Procedure) Rules, 1947," and shall come into force on the day the Bombay Industrial Relations Act (No. XI of 1947) comes into force by virtue of a notification issued by the Provincial Government under section 2 (2) of the said Act.

2. (A) In these rules unless there is anything repugnant in the subject or context :

(1) " Act" means the Bombay Industrial Relations Act (No. XI of 1947).

(2) " Application " means any application made to the Court under the Act or these rules.

(3) " Complaint " means an allegation made in writing to a Judge with a view to his taking action under the Act that some person mentioned therein has committed an offence punishable under the Act, and includes the Report of a Labour Officer under section 82 of the Act.

(4) " Court " means the Labour Court as constituted under section 9 of the Act.

(5) " Judge " means a judge appointed to preside over a Labour Court as defined in section 3 (*21*) of the Act.

(6) " Matter " means any application. petition, reference, submission or criminal complaint filed in or made to the Labour Court under the provisions of the Act.

(7) " Order " means any order made by the Labour Court in any proceeding before it other than an award.

(8) " Party " means the applicant, petitioner, opponent, complainant or accused or an employer or employee concerned in any application, petition, submission, reference or criminal complaint.

(9) " Petition " means any petition made to the Court under the Act or these rules.

(10) " Statement of Claim " means a statement filed by or on behalf of a party on whose claim submission or reference arises.

(11) " Written Statement " means a statement filed by an opponent in reply to a statement of Claim or to an application or petition.

2. (B) Words and expressions not defined in these rules shall have the same meanings assigned to them under the Act.

CHAPTER II.

Sittings.

3. (*a*) The Court shall ordinarily sit on week days from 11 a.m. to 5 p.m. with a recess, subject to such alterations as the judge may direct on any particular day or days. On Saturdays the Court shall sit from 11 a.m. to 2 p.m.

(*b*) The Court may hold its sittings at such place or places within its territorial jurisdiction as the judge may think necessary for deciding a particular matter or matters.

4. The office of the Court for the purpose of admitting any business shall be open ordinarily, except on Sundays and close Holidays from 10-30 a. m. to 5-30 p.m., but no work unless of an urgent nature shall be admitted after 4-30 p.m. On Saturdays the office shall remain open between 10-30 a.m. and 2-30 p.m but no work unless of an urgent nature shall be admitted after 1-30 p.m.

5. The Court shall have an official seal in the form of a circular ruber stamp one and half inch in diameter.

6. The judge may in matters falling under section 78 (1) A (*b*) in which it appears expedient to do so call in the aid of one or more assessors and may settle the matter wholly or partially with the assistance of such assessor or assessors.

7. The assessor or assessors may be paid such remuneration as the Government may fix by a general or special order on the recommendation of the judge having regard to the status, position and calling of such assessor or assessors.

CHAPTER III.

Appearance in Court.

8. In any proceeding before the Court parties may appear by duly authorised counsel, attorney, advocate or pleader or by an officer of the union which has a right to represent the party under section 30 of the Act, or by the Government Labour Officer of the local area concerned or by an officer of an employers' association as the case may be.

9. Every person except a counsel authorised to appear as per rule 8 hereinabove, shall file a Memorandum of Appearance in Form A signed by the person authorising him.

CHAPTER IV.

Business in Chambers.

10. The following matters shall be disposed of by the judge in Chamber:—

(1) Petition for adding any parties to an application, submission, or reference.

(2) Application for certified copies of documents.

(3) Application for extension of time to file a statement of claim, written statement, or any other statement or document.

(4) Application for issue of summonses to witnesses and notices for appearance in any matter filed in or referred to the Court.

(5) Application for inspection of document filed in the Court.

(6) Application for withdrawal of any matter filed in the Court before it is placed for hearing on the board.

(7) Application for return of exhibits.

(8) Application for adjournment by consent of both the parties for any matter placed for hearing on the board.

(9) Other applications of a miscellaneous nature.

11. Any of the Chamber matters may be decided either *ex-parte* or after hearing the other side as the judge may think fit.

CHAPTER V.

Filing of applications, petitions or statements in submissions and references, camplaints, etc.

I. *Ordinary Jurisdiction.*

Procedure in case of application against numerous employees for declaring a strike illegal.

12. (*i*) When an application is filed by any employer for a decision of the Court that a strike of employees is illegal under the provisions of the Act and the employees affected are numerous persons having the same interest, one or more of such employees may, with the permission of the Court, be proceeded against or defend in such application on behalf of all employees so interested. The Court shall, in such cases, direct notice of the filing of the application to be given to all such employees at the applicant's expense either by personal service or, where from the number of employees or any other cause, such service is not reasonably practicable, by public advertisement and by causing the notice with its translation in the regional language or languages to be affixed by the applicant at the entrance through which the majority of the employees enter the premises for their work. The person affixing the notice and putting up the advertisement shall file an affidavit in the Court of his having done so.

(*ii*) Any employee on whose behalf the application is defended under sub-rule (*i*) may apply to the Court to be made a party to such application. The Court may grant such application if it is satisfied that his interests will be seriously affected to his prejudice if he is not joined as a party.

Procedure in case of application by numerous employees for declaring a change or lock-out illegal.

13. (*i*) Where there are numerous employees having the same interest, one or more of such employees may, with the permission of the Court, file an application for an alleged illegal change or lock-out on behalf of or for the benefit of all employees so interested. The Court shall, in such cases, direct notice of the filing of the application to be given to all such employees, at the applicant's or applicants' expense, either by personal service or, where from the number of employees or any other cause such service is not reasonably practicable by public advertisement. The person putting up the advertisement shall file an affidavit in the Court of his having done so.

(*ii*) Any employee on whose behalf the application is filed under sub-rule (*i*) may apply to the Court to be made a party to such application. The Court may grant such application if it is satisfied that his interests will be seriously affected to his prejudice if he is not joined as a party.

14. Subject to the provisions of section 79 (2) of the Act every application, petition, written statement, statement of claim, to be made to the Court under the Act or directed to be filed under these rules shall be drawn in the relevant forms B, C and D prescribed in Schedule I and two copies thereof shall be filed in the office or sent to the Court by Registered Post.

15. If the application or petition is not in order by reason of any formal defect it shall be returned by the judge for remedying the defect if any, within a specified time.

16. If the judge thinks that any application or petition may be fixed for preliminary hearing he shall cause notice in form E to be served on the applicant or petitioner directing him to appear before him at the time and place mentioned therein to show cause why the application or petition may not be summarily dismissed.

17. If any of the parties applies for determining certain matter on preliminary issues, the judge may proceed to determine such issues on issuing notice to the opposite party.

18. If the application or petition is not summarily dismissed the judge shall cause notice in form F to be given to the opponent directing him to file a written statement within a specified time.

19. As soon as any submission or reference is admitted to the file the judge shall give notices in forms G, H, I and J to the parties to file their statement of claim, or written statement as the case may be within the time stated in the notice.

20. The statement of claim and the written statement referred to in rule 19 shall be drawn up in forms C and D respectively.

II—Special (Criminal) Jurisdiction.

21. The provisions of the Code of Criminal Procedure, 1898, regarding bail shall apply to all proceedings in respect of offences triable by the Court.

22. In all criminal proceedings before the Court the forms prescribed in the Code of Criminal Procedure shall be used in so far as they may be applicable.

CHAPTER VI.

Issue of Summonses, notices and processes.

23. When in any matter it appears necessary that Government should be represented and heard on any point arising therein, the judge shall give intimation of the matter to the Provincial Government or the principal officer of Government in the local area as per form K.

24. In every matter coming before the Court in its ordinary jurisdiction a notice in form L shall be given to the Government Labour Officer of the local area concerned requiring him or his deputy to attend the Court at such time and place mentioned therein.

25. Every summons, notice, warrant or other process and every decision, order, award, certified copy of any document, shall be signed by the judge with the day and year of signing and shall be sealed with the official seal of the Court.

26. The service of every summons, notice, warrant, other mandatory process, order or award shall be effected either by hand delivery or through Registered Post as may be expedient or as provided in order V of Civil Procedure Code or in Criminal Procedure Code as the case may be.

CHAPTER VII.

Procedure in the Court.

Ordinary Jurisdiction.

27. The Court shall call upon the parties in such order as it may think fit to state their case.

28. Each witness shall give his evidence on oath or solemn affirmation as the case may be and shall give the following particulars, namely (1) his name, (2) age, (3) occupation and (4) place of residence and (5) religion, if any.

29. The Court may accept, admit or call for any evidence at any stage and in any manner it thinks fit.

30. Where a party desires to rely upon any statistical statement the party shall supply copies as follows, namely, one copy to the Court and additional copies to each of the assessors if so required by the Court and one copy to each representative for the other side.

31. Where statistical statements are to be filed as exhibits on each such statement shall be put the following particulars, namely, (1) the source from which the figures have been compiled, and (2) the name of the party submitting the exhibit.

CHAPTER VIII.

Miscellaneous.

32. One party on either side in any matter, Registrar or unions, or any other authority wherever concerned, shall be supplied by the judge with a certified copy of the decision, order or award made therein by him free of charge and any additional copy required by the parties shall be supplied at the cost prescribed for certified copies of documents in Schedule II.

33. Where any fact is to be proved by affidavit it shall be drawn in Form M, shall bear the stamp prescribed in Schedule II and shall be sworn or affirmed in the presence of the judge or the Court clerk who may be authorised in writing by the judge in this behalf.

34. The Court may correct in any decision, award or order any clerical mistake or error arising from an accidental slip or omission.

35. The forms set out in Schedule I to these rules or forms substantially to the like effect with such variations as the circumstances of each case may require shall be used for all cases where forms are appropriate.

36. Nothing in these rules shall be deemed to limit or otherwise affect the power to make such order as may be necessary for the ends of justice or to prevent the abuse of process of the Court.

37. The judge or any other person authorised in writing by him in this behalf may at any time during the pendency of the dispute enter any building, factory, workshop, or other places or premises whatsoever and inspect the same or any work, machinery, appliances, or articles therein or interrogate any person therein in respect of anything situated therein or any matter relating to the subject matter of the dispute.

CHAPTER IX.

Registers and Returns.

38. The judge shall send every year before 31st January a return in form O to the Registrar, Industrial Court, showing the number of cases filed, withdrawn, decided, pending, etc.

39. A register in form P shall be maintainted for entering the particulars of exhibits returned.

40. The applications or petitions, submissions, references and complaints in criminal matters shall be entered separately in registers as per forms Q, R, S and T respectively.

41. The particulars of certified copies given to the parties shall be entered in a separate register as per form U.

SCHEDULE I.

FORMS.

Form A.

(*Memorandum of Appearance.*)

IN THE LABOUR COURT AT

No. of

In the matter of

Address :

I/We have appointed Mr.

to appear for me/us in the above matter.

Dated this day of 19

(Signature).

Accepted.

(Signature).

Form B.

(*Application or Petition.*)

IN THE LABOUR COURT AT

Application / Petition No. of 19

(1) A
(2) B
(3) C ... } Applicant/s. / Petitioner/s.

Address :

versus

(1) X ...
(2) Y ... } Opponent/s.
(3) Z ...

Address :

Application/petition under section of the Bombay Industrial Relations Act, No. XI of 1947, read with section

In the matter of

The applicant/s petitioner/s abovenamed beg/s respectfully to submit as follows :—

(1) That
(2) That
(3) That

The applicant/s petitioner/s therefore pray/s that the Court may be pleased to decide

(1) That
(2) That
(3) That

The applicant/s petitioner/s beg/s to amend or add to or make alterations in the application/petition if and when necessary.

Date : Signature or thumb impression of applicant/s petitioner/s

The applicant/s petitioner/s does/do solemnly declare that what is stated above is true to the best of his/their knowledge, belief and information. This verification is signed at on day of 19 .

Signature or thumb impression of applicant/s petitioner/s

Drafted by :
Place

Form C

(*Statement of Claim*).

IN THE LABOUR COURT AT

Reference/Submission No. of 19 .

BETWEEN

(*a*) (*b*) (*c*) ... First Party.

Address :

AND

(*x*) (*y*) (*z*) ... Second Party.

Address :

Reference Submission under section
of the Bombay Industrial Relations Act,
No. XI of 1947.

In the matter of

The abovenamed beg/s respectfully to submit the statement of claim as follows :—

(1) That

(2) That

(3) That

The beg/s to amend, add to or make alterations in the statement of claim if and when necessary.

Date :

Signature or thumb impression.

The does/do solemnly declare that what is stated above is true to the best of his/their knowledge, belief and information. This verification is signed at on day of 19

Signature or thumb impression.

Drafted by

Place

Form D.

(*Written Statement.*)

IN THE LABOUR COURT AT

Application
Petition No. of 19 .
Submission
Reference

(1) A ...
(2) B ... } Applicant/s
(3) C ... Petitioner/s
First Party.

Address :

versus.

(1) X ...
(2) Y ... } Opponent/s
(3) Z ... Second Party.

Address :

In the matter of

The $\frac{\text{opponent/s}}{\text{second party}}$ abovenamed beg/s respectfully to submit his/their written statement as under :—

(1) That
(2) That
(3) That

The $\frac{\text{opponent/s}}{\text{second party}}$ beg/s to amend or add to or make alterations in the written statement if and when necessary.

Date : Signature or thumb impression of opponent/s second party.

The opponent/s second party does/do solemnly declare that what is stated above is true to the best of his/their knowledge, belief and information. This verification is signed at on day of 19 .

Signature or thumb impression

Drafted by of opponent/s second party.

Place

Form E.

(*Notice of Preliminary Hearing.*)

IN THE LABOUR COURT AT

No. of 19 .

(Ordinary Jurisdiction).

In the matter of

NOTICE.

PLEASE TAKE NOTICE that the above matter will be taken up for preliminary hearing before me at on in You are hereby required to appear in person or through any other person or by a duly authorised counsel, advocate, attorney, pleader or a representative as the case may be at the aforesaid time and place and to show cause, if any, why the above matter should not be summarily dismissed.

Seal.

Judge,

Labour Court.

No.

Office of the Labour Court,

day of 19

To

Form F.

(*Notice to file written statement in application or petition.*)

IN THE LABOUR COURT AT

Application / Petition No. of 19 .

(Ordinary Jurisdiction)

(1) A
(2) B
(3) C

} Applicant (s) / Petitioner (s)

Address :

versus

(1) X
(2) Y
(3) Z

} Opponent (s).

Address :

Application/Petition under section of the Bombay Industrial Relations Act, No. XI of 1947, read with section

In the matter of

NOTICE.

WHEREAS abovenamed has filed in this Court, a copy whereof in enclosed herewith, NOTICE is hereby given to you that if you so desire, two copies of your written statement may be filed in this office on or before and that a copy thereof may be supplied to the abovenamed and to inform the undersigned that this has been done.

2. The time and place of hearing will be announced later.

Seal.

Judge,
Labour Court.

No.

Office of the Labour Court,
day of 19 .

To

Form G.

(*Notice to file statement of claim in a Submission*).

IN THE LABOUR COURT AT

Submission No. of 19

(Ordinary Jurisdiction.)

BETWEEN

AND

In the matter of

NOTICE.

WHEREAS the parties abovenamed have submitted the above dispute to the arbitration of this Court, PLEASE TAKE NOTICE that you are hereby required to file a statement of claim (in two copies) in connection with the said dispute on or before the
and that a copy of the same may be handed over by you simultaneously to the other side and to inform the undersigned that this has been done.

2. The time and the place of hearing will be announced later.

Seal.

Judge

Labour Court.

No.

Office of the Labour Court,
day of 19 .
To

Form H.

(*Notice to file written statement in a Submission*).

IN THE LABOUR COURT AT

Submission No. of 19 .

(Ordinary Jurisdiction.)

BETWEEN

AND

In the matter of

NOTICE.

WHEREAS the parties abovenamed have submitted the above dispute to the arbitration of this Court, AND WHEREAS
has/have been directed to file a statement of claim in this office on or before
a copy whereof will be handed over to you simultaneously by him/them on or before that day, PLEASE TAKE

NOTICE that you are hereby required to file in this office on or before the two copies of the written statement in reply to the statement of claim that you may receive and that a copy of the same may be handed over by you simultaneously to the other side and to inform the undersigned that this has been done.

2. The time and the place of hearing will be announced later.

Seal.

Judge.
Labour Court.

No.

Office of the Labour Court,

day of 19 .

To

Form I.

(*Notice to file statement of claim in a Reference.*)

IN THE LABOUR COURT AT

Reference No. of 19

(Ordinary Jurisdiction)

BETWEEN

AND

In the matter of

NOTICE.

WHEREAS by Government Notification, Political and Services Department, No. dated the the above matter has been referred to the arbitration of this Court, PLEASE TAKE NOTICE that you are hereby required to file a statement of claim (in two copies) in this office on or before in connection with the said dispute and that a copy of the same may be handed over by you simultaneously to the other side and to inform the undersigned that this has been done.

2. The time and the place of hearing will be announced later.

Seal.

Judge,
Labour Court.

No.
Office of the Labour Court,
day of 19 .
To

Form J.

(Notice to file written statement in a Reference.)

IN THE LABOUR COURT AT

Reference No. of 19 .

(Ordinary Jurisdiction)

BETWEEN

AND

In the matter of

NOTICE.

WHEREAS by Government Notification, Political and Services Department, No dated the the above matter has been referred to the arbitration of this Court, AND WHEREAS has/have been directed to file a statement of claim in this office on or before a copy whereof will be handed over to you simultaneously by him/them on or before that day, PLEASE TAKE NOTICE that you are hereby required to file in this office on or before the two copies of the written statement in reply to the statement of claim that you may receive and that a copy of the same may be handed over by you simultaneously to the other side and to inform the undersigned that this has been done.

2. The time and the place of hearing will be announced later.

Seal.

Judge,
Labour Court.

No.
Office of the Labour Court,
day of 19
To

Form K.

(*Letter of Intimation to Government.*)

IN THE LABOUR COURT AT

No. of 19 .

In the matter of

No.

From OFFICE OF THE LABOUR COURT,

X Y Z,
Judge,
Labour Court :

To

Sir,

I have the honour to inform you that the above matter will be taken up for hearing before me at on in . It is necessary that Government should be represented and heard on points arising therein. I am, therefore, to request you that arrangement may kindly be made to engage a lawyer or any other officer as you may consider proper in order to place the Government's case before the Court at the aforesaid time and place.

Your obedient servant,

Judge,
Labour Court.

Form L.

(*Letter to the Government Labour Officer for appearance.*)

IN THE LABOUR COURT AT

(Ordinary Jurisdiction.)

No.

OFFICE OF THE LABOUR COURT,

From

X Y Z,
Judge,
Labour Court :

To

The Government Labour Officer.

Sir,

I have the honour to inform you that the matters mentioned on the reverse will be taken up for hearing before me at on in , which please note. As the presence of the Labour Officer in necessary, I am to request you to make it convenient to attend the sittings of the Court or to send your deputy at the aforesaid time and place.

Your obedient servant,

Judge,
Labour Court.

Form M.

(From of Affidavit.)

IN THE LABOUR COURT AT

No. of 19 .

I (Name)

beg to state on oath/solemn affirmation as follows :—

(1) That

(2) That

(3) That

(4) That

(Signature)

Identified by

Before me,

Judge,
Labour Court.

Form N.

(Summons to Witness).

IN THE LABOUR COURT AT

No. of 19 .

In the matter of

SUMMONS.

WHEREAS the above matter will be taken up for hearing at in AND WHEREAS your presence is necessary, you are hereby SUMMONED to appear in person before me at the aforesaid time and place and to give evidence, to answer all material questions and to produce all books, documents, etc., which may be in your possession or under your control and in any way relating to the matters in dispute, and to continue to remain present until you are discharged.

Seal.

Judge

Labour Court.

No.
Office of the Labour Court,
day of 19
To

Form O.

Annual Return showing the position of cases as on 31st December 19 .

IN THE LABOUR COURT AT .

Nature of Case	Centre. Sub-Areas.	Centre. Total.	Remarks.
Criminal Complaint.			
Filed by individual persons			
Filed by Government Labour Officer			
No. of cases filed in 19			
No. of cases pending from 19			
Total ...			
No. of cases decided in 19			
No. of cases withdrawn in 19			
No. of cases pending in 19			
Application for Illegal Changes.			
Filed by employees			
Filed by Trade Unions			
Filed by Government Labour Officers			
No. of cases filed in 19			
No. of cases pending from 19			
Total ...			
No. of cases decided in 19			
No. of cases withdrawn in 19			
No. of cases pending in 19			
Application for Illegal Strike.			
Filed by Employers' Association			
Filed by individual employers			
No. of cases filed in 19			
No. of cases pending from 19			
Total ...			
No. of cases decided in 19			
No. of cases withdrawn in 19			
No. of cases pending in 19			

Nature of Case	Centre. Sub-Areas.	Centre. Total.	Remarks.
Submissions.			
Filed by individual employers', employees' Associations and Trade Unions in 19 ...			
No. of cases pending from 19			
Total ...			
No. of cases decided in 19			
No. of cases withdrawn in 19			
No. of cases pending in 19			
References.			
From the Provincial Government under Section...			
No. of cases decided in 19			
No. of cases pending in 19			
Miscellaneous Applications or Petitions.			
Filed by employers' Association			
Filed by individual employers			
Filed by individual employees			
Filed by Trade Unions			
Filed by Government Labour Officers			
Total ...			
No. of cases decided in 19			
No. of cases withdrawn in 19			
No. of cases pending in 19			
Grand Total ...			
No. of cases filed in 19			
No. of cases pending from 19			
Total ...			
No. of cases decided in 19			
No. of cases withdrawn in 19			
No. of cases pending in 19			

Form P.

THE LABOUR COURT AT

Register of Exhibits returned.

Register No	Exhibit No.	Matter No.	Put in by	Date when tendered.	Returned on	Returned to	Acknowledgment received on.	Initials	Remarks.

Form Q.

THE LABOUR COURT, AT

Register of Applications or Petitions.

Date of Application / Petitions	Application or Petition No.	Applicant / Petitioner	Opponent.	Subject matter.	Industry.	Date of hearing.	Adjournment.	Date of final order.	Final Order in brief.	Witnesses examined on behalf of the Applicant / Petitioner	Witnesses examined on behalf of the Opponent. / Petitioner	Exhibits tendered by the Applicant.	Exhibits tendered by the Opponent.	Remarks.

Form R

THE LABOUR COURT AT

Register of Submissions.

Date of filing.	Submission No.	Parties to Submission.	Industry.	Terms of Reference.	Date of hearing.	Adjournments.	Date of award.	Award in brief.	Witnesses examined.		Exhibits tendered.		Remarks.
									For first party.	For second party.	By first party.	By second party.	

Form S

THE LABOUR COURT AT

Register of References.

Date of Receipt.	Reference No.	Government. Notification No. and date.	Parties to Reference.	Terms of Reference.	Date of hearing.	Adjournments.	Date of award.	Award in brief.	Witnesses examined.		Exhibits tendered.		Remarks.
									For first party.	For second party.	By first party.	By second party.	

Form T

THE LABOUR COURT AT

Register of Criminal Complaints.

Case No.	Date of complaint.	Complainant	Accused.	Charge	Dates of proceedings and final order.	Order in brief.	Names of witnesses		List of exhibits.	Execution of order.	Remarks.
							Of Complainant	Of accused.			

Form U

THE LABOUR COURT AT

Register for supply of Certified Copies.

Serial No.	Date of receipt of application.	Name.	Particulars of certified copy asked for.	Copy delivered or posted on.	No. of folios.	Copying charges Rs. a. p.	Postage Rs. a. p.	Total amount Rs. a. p.	Amount received on	Receipt No.	Date of payment in Treasury or Reserve Bank.	Initials.	Remarks.

SCHEDULE II

Table of Fees, Charges, etc.

	Rs.	a.	p.
(1) Affidavit	0	8	0
(2) Process fee for each witness summons	0	6	0
(3) Type copying and comparing charges of certified copies of documents (per folio of 100 words)	0	6	0
(4) Inspection and Search of documents in the possession of Court (per day for each document)	0	12	0

N. B.—Fees for items 3 and 4 are payable in cash and in respect of other items, in court fee stamps.

By order of the President,

K. R. WAZKAR,
Registrar,
Industrial Court.

Bombay, 6th September 1947.

Printed at the I. P. Press

THE INDUSTRIAL DISPUTES ACT

(Act No. XIV of 1947.)

Statement of Objects and Reasons.

1. Experience of the working of the Trade Disputes Act, 1929 has revealed that its main defect is that while restraints have been imposed on the rights of strike and lock-out in public utility services no provision has been made to render the proceedings institutable under the Act for the settlement of an industrial dispute, either by reference to a Board of Conciliation or to a Court of Inquiry, conclusive and binding on the parties to the dispute. This defect was overcome during the war by empowering under Rule 81A of the Defence of Indian Rules, the Central Government to refer industrial disputes to adjudicators, and to enforce their awards. Rule 81A, which was to lapse on on the 1st October 1946, is being kept in force by the Emergency Powers (Continuance) Ordinance, 1946, for a further period of six months; and as industrial unrest, in checking which this rule has proved useful, is gaining momentum due to the stress of post-war industrial readjustment, need of permanent legislation in replacement of this rule, is self-evident. This Bill embodies the essential principles of Rule 81A, which have proved generally acceptable to both employers and workmen, retaining intact for the most part, the provisions of the Trade Disputes Act, 1929.

2. Two new institutions for the prevention and settlement of indust-rial disputes provided for in the Bill are the Works Committees consisting of representatives of employers and workmen, and Industrial Tribunals consisting of one or more members possessing qualifications ordinarily required for appointment as judges of High Court. Power has been given to appropriate Government to require Works Committees to be constituted in every establishment employing hundred workmen, or more, and their duties will be to remove causes of friction between the employer and workmen in the day to day working of the establishment and to promote measures for securing amity and good relations between them. Industrial peace will be most enduring where it is founded on voluntary settlement, and it is hoped that the Works Committees will render recourse to the remaining machinery provided for in the Bill for the settlement of disputes infrequent. A reference to Industrial Tribunal will lie where both parties to any industrial dispute apply for such reference, and also where appropriate Government considers it expedient so to do. An award of a Tribunal may be enforced either wholly or in part by the appropriate Government for a period not exceeding one year. The power to refer disputes to Industrial Tribunals and enforce their award is an essential corolary to the obligation that lies on the Government to secure conclusive determination of the disputes with a view to redressing the legitimate grievances of the parties thereto, such obligation arising from the imposition of restraints on the rights of strike and lock-out which must remain inviolate, except when considerations of public interest override such rights.

3. The Bill also seeks to re-orient the administration of the conciliation machinery provided in the Trade Disputes Act. The conciliation will be compulsory in all disputes in public utility services and optional in the case of other industrial establishments. With a view to expedite conciliation proceedings, time limits have been prescribed for conclusion thereof–14 days in the case of of conciliation officer and two months in the case of Board of Conciliation from the date of notice of strike. A settlement arrived at in the course of conciliation proceedings will be binding for such period as may be agreed upon by the parties and where no period has been agreed upon, for a period of one year, and will continue to be binding until revoked by three month's notice by either party to the dispute.

4. Another important new feature of the Bill relates to the prohibition of strikes and lock-outs during the pendency of conciliation and adjudication proceedings of settlements reached in the course of conciliation proceedings and of awards of Industrial Tribunals declared binding by the appropriate Government. The underlying argument is that where a dispute has been referred to conciliation or adjudication a strike or lock-out in furtherence thereof, is both unnecessary and inexpedient. Where on the date of reference to conciliation or adjudication a strike or lock-out is already in existence, power is given to the appropriate Government to prohibit its continuance lest chances of settlement or speedy determination of the dispute should be jeopardised.

5. The Bill also empowers the appropriate Government to declare, if public interest or emergency so requires by notification in the official Gazette, any industry to be a public utility service, for such period, if any, as may be specified in the notification.

New Delhi;
The 25th October, 1946.

(Sd) G. H. Spence

THE INDUSTRIAL DISPUTES ACT

INDIA ACT NO. XIV OF 1947

First published after having received the assent of the Governor General in the Government of India Gazette on the 17th March 1947.

An Act to make provision for the investigation and settlement of industrial disputes, and for certain other purposes;

Whereas it is expedient to make provision for the investigation and settlement of industrial disputes, and for certain other purposes hereinafter appearing;

It is hereby enacted as follows: —

Preamble: Previous legislation:—The outbreak of industrial unrest on a large scale was a feature of the period succeeding the close of the world war I and led the Government of India to explore the possibility of providing some machinery for the settlement of industrial disputes. As a result of inquiries and experience gained, the Government were satisfied that legislation for the prevention and settlement of trade disputes is likely to prove of considerable value and therefore the Trade Disputes Act was passed in the year 1929 with the object of providing for investigation and settlement of industrial disputes. That Act provided for the establishment of Courts of Inquiry and Boards of Conciliation, to enquire into and to promote settlement of industrial disputes. But neither party was under an obligation to accept the findings of the Court or the advice of the Board. During the second world war, it was found necessary to arm the Government with greater power to prevent strikes and lock-outs in order that the process of production may not be interrupted. The Government was empowered under rule 81 A of the Defence of India Rules ot appoint adjudicator to adjudicate upon an industrial dispute and to make the decision of an adjudicator binding upon the parties. This provision was found very useful and numerous industrial disputes were referred to adjudicators whose decisions were made binding upon the parties. This Act is mainly based upon the Trade Disputes Act, 1929 and in addition, the provision regarding reference to compulsory adjudication of disputes under the Defence of India Rules have been incorporated in this Act with suitable changes. "Experience of the working of the Trade Disputes Act, 1929, has revealed that its main defect is that while restraints have been imposed on the rights of strike and lock-out in public utility services no provision has been made to render the proceedings institutable under the Act for the settlement of an industrial dispute either by reference to a Board of Conciliation or to a Court of Inquiry, conclusive and binding on the parties to the dispute. This defect was overcome during the war by empowering under rule 81A of the Defence of India Rules, the Central Government to refer industrial disputes to adjudicators and to enforce their awards. Rule 81 A which was to lapse on 1st October 1946, is being kept in force by the Emergency Power Continuance Ordinance, 1946,

the dispute to a Board, Court or Tribunal for settlement, inquiry or adjudication unless the Government considers the notice to be frivolous or vexatious. Punishment is provided for illegal strikes and lock-outs, instigation of illegal strikes and lock-outs and breach of the terms of a settlement or an award.

Works committees:

Provision has been made of works committees in establishments having hundred or more workmen, composed of equal number of the representatives of the employer and workmen. The duty of a works committee will be to promote measures for securing and preserving amity and good relations between the employer and workmen and to endeavour to compose any material difference of opinion between them.

CHAPTER I.

Preliminary

1. *Short title, extent and commencement.*—(1) This Act may be called the Industrial Disputes Act, 1947.

(2) It extends to the whole of British India.

(3) It shall come into force on the first day of April, 1947.

2. *Definitions.*—In this Act unless there is anything repugnant in the subject or context,—

(*a*) " appropriate Government " means—

(*i*) in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government, by the Federal Railway Authority or by a railway company operating a Federal Railway or in relation to an industrial dispute concerning a mine, oilfield, or a major port, the Central Government, and

(*ii*) in relation to any other industrial dispute, the Provincial Government ;

(*b*) "award" means an interim or final determination by an Industrial Tribunal of any industrial dispute or of any question relating thereto ;

(*c*) "Board" means a Board of Conciliation constituted under the Act ;

(*d*) "conciliation officer" means a conciliation officer appointed under this Act ;

(*e*) "conciliation proceeding" means any proceeding held by a conciliation officer or Board under this Act ;

(*f*) "Court" means a court of inquiry constituted under this Act ;

(*g*) "employer" means—

(*i*) in relation to any industry carried on by or under the authority of any department of a Government in British India, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department ;

(*ii*) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority ;

COMMENT.

From the wording of the clause it is clear that the definition of "employer" is not exhaustive. It only lays down who must be deemed to be an employer in case of an industry carried on by or on behalf of a Government—Provincial or Central and in case of an industry carried on by or on behalf of a local authority.

(*h*) "Federal Railway" has the same meaning as in the Government of India Act, 1935 (26, Geo. 5, c. 2);

COMMENT.

The definition of "Federal Railway" in section 311 of the Government of India Act, 1935 is as follows : "Railway" includes a tramway not wholly within a municipal area. "Federal Railway" does not include an Indian State Railway but save as aforesaid, includes any railway not being a minor railway;

"Indian State Railway" means a railway owned by state and either operated by the state, or operated on behalf of the state, otherwise than in accordance with a contract made with the state by or on behalf of the Secretary-of-State -in-Council, the Federal Railway, the Federal Railway Authority, or any company operating a Federal Railway ;

"minor railway" means a railway which is wholly situated in one unit and and does not form a continuous line of communication with a Federal Railway whether of the same gauge or not ;

and "unit" means a Governor's Province, chief commissioner's Province or a Federal State.

(*i*) A person shall be deemed to be "independent" for the purpose of his appointment as the chairman or other member of the Board, Court or Tribunal, if he is unconnected with the industrial dispute referred to such Board, Court or Tribunal or with any industry directly affected by such dispute ;

COMMENT.

As the chairman of a Board of Conciliation and members of a Court of Inquiry and Industrial Tribunal are to be independent persons, a definition of the expression "independent person" has been given here.

(*j*) "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.

(*k*) "industry 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 employment or with the conditions of labour of any person;

COMMENT.

The definition of the word "industrial dispute" is similar in all respects, to the definition of the word "trade dispute" under the Trade Disputes Act, 1929 except that the words "between employers and employers" are added in the definition of "industrial dispute" in this Act. This definition is much narrower than the definition of the term "industrial dispute" in the Bombay Industrial Relations Act, 1947.

Industrial Dispute:

The basis of all proceedings under this Act is the existence or apprehension of an industrial dispute. Industrial dispute means a difference or a dispute—

(*a*) (i) between employers and employers or
(ii) between employers and workmen,
(iii) or workmen and workmen, and

(*b*) which is connected with employment, non-employment terms of employment, or conditions of labour of any person.

Terms of employment : Bonus :

Is a dispute regarding bonus an industrial dispute? Where the workers demanded bonus and threatened to strike work if the demand was not granted it was held under the Trade Disputes Act, 1929 in which the definition of the term "trade dispute" is similar to the definition of the term "industrial dispute" (under this Act) accepting that the primary meaning of the word "bonus" is "gift" or "gratuity" it is not asked in this case as a matter of patronage or bounty. It is demanded and strike action is threatened if such demand is not complied with; so that as soon as that demand is declined all elements of a trade dispute arise.[1]

The decision in the above case is based on the nature of the demand of the workmen. The Court held that while the employers contended that bonus was an *ex gratia* payment, the workmen contended that it was not so. The effect was that the employer's contention was that the workmen were not entitled to bonus under the terms of employment while workmen denied that it

1 Indian Hume Pipe Ltd. v/s E. M Nanavati and others A I. R. 1947 Bom 42 48 B L. R. 551

was so. Therefore it was a dispute between the parties as to the terms of employment and therefore was a trade dispute.

Where there were demands ranging from a demand of 15 days' leave with pay to the demand that the members of the staff should stop abusing workers as well as beating them during the course of their work and in working hours, held that whether there was any justification for these demands or not they were connected with the workers' terms of employment and the dispute regarding them was a "trade dispute."[1]

(*i*) "lock-out" means the closing of a place of employment or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him.

COMMENT

The definition of the term "lock-out" is very wide—in fact much wider than the definition of the word "lock-out" in the Bombay Industrial Relations Act and in the Trade Disputes Act, 1929. Mere closing of the place of employment or suspension of work or the refusal to continue to employ any number of persons employed by him amounts to lock-out whatever may be the motive, reason or the object of the employer in doing so. Under the Bombay Industrial Relations Act and the Trade Disputes Act, 1929 in a lock-out the closing of a place of employment or refusal to employ a person must be with the object of compelling employees to accept a term of employment and must be in consequence of a dispute. Under this act the intention of the employer is irrelevant.

S. 24 lays down when a lock-out would be illegal and s. 26 provides penalty for an illegal lock-out.

(*m*) "prescribed" means prescribed by the rules made under this Act;

(*n*) "public utility service" means—

(*i*) any railway service;

(*ii*) any section of the industrial establishment, on the working of which the safety of the establishment or the workmen employed therein depends;

(*iii*) any postal, telegraph, or telephone service;

(*iv*) any industry which supplies power, light or water to the public;

(*v*) any system of public conservancy or sanitation;

(*vi*) any industry specified in the schedule which the appropriate Government may, if satisfied that the public emergency or public interest so requires, by notification in the official Gazette

1. (ibid)

declare to be a public utility service for the purposes of this Act, for such period as may be specified in the notification:

Provided that the period so specified shall not, in the first instance, exceed six months but may, by a like notification, be extended from time to time, by any period not exceeding six months at any time if in the opinion of the appropriate Government public emergency or public interest requires such extension.

COMMENT.

The definition of public utility service is wider than the definition of the term in the Trade Disputes Act. This sub-clause provides that the appropriate Government, if satisfied that public emergency or public interest requires, may declare any of the following industries viz. (1) Transport (other than railway) for carriage of passengers or goods by land, water or air (2) Coal (3) Textiles (4) Foodstuffs (5) Iron and steel, to be public utility service for a period not exceeding six months. This period may be extended by a further period not exceeding six months at any one time if necessary.

(*o*) "railway company" means a railway company as defined in s. 3 of the Indian Railways Act, 1890 (X of 1890).

COMMENT.

Railway company has been defined in s. 3 (5) of the Indian Railways Act, 1890 as follows :

"Railway Company" includes any persons whether incorporated or not, who are owners or lessees of a railway or parties to an agreement for working a railway.

(*p*) "settlement" means any settlement arrived at in the course of conciliation proceeding;

(*q*) "strike" means a cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal, or a refusal under a common understanding, of any number of persons who are or have been so employed to continue to work or to accept employment ;

COMMENT.

The definition of the term "strike" is very wide—in fact much wider than in the Bombay Industrial Relations Act and the Trade Disputes Act, 1929. It would be strike under this Act if a body of workmenc eases work or refuses to work or to accept work in concert or under a common understanding. The motive, cause or object of cessation of work is immaterial. Under the Bombay Industrial Relations Act and the Trade Disputes Act, 1929 the cessation of work or refusal to work would amount to strike only if it is *in consequence of an* industrial dispute. If the cessation of work is for any other causes it

would not amount to a strike under that Act. But under this Act the cessation of work need not be in consequence of an industrial dispute. It may be for any cause. The only thing necessary is that the cessation of work or refusal to work must be by workers acting in combination or in concert or under a common understanding. Thus cessation of work for observing a "foundation day" or for taking part in a municipal election does not amount to a strike under the Bombay Industrial Relations Act but would be a "strike" within the meaning of the term under this Act.

S. 24 lays down when a strike would be illegal and s. 26 provides penalty for an illegal strike.

(*r*) "Tribunal" means an Industrial Tribunal constituted under this act ;

(*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 proceedings under this Act in relation to any industrial dispute, a workman discharged during that dispute, but does not include any person employed in the naval, military or air service of the Crown.

CHAPTER II

Authorities under this Act

3. *Works Committees.*—(1) In the case of any industrial establishment in which one hundred or more workmen are employed or have been employed on any day in the preceding twelve months, the appropriate Government may by general or special order require the employer to constitute in a prescribed manner a Works Committee consisting of representatives of employers and workmen engaged in the establishment so however that the number of representatives of workmen on the committee shall not be less than the number of representatives of the employer. The representatives of the workmen shall be chosen in the prescribed manner from among the workmen engaged in the establishment and in consultation with their trade union, if any, registered under the Indian Trade Unions Act, 1926 (XVI of 1926).

(2) It shall be the duty of the Works Committee to promote measures for securing and preserving amity and good relations between the employer and workmen and, to that end, to comment upon matters of their common interest of such matters.

COMMENT

Works Committee.—In England works committees have been formed in industrial concerns on voluntary basis and they have been eminently successful in promoting harmonious relations between the employers and workers. Under the Bombay Industrial Relations Act elaborate provisions are made for the constitution of joint committees of the representatives of the employer and employees for joint discussion of matters of common concern. The joint committees are also on a voluntary basis. This Act makes provision for the constitution of works committees. A distinguishing fearure of it is that it is the appropriate Government who may order the constitution of a works committee in an industrial establishment in which one hundred or more workmen are employed or have been employed on any day in the preceding twelve months. The representatives of workmen and of the employers are to be equal. The duty of the works committee would be to promote measures for securing and preserving good relations between the employer and workmen and to endeavour to compose the difference of opinion in respect of such matters. The decision or the opinion of the works committee is binding upon neither party. But it is obvious that joint discussion of matters of difference is likely to assist the solution thereof.

"Power has been given to appropriate Government to require works committee to be constituted in every industrial establishment employing hundred workmen or more and their duties will be to remove causes of friction between the employer and workmen in the day to day working of the establishment and to promote measures for securing amity and good relation between them. Industrial peace will be most enduring where it is founded on voluntary settlement and it is hoped that the works committee will render recourse to the remaining machinery provided for in the Bill for the settlement of disputes infrequent."[1]

4. *Conciliation officers.*—(1) The appropriate Government may, by notification in the official Gazette, appoint such number of persons as it thinks fit, to be conciliation officers charged with the duty of mediating in and promoting the settlement of industrial disputes.

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

COMMENT

For the powers and duties of the conciliation officer see S. 12

5. *Board of conciliation.*—(1) The appropriate Government may, as occassion arises, by notification in the official Gazette con-

1 Statement of Odjects and Reasons.

stitute a Board of Conciliation for promoting a settlement of an industrial dispute.

(2) A Board shall consist of a chairman and two or four other members as the appropriate Government thinks fit.

(3) The chairman shall be an independent person and the other members shall be persons appointed in equal number to represent the parties to the dispute and any person appointed to represent a party shall be appointed on the recommendation of that party:

Provided that, if any party fails to make a recommendation as aforesaid within the prescribed time, the appropriate Government shall appoint such persons as it thinks fit to represent that party.

(4) A Board having the prescribed quorum, may act notwithstanding the absence of the chairman or any of its members or any vacancy in its number:

Provided that if the appropriate Government notifies the Board that the services of the chairman or of any other member have ceased to be available, the Board shall not act until a new chairman or a member, as the case may be, has been appointed.

COMMENT

For the powers and duties of the Board of Conciliation see sections 11 and 13.

The Boards of Conciliation are to be appointed *ad hoc* in order to deal with particular disputes.

6. *Courts of Inquiry.*—(1) The appropriate Government may as occasion arises by notification in the official Gazette constitute a Court of Inquiry for inquiring into any matter appearing to be connected with or relevant to an industrial dispute.

(2) A Court may consist of one independent person or of such number of independent persons as the appopriate Government may think fit and where a Court consists of two or more members, one of them shall be appointed as chairman.

(3) A Court, having the prescribed quorum may act notwithstanding the absence of the chairman or any of its members or any vacancy in its number:

Provided that if the appropriate Government notifies the Court that the services of the chairman have ceased to be available, the Court shall not act until a new chairman has been appointed.

COMMENT

For the powers and duties of a Court of Inquiry see sections 11 and 14.

Courts of Inquiry are also intended to be appointed *ad hoc* like Boards of conciliation in order to deal with particular disputes only.

7. *Industrial Tribunals.*—(1) The appropriate Government may constitute one or more Industrial Tribunals for the adjudication of industrial disputes in accordance with the provisions of this Act.

(2) A Tribunal shall consist of such number of members as the appropriate Government thinks fit. Where the Tribunal consists of two or more members, one of them shall be appointed as the chairman.

(3) Every member of the Tribunal shall be an independent person—

(a) who is or has been a Judge of a High Court or a District Judge or ;

(b) is qualified for appointment as a Judge of a High Court ;

Provided that the appointment to a Tribunal of any person not qualified under part (a) shall be made in consultation with the High Court of the Province in which the Tribunal has or is intended to have, its usual place of sitting.

COMMENT

An industrial Tribunal is a very important body. Its duty is to adjudicate upon industrial disputes referred to it and by the appropriate Government to make binding and conclusive awards subject to the provisions of section 15. It may be noted that the powers and functions of an industrial Tribunal constituted under this Act are however much less than those of the Industrial Court constituted under the Bombay Industrial Relations Act.

"Reference to an Industrial Tribunal will lie where both parties to an industrial dispute apply for such reference and also where appropriate Government considers it expedient so to do. An award of a Tribunal may be enforced either wholly or in part by the appropriate Government for a period not exceeding one year. The power to refer disputes to industrial Tribunals and to enforce their awards is an essential corrollary to the obligation that lies on the Government to secure conclusive determination of the disputes with a view to redressing the legitimate grievances of the parties thereto, such obligation arising from the imposition of restraints on the rights of strikes and lock-outs which must remain inviolate except where the considerations of public interest override such rights."[1]

1 Statement of Objects and Reasons.

8. *Filling of vacancies*:—(1) If the services of the chairman of a Board or of the chairman or other member of a Court or a Tribunal cease to be available at any time, the appropriate Government shall, in the case of a chairman and may in the case of any other member, appoint another independent person to fill the vacancy, and the proceedings shall be continued before the Board, Court or Tribunal so reconstituted.

(2) Where a Court or a Tribunal consist of one person only and his services cease to be available, the appropriate Government shall appoint another independent person in his place, and the proceedings shall be continued before the person so appointed.

(3) Where the services of any member of a Board other than the chairman have ceased to be available, the appropriate Government shall appoint in the manner specified in sub-section (3) of section 5 another person to take his place, and the proceedings shall be continued before the Board so reconstituted.

9. *Finality of orders constituting a Board, a Court or Tribunal.*—No order of the appropriate Government appointing any person as a member of a Board, Court, or Tribunal shall be called in question in any manner.

CHAPTER III

Reference of Disputes to Boards, Courts or Tribunals.

10. *Reference of disputes to Boards, Courts or Tribunals*—(1) If any industrial dispute exists or is apprehended, the appropriate Government may, by order in writing—

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

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

(c) refer the dispute to a Tribunal for adjudication:

Provided that where the dispute relates to a public utility service and a notice under section 22 has been given, the appropriate Government shall, unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make a reference under this sub-section notwithstanding hat any other proceedings under this Act in respect of the dispute may have commenced.

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

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

COMMENT

This section provides that where an industrial dispute exists or is aprehended the appropriate Government may refer it to a Board for promoting a settlement thereof, or to a Court for inquiry or to a Tribunal for adjudication. It is perfectly discretionary with the appropriate Government to make or not to make a reference at all. Also the appropriate Government may in its discretion make reference to any of the bodies as it thinks fit. But if the dispute relates to a public utility service and a notice of strike or lockout is given, the appropriate Government is bound to make a reference to any of the bodies under this section, unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient to do so.

Under sub-section (2) where the parties to an industrial dispute apply either jointly or separately for reference of the dispute to a Board, Court or Tribunal the appropriate Government is bound to make a reference accordingly if satisfied that the persons applying represent majority of each party. Thus no option is left to the appropriate Government to refuse to refer a dispute to a Court, Board or Tribunal when the Government is assured that both parties are agreed as to the necessity of reference and the form which it should take.

Reference to a Board, Court or Tribunal:

There is a vast difference between the powers and functions of a Board of Conciliation, Court of Inquiry and an Industrial Tribunal. The duty of a Board is to endeavour to induce the parties to come to a settlement, but neither of the parties is under an obligation to accept its advice. The duty of a Court of Inquiry is to enquire into the matter referred to it and to make a report thereon. Neither party will be bound to accept its findings. The function of an Industrial Tribunal is to make an award which will be binding on the parties subject to the provision of section 15.

The powers of and procedure before a Board of Conciliation are prescribed in section 13, those of a Court of Inquiry are laid down in section 14 and those of an Industrial Tribunal are laid down in section 15.

Existence of an industrial dispute:

It may be noted that the jurisdiction to make a reference to a Court, Board or a Tribunal arises only when there is an existence or apprehension of an industrial dispute. Thus where the workers of a company demanded bonus at a certain rate and threatened strike if the demand was not granted, the Government referred the dispute to an Adjudicator under rule 81 A of Defence of India Rules which read with Trade Disputes Act empowered the Government to refer a dispute in case of existence or apprehension of a "trade dispute" (a word of the same import as the word "industrial dispute"). It was contended that the bonus was an *ex gratia* payment and therefore there was no "trade dispute" within the meaning of ths word and therefore the action of the Government referring the dispute to an Adjudicator was *ultra vires* and without jurisdiction. It was held overruling the contention that in any judgment as soon as the appellant company refused to comply with this demand which it was in their unfetterred discretion to grant, it is quite impossible to say that there was no dispute or difference between the employers and their workmen which was connected with the terms of employment.....Even accepting that the primary meaning of the word "bonus" is "gift" or "gratuity", it is not asked as a matter of patronage or bounty. It is demanded and strike action is threatened if such demand is not complied with. So that as soon as demand is declined, all the elements of a trade dispute arise". Kania J. in the same case observed "while the appellants contend that it is an *ex gratia* payment and for the present discussion it does not matter whether it is described as bonus or otherwise, the respondents contend that it is not so. The appellants contend that the workmen are not entitled under the terms of their employment to the same while the respondents contend that it is not so. If so, in my opinion it is clearly a dispute between the parties as regards the terms of employment and is covered by section 3 of the Trade Disputes Act and rule 81 A of the Defence of India Rules[1]".

Sub-section 3:—"Where on the date of reference to conciliation or adjudication, a strike or lock-out is already in existence, power is given to the appropriate Government to prohibit its continuance lest chances of settlement or speedy determination of the dispute should be jeopardised."[2]

CHAPTER IV

Procedure, Powers and Duties of Authorities.

11. *Procedure and powers of conciliation officers, Boards, Courts and Tribunals.*—(1) Conciliation officers, Boards, Courts and Tribunals shall, subject to the provisions of this Act, follow such procedure as may be prescribed.

(2) A conciliation officer or a member of a Board, Court, or Tribunal may for the purpose of inquiry into any existing or

[1] Indian Hume Pipe Company v/s E. M. Nanawaty A. I. R. 1947 Bom. 42=48 B. L. R. 551.

[2] Statement of Objects and Reasons.

apprehended industrial dispute, after giving reasonable notice, enter the premises occupied by any establishment to which the disputes relates.

(3) Every Board, Court and Tribunal shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (V of 1908), when trying a suit, in respect of the following matters, namely—

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

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

(c) issuing commissions for the examination of witnesses ;

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

and every inquiry or investigation by a Board, Court or Tribunal, shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (XLV of 1860).

(4) A conciliation officer may call for and inspect any document which he has ground for considering to be relevant to the industrial dispute.

(5) With the consent of all parties to the dispute, a Court or Tribunal may, if it so thinks fit, appoint one or more persons as assessors to advise it in the proceedings.

(6) Every conciliation officer and every member of a Board, Court or Tribunal shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (XLV of 1860).

COMMENT

Clauses (1) and (3) of this section correspond to s. 9 of the Trade Disputes Act.

12. *Duties of conciliation officers.*—(1) When any industrial dispute exists or is apprehended, the conciliation officer may, or where the dispute relates to a public utility service and a notice under s. 22 has been given, shall, hold conciliation proceeding in the prescribed manner.

(2) The conciliation officer shall, for the purpose of bringing about a settlement of the dispute, without delay investigate the dispute and all matters affecting the merits and the right settlement

thereof and may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

(3) If a settlement of the dispute or of any of the matter in dispute is arrived at in the course of the conciliation proceeding the conciliation officer shall send a report thereof to the appropriate Government together with a memorandum of the settlement signed by the parties to the dispute.

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

(5) If, on a consideration of the report referred to in sub-section (4), the appropriate Government is satisfied that there is a case for reference to a Board or Tribunal, it may make such reference. Where the appropriate Government does not make such reference it shall record and communicate to the parties concerned its reasons therefor.

(6) A report under this section shall be submitted within 14 days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate Government.

COMMENT.

Scope of the section :—"The Bill also seeks to reorient the administration of the conciliation machinery provided in the Trade Disputes Act. Conciliation will be compulsory in all disputes in public utility services and optional in case of other industrial establishments with a view to expedite conciliation proceedings, time limits having been prescribed for conclusion thereof–14 days in case of conciliation officer and two months in case of Board of conciliation".[1]

Where an industrial dispute exists or is apprehended, the conciliation officer may hold the conciliation proceedings–it is discretionary with him to hold the proceedings. But if a notice of strike or lock-out in a public utility service is given under s. 22 it is obligatory on him to hold the conciliation proceedings. Under s. 10 when such notice is given the appropriate Government is bound to refer the dispute to a Board, Court, or Tribunal. It seems there would be two proceedings at one time in such a case, one to be held by a the conciliation officer and the other to be held by the Board or Court or the

[1] Statement of Objects and Reasons

Tribunal, to whom the matter has been referred. There is no express provision enjoining that the proceedings before a conciliation officer should be stopped in such a case. The reason seems to be that the conciliation officer has to conclude his proceedings within a short period of 14 days.

Powers of Conciliation Officers:

The duty of a conciliation officer is to hold conciliation proceedings with a view to settlement of the industrial dispute and to use his best endeavours to induce the parties to come to a settlement, but he has no power to force the parties to arrive at a settlement, nor are the parties bound to accept his advice. If the parties do not arrive at a settlement, he has to make a report to the appropriate Government. Such report is to be made within 14 days of the commencement of the conciliation proceedings or such shorter period as may be fixed by the Government.

13. *Duties of Boards.*—(1) Where a dispute has been referred to a Board under this Act, it shall be the duty of the Board to endeavour to bring about a settlement of the same and for this purpose the Board shall in such manner as it thinks fit and without delay, investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all such things as it thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

(2) If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings, the Board shall send a report thereof to the appropriate Government together with a memorandum of the settlement signed by the parties to the dispute.

(3) If no such settlement is arrived at, the Board shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the proceedings and steps taken by the Board for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, its findings thereon, the reasons on account of which, in its opinion a settlement could not be arrived at and its recommendations for the determination of the dispute.

(4) If, on the receipt of a report under sub-section (3) in respect of a dispute relating to a public utility service, the appropriate Government does not make a reference to a Tribunal under s. 10. it shall record and communicate to the parties concerned its reasons therefor.

(5) The Board shall submit its report under this section within two months of the date of the notice under section 22 or within such shorter period as may be fixed by the appropriate Government:

Provided that the appropriate Government may from time to time extend the time for submission of the report by such further periods not exceeding two months in the aggregate:

Provided further that the time for the submission of the report may be extended by such period as may be agreed in writing by all the parties to the dispute

COMMENT.

The duty of a Board is to endeavour to induce the parties to come to a settlement but neither party is under an obligation to accept its advice.

The powers and duties of a Board of Conciliation under this Act are similar to that of a Board of Conciliation constituted under the Bombay Industrial Disputes Act and The Bombay Industrial Relations Act.

"Neither party will be under any obligation to accept the findings of the Court or the advice of the Board where the dispute is not brought to an end during the deliberations of the Tribunal (i. e. Board or Court and not the Industrial Tribunal) that has been appointed. Reliance is placed on the force of public opinion which will be enabled by the publication of the report to arrive at just conclusions on the merits of the dispute"[1]

14. *Duties of Courts.*—A Court shall inquire into the matters referred to it and report thereon to the appropriate Government ordinarily within a period of six months from the commencement of its inquiry.

COMMENT

"The object of a Court of Inquiry which will ordinarily be composed of persons having no direct interest in the dispute will be to investigate and report on such questions connected with the dispute as may be referred to them"[2]

The findings of a Court of Inquiry are not binding on the parties. The report of the Court would help the public to arrive at just conclusions on the merit of the dispute.

15. *Duties of Tribunals.*—(1) Where an industrial dispute has been referred to a Tribunal for adjudication, it shall hold its proceedings expeditiously and shall as soon as practicable on the conclusion thereof, submit its award to the appropriate Government.

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[1] Statement of Objects and Reasons of the Trade Disputes Act, 1929

[2] Statement of Objects and Reasons of the Trade Disputes Act, 1929.

(2) On receipt of such award, the appropriate Government shall by order in writing declare the award to be binding :

Provided that where the appropriate Government is a party to the dispute aud in its opinion it would be inexpedient on public grounds to give effect to the whole or any part of the award, it shall on the first available opportunity lay the award together with the statement of its reasons for not making a declaration as aforesaid before the Legislative Assembly of the province or where the appropriate Government is the Central Government before the Central Legislative Assembly, and shall, as soon as may be, cause to be moved therein a resolution for the consideration of the award; and the Legislative Assembly may, by its resolution confirm, modify or reject the award.

(3) On the passing of the resolution under the proviso to sub section (2), unless the award is rejected thereby, the appropriate Government shall by order in writing declare the award as confirmed or modified by the resolution, as the case may be, to be binding.

(4) Save as provided in the proviso to sub-section (3) of section 19, an award declared to be binding under this section shall not be called in question in any manner.

COMMENT.

Industrial Tribunals and its Powers :

The fundamental change effected by this Act is the creation of Industrial Tribunals with powers to make conclusive and binding awards. There was no such provision in the Trade Disputes Act, 1929. It was considered to be a serious defect in that Act and the absence of binding nature of the proceedings under that Act was perhaps the cause why that Act was very infrequently used. During the World War II, rule 81A of the Defence of India Rules empowered the Government to refer industrial disputes for adjudication to the Adjudicators and to make the award binding. This power was very largely used and together with provisions for prohibition of strikes and lock-outs without notice, was perhaps the cause of remarkable industrial peace and peaceful settlement of industrial disputes during the war. After the end of the war the provisions of rule 81A were kept up in force by the Emergency Powers (continuation) Ordinance 1946 for a further period of six months. As rule 81A proved useful in its purpose it was thought necessary to have permanent legislation embodying the same principles. The creation of Tribunals with powers to make binding awards embodies those principles. The difference is that under the rule 81A of Defence of India Rules there was no permanent Tribunal like an Industrial Tribunal, but every dispute was referred to an adjudicator appointed for the purposes of the industrial dispute in question.

Also the Government was not bound to make an order declaring an award of the adjudicator to be binding. It was descretionary with them to make an award binding or not. But under this Act, the Government is under an obligation to make an award binding except in the cases coming within the proviso to section 15 (2).

"Experience of the working of the Trade Disputes Act, 1929 has revealed that its main defect is that while restraint has been imposed on the rights of of strike and lock-out in public utility services no provision has been made to render the proceedings institutable under the Act, for settlement of an industrial dispute either by reference to a Board of Conciliation or to a Court of Inquiry, conclusive and binding on the parties to the dispute. This defect was overcome, during the war by empowering under rule 81A of the Defence of India Rules, the Central Government to refer industrial disputes to adjudicators and to enforce their award. Rule 81A, which was to lapse on 1st October 1946 is being kept in force by the Emergency Powers (continuation) Ordinance 1946 for a further period of six months; and as the industrial unrest in checking which this rule has proved useful is gaining momentum due to the stress of post-war industrial readjustment, the need for permanent legislation in replacement of this rule is self-evident. This bill embodies the essential principles of rule 81A, which have proved generally acceptable to both employers and workmen retaining intact for the most part, the provisions of the Trade Disputes Act, 1929"[1]

This section prescribes the functions of Industrial Tribunal. Unlike the Board of conciliation and the Court of Inquiry, the Tribunal has the power to make a binding and conclusive award. It may be noted that unlike the award of the Industrial Court under the Bombay Industrial Relations Act, the award of an Industrial Tribunal is not *ipso facto* binding. It is to be made binding by written order of the appropriate Government. Of course, the Government is bound to make such order except in cases where it is a party and is of the opinion that it would be inexpedient on public grounds to give effect to the whole of the award. In such cases the award together with the statement of its reasons must be placed before the appropriate Legislative Assembly which may either confirm, reject or modify the award. If the award is not rejected the award as modified or confirmed by the Legislative Assembly must be made binding by the Government.

Compulsory and Voluntary Arbitration :

By this section and section 10 provision is made for compulsory and voluntary reference of industrial disputes. Sub-section (2) of section 10 enacts that if the parties agree to refer the dispute to a Tribunal for adjudication thereof, the appropriate Government is bound on an application being made to it to make the reference. It would be voluntary reference to Arbitration. Under sub-section (i) of S. 10 the appropriate Government may in its descretion refer an industrial dispute to an Industrial Tribunal for adjudication

1 Statement of Objects and Reasons.

irrespective of the wishes of the parties. It would be compulsory reference to the arbitration of an Industrial Tribunal. The award of an Industrial Tribunal would be made binding under this section.

"A reference to an Industrial Tribunal will lie where both parties to an industrial dispute apply for such reference and also where appropriate Government considered it expedient so to do. An award of a Tribunal may be enforced either wholly or in part by the appropriate Government for a period not exceeding one year. The power to refer industrial disputes to Industrial Tribunals and enforce their awards is an essential corrollary to the obligation that lies on the Government to secure conclusive determination of disputes with a view to redressing legitimate grievances of parties thereto, such obligations arising from imposition of restraints on the rights of strikes and lock-outs which must remain inviolate except where considerations of public interest override such rights."[1]

Duration of Awards

S. 19 provides for the duration of the award which remains in force for such period not exceeding one year, as may be fixed by the appropriate Government. Provision is also made for an alteration in the period of duration fixed by the Government, if such change is necessary.

16. *Form of report or award.*—The report of a Board or Court and the award of a Tribunal shall be in writing and shall be signed by all the members of the Board, Court or Tribunal, as the case may be :

Provided that nothing in this section shall be deemed to prevent any member of the Board, Court or Tribunal from recording a minute of dissent from a report or award from any recommendation made therein.

COMMENT.

The report of a Board, a Court or the award of a Tribunal must be in writing but need not be unanimous.

17. *Publication of reports and awards.*—The report of a Board or Court and the award of a Tribunal, together with any minute of dissent recorded therewith, shall within a period of one month from the date of its receipt by the appropriate Government be published in such manner as it thinks fit.

COMMENT.

The publication of the report of a Board or Court and of the award of a Tribunal is compulsory. The object of compulsory publication of a report or an award is to acquaint the public with true state of things so that the public may arrive at just conclusions on the merits of the dispute, and the force of public opinion may be brought to bear on the parties.

1. Statement of Objects and Reasons.

18. *Persons on whom settlements and awards are binding.*— A settlement arrived at in the course of conciliation proceedings under this Act or an award which is declared by the appropriate Government to be binding under sub-section (2) of section 15 shall be binding on—

(a) all parties to the industrial dispute ;

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

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

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

COMMENT

This section lays down on whom a settlement or an award would be binding. Clause (d) makes a settlement or award binding in cases where a party is composed of workmen in an establishment or part thereof, on all the present and future workmen in the establishment or part, as the case may be.

19. *Periods of operation of settlements and awards—(1).* A settlement arrived at in the course of a conciliation proceeding under this Act shall come into operation on such date as is agreed upon, on the date on which the memorandum of settlement is signed by the parties to the dispute.

(2) Such settlement shall be binding for such period as is agreed upon by the parties, and if no such period is agreed upon, for a period of six months, and shall continue to be binding on the parties after the expiry of the period aforesaid, until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement.

(3) An award declared by the appropriate Government under section 15 to be binding shall come into operation on such date as

may be specified by the appropriate Government and shall remain in operation for such period, not exceeding one year, as may be fixed by that Government :

Provided that if, of its own motion or on the application of any party bound by the award, the appropriate Government considers that there has been a material change in the circumstances on which the award was based, it may refer the award to a Tribunal for a decision whether or not the award should, by reason of such change cease to be in operation before the expiry of the period so fixed, and the period of operation of the award should be determined by the decision of the tribunal on such reference

COMMENT

This section provides for the commencement, the period of operation and the termination of a settlement or an award. Sub-sections (1) and (2) deal with a settlement and snb-section (3) deals with an award. A settlement comes into operation on the day agreed upon by the parties and if no day is agreed upon, from the date on which the memorandum of settlement is signed by the parties.

A settlement would be in force for the period agreed upon by the parties and if no period is agreed upon by the parties, then at least for six months and thereafter it can be terminated only by a two months notice in writing of an intention to terminate it given by one party to the other party. Till the expiry of such a notice the settlement continues to be binding.

An award declared to be binding by an order of the appropriate Government comes into operation on such date as may be specified and shall remain in force for such period not exceeding one year as may be fixed by the Government. The method of determination before the period so fixed is as follows:— If the appropriate Government considers *suo moto or* on an application by a party that on account of material change in the circumstances the award should be determined, it may refer the award to a Tribunal for a decision whether the award should be so determined and the Tribunal shall decide when it should be determined.

20. *Commencement and conclusion of proceedings.*—(1) A conciliation proceeding shall be deemed to have commenced on the date on which a notice of strike or lock-out under s. 22 is received by a conciliation officer or on the date of the order referring the dispute to a Board, as the case may be.

(2) A conciliation proceeding shall be deemed to have concluded—

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

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

(c) when a reference is made to a Court or Tribunal under s. 10 during the pendency of conciliation proceedings.

(3) Proceedings before a Tribunal shall be deemed to have commenced on the date of reference of a dispute for adjudication and such proceedings shall be deemed to have concluded when the award is published by the appropriate Government under s. 17, or when an award has been laid before the Legislative Assembly under the proviso to sub-section (2) of s. 15, when the resolution of the Legislative Assembly thereon is passed.

COMMENT

This section lays down as to when the conciliation proceedings and the proceedings before a Tribunal are deemed to be commenced and concluded. These provisions are of practical importance because no strike or lock-out can be commenced or declared during the pendency of conciliation proceedings and the proceedings before a Tribunal and some time thereafter as laid down in sections 22 and 23.

Commencement of Conciliation Proceedings:

It may be noted that the conciliation proceedings are deemed to commence when a notice of strike or lock-out under section 22 is received by a conciliation officer or on the date of the order referring the dispute to a Board as the case may be. Under s. 22 a 14 days' notice of strike or lock-out in a public utility service must be given and on the receipt of the said notice by the conciliation officer, the conciliation officer is bound to hold conciliation proceedings. Therefore the date of the receipt of the notice by the conciliation officer is made the date of commencement of conciliation proceedings. But under s. 12 a conciliation officer has discretionary power to hold conciliation proceedings in case of an industrial dispute in other establishments. But even if in such a case he thinks fit to hold conciliation proceedings there is no prohibition of strikes and lock-outs during the pendency of such proceedings. And therefore there is no provision as to when such proceedings shall be deemed to have commenced.

Conclusion of Conciliation Proceedings:

A conciliation proceeding is deemed to be concluded when the report of the conciliation officer is received by the appropriate Government, or when the report of the Board is published. How is a party to know that the report of the conciliation officer is received by the Government? This provision is rather not happy.

21. *Certain matters to be kept confidential.*—There shall not be included in any report or award under this Act any information obtained by a conciliation officer, Board, Court or Tribunal in the course of any investigation or inquiry as to trade union or as to any individual business (whether carried on by a person, firm, or company) which is not available otherwise than through the evidence given before such officer, Board, Court or Tribunal, if the trade union, person, firm or company in question has made a request in writing to the conciliation officer, Board, Court or Tribunal, as the case may be, that such information shall be treated as confidential ; nor shall such conciliation officer or any individual member of the Board, Court or Tribunal or any person present at or concerned in the proceedings disclose any such information without the consent in writing of the secretary of the trade union or the person, firm or company in question, as the case may be :

Provided that nothing contained in this section shall apply to a disclosure of any such information for the purposes of prosecution under section 193 of the Indian Penal Code (XLV of 1860).

CHAPTER V

Strikes and lock-outs :

22. *Prohibition of strikes and lock-outs.*—(1) No person employed in a public utility service shall go on strike in breach of contract—

(a) without giving to the employer notice of strike, as hereinafter provided, within six weeks before striking ; or

(b) within fourteen days of giving such notice ; or

(c) before the expiry of the date of strike specified in any such notice as aforesaid ; or

(d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

(2) No employer carrying on any public utility service shall lock-out any of his workmen—

(a) without giving them notice of lock-out as hereinafter provided, within six weeks before locking out ; or

(b) within fourteen days of giving such notice ; or

(c) before the expiry of the date of lock-out specified in such notice as aforesaid ; or

(d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

(3) The notice of lock-out or strike under this section shall not be necessary where there is already in existence a strike or, as the case may be, lock-out in the public utility service, but the employer shall send intimation of such lock-out or strike on the day on which it is declared, to such authority as may be specified by the appropriate Government either generally or for a particular area or for a particular class of public utility service.

(4) Notice of strike referred to in sub-section (1) shall be given by such number of persons to such person or persons and in such manner as may be prescribed.

(5) The notice of lock-out referred to in sub-section (2) shall be given in such manner as may be prescribed.

(6) If on any day an employer receives from any persons employed by him any such notices as are referred to in sub-section (1) or gives to any person employed by him any such notices as are referred to in sub-section (2), he shall within 5 days thereof report to the appropriate Government or to such authority as that Government may prescribe the number of such notices received or given on that day.

COMMENT

This section corresponds to section 15 of the Trade Disputes Act 1929; but there have been some necessary changes.

Object of the Provisions as to Notice:

"The clause is based on the principle that persons whose work is vital to the welfare to the community should not be entitled to enter into a strike before sufficient time is given to examine into the merits of their grievances and to explore the possibilities of arriving at a peaceful settlement. Provisions of a somewhat similiar type already exist in the Indian Post Office Act and in a number of Municipal Acts in India and the principle is one which is widely accepted in other countries."[1]

"We have decided to accept the principle of this clause which, however, as originally drafted was open to certain criticisms. For example, it was pointed out that many persons are actually employed upon daily wages which is in practice paid monthly; also that the clause would appear to penalise abstention from work on the part of a particular individual; and further that the clause is one-sided and inflicts no penalty upon an employer who locks-out his workmen. The latter point is, we think, one which certainly must be met and as by the nature of his employment, a casual or day to day labourer must be entitled to cease work at any moment and be similiarly liable to dismissal. We Agree that he should be excluded altogether from the operation of

1. Statement of Objects and Reasons of the Trade Disputes Act, 1929.

this clause. We have accordingly adopted a suggestion made by the Bombay Government which makes it clear that the cessation of work must be in the nature of a strike as defined in the Bill, and we have provided that in order to render it a penal offence, the strike must be in breach of definite contract between the employer and workmen; we further made a collateral provision penalising an employer for locking-out his workmen in breach of any contract"[1]

23. *General prohibition of strike and lock-outs.*—No workman who is employed in any industrial establishment in breach of contract and no employer of any such workman shall declare a lock-out—

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

(b) during the pendency of proceedings before a Tribunal and two months after the conclusion of such proceedings ; or

(c) during any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award.

COMMENT.

Scope of the Section:

"Another important new feature of the bill relates to the prohibition of strikes and lock-outs during the pendency of conciliation and adjudication proceedings of settlement reached in the course of conciliation proceedings and of awards of Industrial Tribunals declared binding by the appropriate Government. The underlying argument is that where a dispute has been referred to conciliation or adjudication a strike or lock-out in furtherance thereof is both unnecessary and inexpedient"[2]

This section is general and the prohibition contained in it applies to strikes and lock-outs in all industrial concerns including the public utility services. Thus restriction on a strike or lock-out in a public utility service or those contained in this section in addition to those contained in section 22, while the restriction on strikes and lock-outs in other industrial establishments are only those contained in this section.

Conciliation Proceedings before Conciliation Officers:

Sub-clause (a) prohibits strikes and lock-outs during the pendency of conciliation proceedings before a Board. But it is silent as to conciliation proceedings held by conciliation officer. In cases where a conciliation officer holds conciliation proceedings in respect of an industrial dispute in any establishment other than a public utility service, strikes or lock-outs are not prohibited during the pendency of such proceedings. In case of a public utility service strikes and lock-outs during pendency of conciliation proceedings held by a conciliation officer are prohibited by s. 22.

1. Report of the Select Committee on the Trade Disputes Act, 1929.
2. Statement of Objects and Reasons.

It may be noted that no notice of strike or lock out is necessary in case of industrial establishment other than public utility service The workmen can go on a strike and the employer can declare a lock-out without any previous notice or preliminary ceremony. It is only when the appropriate Government takes action under s. 10 by referring the dispute to a Board or Tribunal, that strikes and lock-outs are prohibited as laid down in this section.

It may also be noted that workmen would be at liberty to go on a strike and the employer to declare a lock-out seven days after the conclusion of conciliation proceedings if the proceedings fail.

S. 20 lays down that a conciliation proceeding shall be deemed to have concluded.

S. 24 makes illegal the strikes and lock-outs in contravention of s 22 and 23 and section 10 (3) and section 26 provide penalty therefor.

24. *Illegal strikes and lock-outs.*—(1) A strike or a lock-out shall be illegal if—

(i) it is commenced or declared in contravention of section 22 or section 23 ; or

(ii) it is continued in contravention of an order made under sub section (3) of section 10.

(2) Where a strike or a lock-out in persuance of an industrial dispute has already commenced and is in existence at the time of the reference of the dispute to a Board, or Tribunal, the continuance of such strike or lock-out shall not be deemed to be illegal, provided that such strike or lock-out was not at its commencement in contravention of the provisions of this Act or the continuance thereof was not prohibited under sub-section (3) of section 10.

(3) A lock-out declared in consequence of an illegal strike or a strike declared in consequence of an illegal lock out shall not be deemed to be illegal

COMMENT.

Difference Between Illegal Strikes and Lock-outs Under this Act and B. I. R. Act :

It may be noted that the difinition of "strike" and "look out" are much wider than the definition of these terms in the B. I R. Act. Also the restrictions on a strike or a lock-out are also different Therefore what is an illegal "strike" or "look-out" under that Act is not necessarily an illegal "strike" or "look-out" under this Act. In cases under this Act whether there is an illegal "strike" or "look-out" is to be determined with reference to the provisions of this Act.

Illegal strike :

In order to prove an illegal strike the following must be proved.

(1) There was a cessation of work by a body of persons employed in any industry or refusal to continue to work or accept employment.

(2) Such cessation of work was by workmen acting in combination or refusal to work was concerted or under a common understanding.

(3) Such cessation of work or refusal to work was in breach of contract and

(4) It was in contravention of the provisions of sections 22 and 23 in case of a public utility service and of section 23 in case of other industrial establishment.

or

It was continued in contravention of an order made under section 10 (3).

Section 26 (1) provides penalty for an illegal strike.

Illegal Lock-out—

In order to prove an illegal lock-out, the following must be proved:—

(1) There was a closing of a place of employment or suspension of work or refusal by an employer to continue to employ any number of persons employed by him.

(2) It was in breach of a contract and

(3) It was in contravention of the provisions of sections 22 and 23 in case of a public utility service and of section 23 in case of other industrial establishment.

or

It was in contravention of an order under s. 10 (3).

S. 26 (2) provides penalty for an illegal lock-out.

25. *Prohibition of financial aid to illegal strikes and lock-outs* —No person shall knowingly expend or apply any money in direct furtherance or support of any illegal strike or lock-out.

CHAPTER VI

Penalties

26 *Penalty for illegal strikes and lock-outs.*—(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 with both.

(2) Any employer who commences, continues, or otherwise acts in furtherance of a lock-out 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 one thousand rupees, or with both.

27. *Penalty for instigation, etc.*—Any person who instigates or incites others to take part in, or otherwise acts in furtherance

of a strike or lock-out which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

28. *Penalty for giving financial aid to illegal strikes and lock-outs.*—Any person who knowingly expends or applies any money in direct furtherence or support of any illegal strike or lock-out shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.

29. *Penalty for breach of settlement or award.*—If any person commits a breach of any term of any settlement or award which is binding on him under this Act, he shall on his first conviction therefor be punishable with fine which may extend to two hundred rupees and in the event of a second or subsequent conviction, with fine which may extend to five hundred rupees.

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

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

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

COMMENT

This chapter provides penalties for offences under the Act. It may be noted that prosecutions for offences under the Act cannot be launched except on a complaint made by or under the authority of the appropriate Government.[1]

1 S. 34.

CHAPTER VII

Miscellaneous

32. *Offence by companies, etc.*—Where a person committing an offence under this Act is a company, or other body corporate, or an association of persons (whether incorporated or not), every director, manager, secretary, agent or other officer or person concerned with the management thereof shall, unless he proves that the offence was committed without his knowledge or consent, be deemed to be guilty of such offence.

COMMENT

By virtue of this section every director, manager, secretary agent or other officer concerned with the management of a delinquent company is to be deemed to be guilty of the offence unless he proves that the offence was committed without his knowledge or consent. It appears that the penalty imposed by this section on the directors etc. of the company is in addition to and not in lieu of the penalty that would be incurred by the company itself for the offence.

33. *Condition of service, etc., to remain unchanged during pendency of proceedings.*—No employer shall during the pendency of any conciliation proceedings or proceedings before a Tribunal, in respect of any industrial dispute, alter to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceedings, nor, save with the express permission in writing of the conciliation officer, Board or Tribunal, as the case may be, shall he during the pendency of such proceedings, discharge, dismiss or otherwise punish any such workmen, except for misconduct not connected with the dispute.

COMMENT

This section prohibits the employer from altering the conditions of service to the prejudice of the workmen concerned in the dispute, and from dismissing or discharging such workmen except for misconduct unconnected with the dispute during the pendency of conciliation proceedings or the proceedings before a Tribunal. The object is to prevent the employer from bringing undue pressure on the workmen by dispensing with their services or by altering the conditions of employment. The right of the emloyer to dismiss a workman for a misconduct unconnected with the dispute is kept unimpaired. The contravention of the terms of this section renders the emloyer punishable under S. 31 (1).

34. *Cognizance of offences.*—(1) No Court shall take cognisance of any offence punishable under this Act or of the abetment of any such offence, save on complaint made by or under the authority of the appropriate Government.

(2) No Court inferior to that of a presidency magistrate or a magistrate of the first class shall try any offence punishable under this Act.

COMMENT

No complaint for an offence under this Act can be instituted save by the or under the authority of the appropriate Government. The party affected cannot make a complaint.

35. *Protection of persons.*—(1) No person refusing to take part or to continue to take part in any strike or lock-out which is illegal under this Act shall, by reason of such refusal or by reason of any action taken by him under this section, be subject to expulsion from any trade union or society, or to deprivation of any right or benefit to which he or his legal representatives would othewise be entitled, to be liable to be placed in any respect, either directly or indirectly, under any disability or at any disadvantage as compared with other members of the union or society, any thing to the contrary in the rules of a trade union or society notwithstanding.

(2) Nothing in the rules of a trade union or society requiring the settlement of disputes in any manner shall apply to any proceeding for enforcing any right or exemption secured by this section, and in any such proceeding the Civil Court may, in lieu of ordering a person who has been expelled from membership of a trade union or society to be restored to membership, order that he be paid out of the funds of the trade union or society such sum by way of compensation or damages as that Court thinks just.

36. *Representation of parties*—A workman who is a party to an industrial dispute shall be entitled to be represented in any proceedings under this Act by an officer of a registered trade union, and any employer who is a party to an industrial dispute shall be entitled to be represented in any such proceedings by an officer of an association of employers.

(2) No party to an industrial dispute shall be entitled to be represented by a legal practitioner in any conciliation proceedings under this Act.

(3) A party to an industrial dispute may be represented by a legal practitioner in any proceedings before a Court or Tribunal.

37. *Protection of action taken under the Act.*—No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in persuance of this Act or any rules made thereunder.

38. *Power to make rules*—(1) The appropriate Government may, subject to the condition of previous publication, make rules for the purpose of giving effect to the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

(a) the powers and procedure of conciliation officer's Boards, Courts and Tribunals including rules as to the summoning of witnesses, the production of documents relevant to the subject matter of inquiry or investigation, number of members necessary to form quorum and the manner of submission of reports and awards ;

(b) the constitution and function of and the filling of vacancies in works committees, and the procedure to be followed by such committees in the discharge of their duties ;

(c) the allowances admissible to members of Courts, Boards, and Tribunals and to assessors and witnesses ;

(d) the ministerial establishment which may be allotted to Court, Board or Tribunal and the salaries and allowances payable to members of such establishments ;

(e) the manner in which and the persons by and to whom notice of strike or lock-out may be given and the manner in which such notices shall be communicated ;

(f) the conditions subject to which parties may be represented by legal practitioners in proceedings under this Act before a Court or Tribunal ;

(g) any other matter which is to be or may be prescribed.

(3) Rules made under this section may provide that a contravention thereof shall be punishable with fine not exceeding fifty rupees.

39. *Delegation of power.*—The appropriate Government may by order direct that its power under section 3 shall, in such circum-

stances and under such conditions, if any, as may be specified in the order, be exercised by any officer or authority subordinate to that Government.

40. *Repeal of Act VII of 1929.*—The Trade Disputes Act, 1929, is hereby repealed.

THE SCHEDULE

Industries which may be declared to be public utility service under sub-clause (vi) of clause (n) of section 2.

1. Transport (other than railways) for the carriage of passengers or goods by land, water or air.
2. Coal.
3. Cotton textiles.
4. Foodstuffs.
5. Iron and steel.

RULES MADE BY THE GOVERNMENT OF BOMBAY UNDER INDUSTRIAL DISPUTES ACT, 1947 (XIV of 1947).

Political and Services Department

Bombay Castle, 15th September 1947.

Industrial Disputes Act, 1947.

No. 575/46.—In exercise of the powers conferred by section 38 of the Industrial Disputes Act, 1947 (XIV of 1947), the Government of Bombay is pleased to make the following rules namely :—

Preliminary

1. *Short title.*—These rules may be called the Industrial Disputes (Bombay) Rules, 1947.

2. *Difinitions.*—(1) In these rules, unless there is anything repugnant in the subject or context—

(*a*) "Act" means the Industrial Disputes Act, 1947.

(*b*) "Chairman" means—

(*i*) the Chairman of a Tribunal and in the absence of the Chairman such person as may be elected by the members present at a hearing to be the Chairman for the time being ;

(*ii*) if the Tribunal consists of one person only, such person.

(*c*) "Form" means a form appended to these rules.

(*d*) "Trade union" means a trade union registered under the Indian Trade Unions Act, 1926 ;

(*e*) "Section" means a section of the Act.

(2) Words and expressions not defined in these rules shall have the meanings assigned to them under the Act.

PART I.

3. *Application.*—An application for the reference of an industrial dispute to Tribunal shall be made in Form I and shall be forwarded by registered post in triplicate to the Director of Labour Administration. The application shall be accompanied by a statement setting forth—

(*a*) the names and addresses of the parties to the dispute ;

(*b*) the nature and cause of the dispute, including any demands made by either party on the order to which exception is taken by the opposite party :

(*c*) an estimate of the number of workmen affected or likely to be affected by the dispute ;

(*d*) the efforts made by the parties themselves to adjust the dispute.

4. *Application by whom signed.*—The application and the statement accompanying it shall be signed—

(*a*) in the case of an employer, by the employer himself or where the employer is an incorporated company or other body corporate, by the agent, manager or the principal officer of the corporation ;

(*b*) in the case of workmen—

(*i*) where the majority of the workmen directly affected are members of a trade union, by the President, or Secretary or by such other officer of the union as may be authorized in this behalf by the union ;

(*ii*) in other cases by such representatives of the workmen directly affected not exceeding five as may be duly authorised in this behalf at a meeting of a majority of the workmen held for the purpose.

5. *Notification of reference.*—The reference of a dispute to a Tribunal under section 10 of the Act shall be notified by the Provincial Government in the *Official Gazette.*

PART II.

Powers, Procedure and Duties of Tribunals.

6. *Place and time of hearing.*—The sittings of a Tribunal shall be held at such times and places as are from time to time fixed by the Chairman, and parties shall be notified thereof by the Chairman in such manner as he may deem fit.

7. *Quorum.*—The quorum necessary to constitute a sitting of a Tribunal shall be as follows :—

	Quorum.
(*i*) Where the number of members is 3 or less	...
(*ii*) where the number of members is more than 32	...

8. *Notice to be served.*—On an industrial dispute being referred for adjudication to a Tribunal under section 10, the Tribunal shall cause notices to be served on the parties in forms II and III directing them to file their statements of claims or written statements, as the case may be, within a specified time.

9. *Evidence.*—A Tribunal may accept, admit or call for any evidence at any stage and in any manner which it thinks fit.

10. *Administration of oath.*—Any member of a Tribunal may administer an oath.

11. *Form of notice and summons.*—Notices to the parties and summonses to witnesses to appear before a Tribunal shall be in forms IV and V, respectively.

12. *Service of summons or notice.*—Every notice, summons, process or order issued or made by a Tribunal shall be served either by registered post or in any other manner prescribed under the Code of Civil Procedure, 1908

13. *Procedure at the first sitting.*—At the first sitting of a Tribunal the Chairman shall call upon the parties in such order as he may think fit to state their case.

14. *Information to be kept confidential.*—All books, papers and other documents or things produced before a Tribunal whether voluntarily or in pursuance of a summons may be inspected by the Tribunal and also by such parties as the Tribunal allows; but the information obtained therefrom shall not, except as provided in the Act, be made public; and such parts of the books, papers, documents or things as in the opinion of the Tribunal do not relate to the matters at issue may be sealed up.

15. *Conduct of proceedings of a Tribunal.*—A Tribunal may at any stage of a proceeding before it direct that any witness be examined or the proceeding be held *in camera*.

16. *Tribunal may proceed ex parte.*—If without good cause shown, any party to a proceeding before a Tribunal fails to attend or to be represented, the Tribunal may proceed *ex parte*

17. *Power of entry and inspection*—A Tribunal or any member thereof may, for the purposes of an adjudication, at all reasonable times enter any building, factory, workshop or other place or premises whatsoever and inspect the same or any work, machinery, appliances or article therein, or interrogate any person therein in respect of anything situated therein or any matter relevant to the subject-matter of the adjudication

18. *Powers of Tribunals.*—(1) In addition to the powers conferred by sub-section (3) of section 11 of the Act, Tribunals shall have the powers vested in Courts under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters:—

(*a*) discovery and inspection,

(*b*) granting adjournments,

(c) evidence on affidavits.

(2) A Tribunal may summon and examine *suo motu* any person whose evidence appears to it to be material for the purpose of adjudication.

19. *Decision by majority.*—All questions arising for decision at any meeting of a Tribunal shall, save where the Tribunal consists of one person, be decided by a majority of the votes of the members thereof (including the Chairman) present at the metting. In the event of an equality of votes, the Chairman shall also have a casting vote.

20. *Correction of errors.*—A Tribunal may correct any clerical mistake or error, arising from an accidental slip or omission in any award it issues.

21. *Right of Representatives.*—The representatives of the parties appearing before a Tribunal shall have the rights of examination, cross-examination and re examination of witnesses called by the Tribunal and of addressing the Tribunal on the completion of the taking of evidence.

Provided that save with the permission of the Tribunal not more than one representative of any party shall exercise any such rights.

PART III.

Remuneration of Members of Tribunals. Assessors and Witnesses, and Establishment.

22. *Travelling allowance.*—A member of a Tribunal, if a non-official, will be entitled to draw travelling allowance and halting allowance for any journey performed by him in connection with his duties as such member at the rates admissible and subject to the conditions applicable to a Government servant of the first grade under the Bombay Civil Services Rules.

23. *Fees.*—The Chairman and members of a Tribunal shall be granted such fees as may be sanctioned by the Provincial Government in each case.

24. *Allowances to assessors.*—Where assessors are appointed by a Tribunal they shall be paid such allowances as may be determined by the Provincial Government.

25. *Establishment* —The Provincial Government may appoint such persons to be the Secretary and clerks of a Tribunal as it may think necessary and may fix the salaries and allowances payable to them. Except where the Provincial Government otherwise directs, the Registrar of the Industrial Court Bombay, shall act as Secretary of every Tribunal constituted under the Act.

PART IV.

Miscellaneous.

26. Whenever any application, letter, summons, notice, statement or intimation, is required to be forwarded or served under any of these rules by registered post it shall be deemed to be sufficient compliance with these rules if such application, letter, summons, notice, statement or intimation is delivered by hand and an acknowledgment in writing, by or on behalf of the party to whom it is forwarded on whom it is intended to be served, is obtained in respect of such delivery.

FORM I.

(*See* rules 3 and 4).

Form of Application under Section 10 of the Industrial Disputes Act, 1947, for the reference of an industrial dispute to an Industrial Tribunal.

Whereas an industrial dispute *exists/is apprehended* between

and and it is expedient that

the matters specified in the appended statement which are connected with or relevant to the dispute

the dispute

should be referred for adjudication by an Industrial Tribunal an application is hereby made to the Government of Bombay under section 10 of the Industrial Disputes Act, 1947, that the said dispute should be referred to a Tribunal for adjudication.

2. This application is made on behalf of.....by the undersigned

being the* of the† Union of which the majority of the workmen directly

who have been duly authorised to make this application by ‡

affected are members

3. A statement giving the particulars of the dispute as required by rule 3 of the Industrial Disputes (Bombay) Rules, 1947, is appended hereto, duly signed.

Place

Date

Signature and designation of Applicant (s).

To

The Director of Labour Administration.

Bombay.

FORM II

(*See* rule 8).

(*Notice to file statement of claims in a Reference to Adjudication.*)

BEFORE INDUSTRIAL TRIBUNAL, BOMBAY.

No.....of.....

Between

AND

In the matter of .....

NOTICE

WHEREAS by Government Order, Political and Services Department, No. dated the

the above matter has been referred for adjudication to Industrial Tribunal constituted under the Industrial Disputes Act, 1947. PLEASE TAKE NOTICE that you are hereby required to file in this office on or before a statement of claims (in four copies) in connection with the said disputes and that a copy of the same should be

*Here state the official position of the signatories in the Union, e g., Secretary, President, etc.

†Here enter name of Union.

‡Here state the manner in which the authority was given.

(*c*) evidence on affidavits.

(2) A Tribunal may summon and examine *suo motu* any person whose evidence appears to it to be material for the purpose of adjudication.

19. *Decision by majority.*—All questions arising for decision at any meeting of a Tribunal shall, save where the Tribunal consists of one person, be decided by a majority of the votes of the members thereof (including the Chairman) present at the metting. In the event of an equality of votes, the Chairman shall also have a casting vote.

20. *Correction of errors.*—A Tribunal may correct any clerical mistake or error, arising from an accidental slip or omission in any award it issues.

21. *Right of Representatives.*—The representatives of the parties appearing before a Tribunal shall have the rights of examination, cross-examination and re examination of witnesses called by the Tribunal and of addressing the Tribunal on the completion of the taking of evidence.

Provided that save with the permission of the Tribunal not more than one representative of any party shall exercise any such rights.

PART III.

Remuneration of Members of Tribunals. Assessors and Witnesses, and Establishment.

22. *Travelling allowance.*—A member of a Tribunal, if a non-official, will be entitled to draw travelling allowance and halting allowance for any journey performed by him in connection with his duties as such member at the rates admissible and subject to the conditions applicable to a Government servant of the first grade under the Bombay Civil Services Rules.

23. *Fees.*—The Chairman and members of a Tribunal shall be granted such fees as may be sanctioned by the Provincial Government in each case.

24. *Allowances to assessors.*—Where assessors are appointed by a Tribunal they shall be paid such allowances as may be determined by the Provincial Government.

25. *Establishment* —The Provincial Government may appoint such persons to be the Secretary and clerks of a Tribunal as it may think necessary and may fix the salaries and allowances payable to them. Except where the Provincial Government otherwise directs, the Registrar of the Industrial Court Bombay, shall act as Secretary of every Tribunal constituted under the Act.

PART IV.

Miscellaneous.

26. Whenever any application, letter, summons, notice, statement or intimation, is required to be forwarded or served under any of these rules by registered post it shall be deemed to be sufficient compliance with these rules if such application, letter, summons, notice, statement or intimation is delivered by hand and an acknowledgment in writing, by or on behalf of the party to whom it is forwarded on whom it is intended to be served, is obtained in respect of such delivery.

FORM I.

(*See* rules 3 and 4).

Form of Application under Section 10 of the Industrial Disputes Act, 1947, for the reference of an industrial dispute to an Industrial Tribunal.

Whereas an industrial dispute *exists/is apprehended* between

and and it is expedient that

the matters specified in the appended statement which are connected with or relevant to the dispute

the dispute

should be referred for adjudication by an Industrial Tribunal an application is hereby made to the Government of Bombay under section 10 of the Industrial Disputes Act, 1947, that the said dispute should be referred to a Tribunal for adjudication.

2. This application is made on behalf of.....by the undersigned being the* of the† Union of which the majority of the workmen directly who have been duly authorised to make this application by ‡

affected are members

3. A statement giving the particulars of the dispute as required by rule 3 of the Industrial Disputes (Bombay) Rules, 1947, is appended hereto, duly signed.

Place

Date

Signature and designation of Applicant (s).

To

The Director of Labour Administration.

Bombay.

FORM II

(*See* rule 8).

(*Notice to file statement of claims in a Reference to Adjudication.*)

BEFORE INDUSTRIAL TRIBUNAL, BOMBAY.

No.....of.....

Between

AND

In the matter of .....

NOTICE

WHEREAS by Government Order, Political and Services Department, No. dated the

the above matter has been referred for adjudication to

Industrial Tribunal constituted under the Industrial Disputes Act, 1947. PLEASE TAKE NOTICE that you are hereby required to file in this office on or before a statement of claims (in four copies) in connection with the said disputes and that a copy of the same should be

*Here state the official position of the signatories in the Union, e g., Secretary, President, etc.

†Here enter name of Union.

‡Here state the manner in which the authority was given.

handed over by you simultaneously to the other party to the dispute and to inform the undersigned that this has been done.

2. The time and the place of hearing will be announced later.

By order of the Tribunal,

Secretary,
Industrial Tribunal.

No.
Office of the Industrial Tribunal,
High Court, Bombay.
day of 19 .

FORM III.

(*See* Rule 8.)

(*Notice to file written statement in a Reference to Adjudication*).

BEFORE INDUSTRIAL TRIBUNAL, BOMBAY.

No. of

Between

and

In the matter of.....
.....
.....

NOTICE.

WHEREAS by Government Order, Political and Services Department No. dated the the above matter has been referred for adjudication to Industrial Tribunal constituted under the Industrial Disputes Act, 1947, AND WHEREAS has/have been directed to file a statement of claims in this office on or before a copy whereof will be handed over to you simultaneously by on or before that day, PLEASE TAKE NOTICE that you are hereby required to file in this office on or before four copies of the written statement in reply to the statement of claims that you may receive and that a copy of the same should be handed over by you simultaneously to the other party to the dispute and to inform the undersigned that this has been done.

2. The time and the place of hearing will be announced later.

By order of the Tribunal,

Secretary,
Industrial Tribunal

No.
Office of the Industrial Tribunal,
High Court, Bombay.
day of 19

FORM IV.

(*See* Rule 11.)

Notice of hearing to the parties.

BEFORE INDUSTRIAL TRIBUNAL, BOMBAY.

No. of

Between

and

In the matter of.....

.....

.....

NOTICE

WHEREAS the above matter has been referred by Government for adjudication to Industrial Tribunal, constituted under the Industrial Disputes Act, 1947, PLEASE TAKE NOTICE that the said matter will be taken up for hearing at or at such time immediately thereafter according to the convenience of the Tribunal, on in . You are hereby required to appear in person or through a legal practitioner, at the aforesaid time and place and to continue to remain present until the said matter has been finally disposed of and to produce before the said Tribunal on those days all books, documents etc., which may be in your possession or under your control and in any way relating to the matters in dispute and witnesses, if any.

By order of the Tribunal,

Secretary,
Industrial Tribunal.

No.
Office of the Industrial Tribunal,
High Court, Bombay.
day of 19

FORM V.

(*See* Rule 11.)

Summons to Witnesses.

BEFORE INDUSTRIAL TRIBUNAL, BOMBAY.

Between

and

In the matter of..... .....

....

SUMMONS.

WHEREAS the above matter has been referred by Government for adjudication to Industrial Tribunal constituted under the Industrial Disputes Act, 1947, AND WHEREAS the said matter will be taken up for hearing at , or at such time immediately thereafter according to the convenience of the Tribunal, on in AND WHEREAS your presence is necessary, you are hereby summoned to appear in person before the said Tribunal at the aforesaid time and place to give evidence to answer all material questions and to produce all books, documents, etc., which may be in your possession or under your control and in any way relating to the matters in dispute and to continue to remain present until you are discharged.

By order of the Tribunal.

Secretary,
Industrial Tribunal.

No.
Office of the Industrial Tribunal,
High Court, Bombay,
day of 19

To

By order of the Government of Bombay,
M. G. MONANI.
Joint Secretary to Government.

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ERRATA AND CORRIGENDA.

Pages	Lines	
1	28	add 'and certain other industries' after 'textile industry'.
10	8	add 'no' after 'there was'.
13	foot note	add as 1. 'Certain Bombay Companies Vs. their employees. Reference No. 6/1946 and 10/47. supra' and also read 1. as 2.
16	5	add 'a distinction between' after 'contemplates'
20	32	read 'Appendix III (9)' for 'v (6)'
43	2	add 'to be entered' after 'apply'
49	36	read 'could act' instead of 'could not act'
50	34	add 'or' after 'members'
62	last line	read 'section 28 (2)' instead of 'section 25 (2)'
71	16 and 18	read 'section 106' for 'section 107'
71	27	read 'section 103' for 'section 104'
74	5	read 'infructuous' for 'fructuous'
75	7	delete words 'sect. 46'
79	22	add 'an illegal' after 'constitutes'
81	14	read 'of' instead of 'for'
81	foot note	last line, read 'Vol. 28' for 'Vol. 21'
82	20	read 'standing order No. 9' instead of 'standing order No. 7'
83	18	read '78 (I) (A) (III) (a)' for '78 (I) (a) (III)'
83	32	read 'such usage is not' for 'such usage is'
85	10	instead of 'for the factories' read 'for in the Factories Act'
89	30	from the head note delete the words 'Registered'
123	8	read 'section 78' for 'section 79'
125	7 and 9	instead of 'section 79' read 'section 78'
130	10 and 11	read 'under section 79 (I) an application for deciding a strike, a look-out or change to be illegal' for the words 'under section...to be made. It'
130	27	read '83 of this Act' for '5 (2) thereof'
134	7	instead of 'section 89 (2)' read 'section 88 (2)'
141	foot note 5	last line read 'Vol. 21' for 'Vol. 20'
143	8	read '3 (33)' for '3 (36)'
143	9	read '3(36)' for'3(35)'
151	12	read 'argument' for 'agreement'
152	14	read 'section 97 (1) (a)' for 'section 98 (I) (a)'
152	25	for 'continued' read 'contended'
156	4	instead of 'Act' read 'Bombay Industrial Disputes Act'
157		refer separate slip...
159	32	read 'was' for 'in'

Pages	Lines	
160	26	1st line of para 4, instead of 'it' read 'refusal to employ'
161	9	instead of 'In an application..' read 'So actually there was no closing of the Mills or refusal to employ but only a threat to refuse employment, yet the employees applied...'
167	30	read 'section 103' for 'section 153'
177	11	after 'some' add 'of the'
184	32 and 33	delete words 'in so far as they are not consistent with this Act'
191	5	instead of 'item, (a) of Schedule II' read 'item 2 of Schedule III'
191	7	read '78 (A) (a) (III)' for '78 (A) (III)'
191	12	after '78 (I) (c)' add 'to require any employer to'
193	35 last para line 1	after 'unfair' add 'labour'
195	last line	at the end add '3' and also add '3 Ibid' in the foot note.
195		after the last line add, 'Under this Act a Labour Court is entitled to decide the propriety of such an order and to require reinstatement by virtue of the provisions of section 78'
212	18	Instead of 'line' read 'lien'
227	foot note 1, 2nd line	after '1943' add '154/43, 155/43'
274	1st line	delete 'Cotton Textile Industries' and put those words as line 17

Separate slip to attached at page 157

157	11	after the words 'such application' add 'under the Bombay Industrial Disputes Act'.
157	13	i, e, at the end of the 1st para add the following— 'But under this Act the application for declaring the strike to be illegal must be made within three months of the commencement of the strike, under section 79 (4)'

Separate slip to be attached on page 290

Appendix IV would be a guidance regarding the matter mentioned therein as long as the present constituted Industrial Court works under the Bombay Industrial Disputes Act which stands now repealed. As soon as the work under the B. I. D. Act is over this Appendix would not be useful.