

The Industrial Disputes Act, 1947
(14 of 1947)

13/619

[11th 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:-

LEGISLATIVE HISTORY ▼

- Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948.
- Industrial Disputes (Banking and Insurance Companies) Act, 1949 (54 of 1949).
- Adaptation of Laws Order, 1950.
- Repealing and Amending Act, 1950 (35 of 1950).
- Industrial Disputes (Appellate Tribunal) Act, 1950 (48 of 1950).
- Industrial Disputes (Amendment and Temporary Provisions) Act, 1951 (40 of 1951).
- Industrial (Development and Regulation) Act, 1951 (65 of 1951).
- Industrial Disputes (Amendment) Act, 1952 (18 of 1952).
- Industrial Disputes (Amendment) Act, 1953 (43 of 1953).
- Industrial Disputes (Amendment) Act, 1954 (48 of 1954).
- Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956 (36 of 1956).
- Industrial Disputes (Amendment) Act, 1956 (41 of 1956).
- Industrial Disputes (Amendment) Act, 1957 (18 of 1957).
- State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959).
- Deposit Insurance Corporation Act, 1961 (47 of 1961).
- Agricultural Refinance Corporation Act, 1963 (10 of 1963).
- Unit Trust of India Act, 1963 (52 of 1963)
- Industrial Development Bank of India Act, 1964 (18 of 1964).
- Industrial Disputes (Amendment) Act, 1964 (36 of 1964).
- Industrial Disputes (Amendment) Act, 1965 (35 of 1965).
- Food Corporations (Amendment) Act, 1968 (57 of 1968).
- Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970).
- Central Labour Laws (Extension to Jammu and Kashmir) Act, 1970 (51 of 1970).
- Industrial Disputes (Amendment) Act, 1971 (45 of 1971).
- Industrial Disputes (Amendment) Act, 1972 (32 of 1972).
- Banking Service Commission Act, 1975 (42 of 1975).

- ☐ Industrial Disputes (Amendment) Act, 1976 (32 of 1976).
- ☐ Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980).
- ☐ Export-Import Bank of India Act, 1981 (28 of 1981).
- ☐ National Bank for Agriculture and Rural Development Act, 1981 (61 of 1981).
- ☐ Industrial Disputes (Amendment) Act, 1982 (46 of 1982).
- ☐ Industrial Disputes (Amendment) Act, 1984 (49 of 1984).
- ☐ Industrial Reconstruction Bank of India Act, 1984 (62 of 1984).
- ☐ National Housing Bank Act, 1987 (53 of 1987).
- ☐ Small Industries Development Bank of India Act, 1989 (39 of 1989).
- ☐ Industrial Disputes (Amendment) Act, 1996 (24 of 1996).
- ☐ Industrial Development Bank (Transfer of Undertaking and Repeal) Act, 2003 (53 of 2003).
- ☐ Industrial Disputes (Amendment) Act, 2010 (24 of 2010)
- ☐ Notification No. S.O. 1955(E), dated 20.6.2017

FACT SHEET ▼

The Act has been extended to the new provinces and Merged States by the Merged States (Laws) Act, 1949 (59 of 1949), and to the States of Manipur, Tripura and Vindhya Pradesh by the Union Territories (Laws) Act, 1950 (30 of 1950). Manipur and Tripura are full-fledged States, now see Act 81 of 1971.

The Act has been extended to Goa, Daman and Diu by Regn. 12 of 1962, to Pondicherry by Regn. 7 of 1963, and to Laccadive, Minicoy and Amindivi Islands by Regn. 8 of 1965. These are now known as Lakshdweep Islands.

It has also been extended to Jammu and Kashmir by Act 51 of 1970 and to Sikkim vide S.O. 373(E), dt. 27.6.1979.

The Act applies to State of Bombay *now Maharashtra and Gujarat)-see Bombay Act 16 of 1959 and Gujarat Act 11 of 1960.

The Act has been made applicable to the working journalists - see Section 3, Working Journalists (Conditions of Service) and Miscellaneous Provision Act, 1955 (45 of 1955), and to Beedi Industrial premises- see Section 39, Beedi and Cigar Workers (Conditions of Employment) Act, 1966 (32 of 1966).

The Act does not apply to - (i) Railway Protection Force, see Section 3, Railway Protection Force Act, 1957, (ii) members of the Central Industrial Security Force, see S.20, Central Industrial Security Force Act, 1968, and (iii) Co-operative Societies in U.P. - See U.P. Act 11 of 1966.

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 India];

[* * *]

(3) It shall come into force on the first day of April, 1947.

Object & Reasons ▼

Statement of Object and Reasons.-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 81-A 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 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 re-adjustment, the need of permanent legislation in replacement of this rule, is self-evident. This Bill embodies the essential principles of rule 81-A, which have proved generally acceptable to both employers and workmen, retaining intact, for the most part, the provisions of the Trade Disputes Act, 1929.

The two institutions for the prevention and settlement of industrial 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 a High Court. Power has been given to appropriate Government to require Works Committees to be constituted in every industrial establishment employing 100 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 an Industrial Tribunal will lie where both parties to any industrial dispute apply for such reference, and also where the 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 awards is an essential corollary 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 where consideration of public interest override such rights.

The Bill also seeks to re-orient 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 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 conciliation officer and 2 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 periods 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 a 3 months' notice by either party to the dispute.

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 for adjudication, a strike or lock-out in furtherance 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 the chances of settlement or speedy determination of the dispute should be jeopardized.

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.

Amendment Act 41 of 1956-Statement of Objects and Reasons.-Doubt has been raised whether retrenchment compensation under the Industrial Disputes Act, 1947, becomes payable by reason merely of the fact that there has been a change of employers, even if the service of the workman is continued without interruption and the terms and conditions of his service remain unaltered. This has created difficulty in the transfer, reconstitution and amalgamation of companies and it is proposed to make the intention clear by amending section 25-F of the Act.

2. Questions have also been raised whether a workman who is laid-off for more than forty-five days continuously is entitled to lay-off compensation for any period beyond the first forty-five days. Opportunity has been taken to remove the ambiguity by specifying the circumstances under which such compensation beyond the first forty-five days would be admissible to a workman.

Amendment Act 36 of 1964-Statement of Objects and Reasons.-The Bill seeks to make changes in the Industrial Disputes Act, 1947. The important changes in the Act were discussed at various tripartite meetings like the Indian Labour Conference and the Standing Labour Committee and have their approval.

2. Section 7-A of the Act lays down the qualification for appointment as the Presiding Officer of a Tribunal. The State Government have been experiencing difficulty in getting suitable persons for appointment as Presiding Officers of Tribunals. Many of the State Governments have accordingly amended this section in its application to their States enabling District and Sessions Judges to be appointed to these posts. It is now proposed to provide for the appointment of a serving or a retired District Judge or Additional District Judge of not less than three years' standing as a Presiding Officer of the Tribunal.

3. In order to encourage arbitration, it is proposed to provide (1) for the appointment of umpires in case of difference of opinion between an even number of arbitrators, (2) for prohibition of strikes and lock-outs during arbitration proceedings, and (3) for application of section 33 during the pendency of any arbitration proceedings. Further,

an arbitration award is binding at present only on the parties to the arbitration. This position is discouraging employers from agreeing readily to voluntary arbitration as they cannot enforce it on the workers who are not a party to the agreement. It is now being provided in the Bill that the arbitration award shall have the same binding force as an award of a Tribunal provided that the appropriate Government is satisfied that the parties to the agreement represent the majority of each party

.4. The Supreme Court have held that a notice to terminate an award can be given by a group of workmen acting collectively either through their Union or otherwise, and it is not necessary that such a group or the Union should represent the majority of the workmen bound by the award. In order to prevent any irresponsible or dissatisfied group of workmen from terminating the settlement or an award without any regard for the effect of such termination on the entire body of the workmen, it is proposed to amend the Act so that in future only a majority of workmen shall have the right to terminate a settlement or award.

5. Opportunity has been availed of to propose a few other essential amendments which are mainly of a formal or clarificatory nature.

Amendment Act 35 of 1965-Statement of Objects and Reasons.-In order to simplify the existing procedure for handling disputes in respect of the Air Corporations, it is considered necessary to bring the Indian Airlines and Air India Corporations within the jurisdiction of the Central sphere as in the case of some other Corporations of all India importance such as the Agricultural Refinance Corporation, the Deposit Insurance Corporation, etc.

2. In construing the scope of industrial dispute, Courts have taken the view that a dispute between an employer and an individual workman cannot per se be an industrial dispute, but it may become one if it is taken up by a Union or a number of workmen making a common cause with the aggrieved individual workman. In view of this, cases of individual dismissals and discharges cannot be taken up for conciliation or arbitration or referred to adjudication under the Industrial Disputes Act, unless they are sponsored by a Union or a number of workmen. It is now proposed to make the machinery under the Act available in such cases.

3. Section 25-C of the Act provides that a workman (who has completed not less than one year of continuous service) on being laid-off, is entitled to receive compensation up to a maximum period of forty-five days during the course of any twelve months. Where, however, the period of lay-off after the expiry of the first forty-five days comprises continuous periods of one week or more, the workman is to be paid compensation for all the days comprised in every such subsequent period of lay-off, unless there is an agreement to the contrary between the workman and the employer. This provision is open to abuse inasmuch as workmen could be denied lay-off compensation by being made to work for some days in each week after the first forty-five days of lay-off. With a view to prevent such an abuse, it is now considered necessary to make a provision that lay-off compensation would become payable for all the days of lay-off beyond the first forty-five days, whether the period is continuous for a week or not

4. Section 29 of the Act provides for the imposition of a penalty for breach of a settlement or an award, which may be imprisonment for a term which may extend to

six months, or fine, or both. There is no provision for enhanced penalty in the event of continued breach of settlements or awards with the result that some unscrupulous employers are able to successfully thwart the implementation of settlements or awards by paying a fine once, which may be far less than what the obligation would otherwise entail. Consequently, the workmen are unable to get the benefits flowing from the award though the employer might have been convicted for the breach. Thus, the absence of provisions for deterrent penalties for continued breach of settlements and awards is acting as an impediment in the way of implementation of settlements and awards, and it is, therefore, now proposed to make a suitable provision for the imposition of punishment in case of a continuing breach of a settlement or an award after conviction for the first breach.

5. Many of the above proposals have also received the approval of the Standing Labour Committee at its twenty-first session.

6. The present Bill seeks to amend the Industrial Disputes Act to give effect to the above proposals and opportunity has also been availed of to make two other amendments of procedural nature.

Amendment Act 45 of 1971-Statement of Objects and Reasons.-In *Indian Iron and Steel Company Limited v. Their Workmen* (A.I.R. 1958 S.C. 130 at 138), the Supreme Court, while considering the Tribunal's power to interfere with the management's decision to dismiss, discharge or terminate the services of a workman, has observed that in cases of dismissal on misconduct, the Tribunal does not act as a Court of appeal and substitute its own judgment for that of the management and that the Tribunal will interfere only when there is want of good faith, victimisation, unfair labour practice, etc., on the part of the management.

2. The International Labour Organisation, in its recommendation (No. 119) concerning "Termination of employment at the initiative of the employer" adopted in June, 1963, has recommended that a worker aggrieved by the termination of his employment should be entitled to appeal against the termination, among others, to a neutral body such as an arbitrator, a Court, an arbitration committee or a similar body and that the neutral body concerned should be empowered to examine the reasons given in the termination of employment and the other circumstances relating to the case and to render a decision on the justification of the termination. The International Labour Organisation has further recommended that the neutral body should be empowered (if it finds that the termination of employment was unjustified) to order that the worker concerned, unless reinstated with unpaid wages, should be paid adequate compensation or afforded some other relief.

3. In accordance with these recommendations, it is considered that the Tribunal's power in an adjudication proceeding relating to discharge or dismissal of a workman should not be limited and that the Tribunal should have the power, in cases wherever necessary, to set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. For this purpose, a new section 11-A is proposed to be inserted in the Industrial Disputes Act, 1947.

4. Section 25-FFF of the Industrial Disputes Act, 1947, provides for payment of compensation to workmen in case of closing down of an undertaking and the amount is calculated at the rate of fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months. But, in the case of closure on account of unavoidable circumstances beyond the control of the employer, the ceiling limit of compensation is the average pay for three months. A Central Workers' Organisation suggested an amendment of section 25-FFF of the Act to remove the ceiling limit of compensation in case of closure of a mining undertaking by reason of exhaustion of its reserves. According to its suggestion such closing down should not be deemed to be on account of unavoidable circumstances beyond the control of the employers because the employers have definite knowledge of the exhaustion of the area-reserves of mines. The Industrial Committee on Coal Mining, in its ninth session (Calcutta 10th, 11th August, 1964) and the Industrial Committee on Mines other than Coal in its fourth session (New Delhi 20th, 21st February, 1965) have agreed to the suggestion to amend the Act for the aforesaid purpose. Accordingly, it is proposed to amend section 25-FFF to provide for payment of full compensation to workmen in the event of closing down of a mining undertaking due to exhaustion of its reserves subject to the condition that no retrenchment compensation would be payable to the workmen concerned when an employer provides them with alternative employment with effect from the date of closure at the same remuneration as they were entitled to receive, and on the same terms and conditions of service as were applicable to them, immediately before the closure.

5. It is also proposed to make the Central Government as the appropriate Government in relation to the industrial disputes concerning the Industrial Finance Corporation and the Life Insurance Corporation of India. It is also proposed to declare service in, or in connection with, the working of major ports and docks as permanent public utility service.

Amendment Act 32 of 1972-Statement of Objects and Reasons.-The problem of closure of industrial undertakings resulting in loss of production and unemployment of large numbers of workmen has of late become very serious. Employers have declared sudden closures of industrial establishments without any notice or advance intimation to the Government. Several factors appear to have led to these closures, amongst which are accumulated losses over a number of years and mismanagement of the affairs of the establishments. The unsatisfactory state of industrial relations (in the sense of labour unrest making it difficult to sustain regular production) has been pleaded as a precipitating factor. Certain other causes like financial difficulties and non-availability of essential raw materials have also been mentioned.

2. Since the problem of closure has been acute in the State of West Bengal, a President's Act-the Industrial Disputes (West Bengal Amendment) Act, 1971-was enacted on the 28th August, 1971. This provided that an employer who intended to close down an undertaking should serve at least sixty days' notice on the State Government stating clearly the reasons for the intended closure of the undertaking. While enacting this legislation for West Bengal, Government considered it desirable to promote Central legislation on the subject, since the problem of closure was not limited

to West Bengal but was found in varying degrees in other States as well.

3. It was, however, felt that before Central legislation was enacted, the matter should be considered by the Indian Labour Conference. The Indian Labour Conference which met on the 22nd and 23rd October, 1971 generally endorsed the proposal for Central legislation.

4. The Bill seeks to give effect to the recommendation of the Indian Labour Conference. It provides for the service of a notice, at least sixty days before the intended closure of an undertaking is to become effective, so that within this period prompt remedial measures could be taken, where the circumstances permit to prevent such closure. No notice will be required to be served in the case of undertakings set up for construction of buildings, roads, canals, dams and other construction works and projects or in the case of small establishments employing less than fifty-persons. The Bill also provides for penalty for closing down any undertaking without serving the requisite notice.

Amendment Act 32 of 1976-Statement of Objects and Reasons.-The Industrial Disputes Act, 1947 does not contain any provision for preventing lay-off and retrenchment. Though the Act provides for sixty days' notice by the employer prior to closing down an establishment employing fifty or more persons, it does not provide for any prior scrutiny of the reasons for such closure. The employers have an unfettered right to close down an establishment, subject to the provision of sixty day's notice.

2. There have been many cases of large scale lay-offs, particular by large companies and undertakings. Cases of large-scale retrenchment as well as closures have also been reported time and again. This action on the part of the management has resulted in all-round demoralising effect on the workmen. In order to prevent avoidable hardship to the employees and to maintain higher tempo of production and productivity, it has become now necessary to put some reasonable restrictions on the employer's right to lay-off retrenchment, and closure. This need has also been felt by different State Governments.

3. This Bill, therefore, seeks to amend the Industrial Disputes Act to make prior approval of the appropriate Government necessary in the case of lay-off, retrenchment and closure in industrial establishments where 300 or more workmen are employed. This is sought to be achieved by inserting a new Chapter V-B in the Act. In the interests of rehabilitation of workmen and for maintenance of supplies and services essential to the life of the community, there is a provision in the Bill for restarting the undertakings which were already closed down otherwise than on account of unavoidable circumstances beyond the control of the employer.

4. It is also proposed to provide for more stringent penalties for the contravention of the provisions of Chapter V-B. For the purposes of this Chapter, it is also proposed to make the Central Government the appropriate Government in respect of companies in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government and of Corporations established by or under any law made by Parliament.

Amendment Act 46 of 1982-Statement of Objects and Reasons.-The Industrial Disputes Act, 1947, provides the machinery and procedure for the investigation and settlement of industrial disputes. The provisions of the Act had been amended from time to time in the light of experience gained in its actual working, case laws and

industrial relations policy of the Government. The National Commission on Labour (1969) which made an in-depth study of the industrial relations and procedures had identified a number of areas in which the Act needed to be amended to promote industrial harmony. The recommendations of the National Commission on Labour were discussed at various forums.

2. The objectives of the Bill are mainly to ensure speedier resolution of industrial disputes by removing procedural delays and to make certain other amendments in the light of some of the recommendations of the National Commission on Labour. The Bill seeks to make the following amendments in the Act, namely:

- (i) Difficulties have arisen in the interpretation of the definition of the expression "appropriate Government" as contained in the Act in respect of certain industrial establishments. It is proposed to remove these difficulties by making the Central Government the appropriate Government in respect of those establishments.
- (ii) The Supreme Court in its decision in the Bangalore Wafer Supply and Sewerage Board v. A. Rajappa A.I.R. 1978 S.C. 548: (1978) 2 S.C.C. 213, had, while interpreting the definition of "industry" as contained in the Act, observed that Government might restructure this definition by suitable legislative measures. It is accordingly proposed to redefine the term "industry". While doing so, it is proposed to exclude from the scope of this expression, certain institutions like hospitals and dispensaries, educational, scientific research or training institutes, institutions engaged in charitable, social and philanthropic services, etc., in view of the need to maintain in such institutions an atmosphere different from that in industrial and commercial undertakings and to meet the special needs of such organisations. It is also proposed to exclude sovereign functions of Government including activities relating to atomic energy, space and defence research from the purview of the term "industry". However, keeping in view the special characteristics of these activities and the fact that their workmen also need protection, it is proposed to have a separate law for the settlement of individual grievances as well as collective disputes in respect of the workmen of these institutions. All these have been taken into account and the term "industry" has been made more specific while making the coverage wider. The scope of the term "workman" has been enlarged to cover the supervisory staff whose wages do not exceed Rs. 1,600 per month.
- (iii) A model grievances redressal procedure had been commended for adoption. But this voluntary arrangement has not proved effective. It is, therefore, proposed to make it obligatory for every industrial establishment employing 100 or more workmen to set up a time bound grievance redressal procedure.
- (iv) There has been dissatisfaction with delays involved in the adjudication of industrial disputes. It is proposed to fix a time-limit for the adjudication of individual and collective disputes, as also for the disposal of claims, applications and other references by the Labour Court, the Industrial Tribunal or the National Industrial Tribunal with a view to securing speedier justice to workmen. It has also

been provided that no case will lapse merely on account of the fact that the time limits specified had expired.

- (v) There have been conflicting decisions about the right of legal heirs of a workman in the event of the death of the latter pending proceedings before the authorities under the Act. Provision is being made to make it clear that pending disputes will not abate in the event of the death of the workman.
- (vi) It is observed that when Labour Courts pass awards of reinstatement, these are often contested by an employer in Supreme Court and High Courts. The delay in the implementation of the award causes hardship to the workmen concerned. It is, therefore, proposed to provide for payment of wages last drawn by the workmen concerned, under certain conditions, from the date of the award till the case is finally decided in the Supreme Court or the High Courts.
- (vii) It is proposed to provide that workmen in mines could be laid-off for reasons of fire, flood, excess of inflammable gas or explosion without previous permission.
- (viii) Taking into consideration the observations of the Supreme Court in the Excel Wear case, A.I.R. 1979 S.C. 25: (1978) 4 S.C.C. 224, it is proposed to recast the provisions relating to closure of industrial establishments as contained in the Act to provide for the following, namely:
 - (a) The employer will have to apply to Government to obtain permission for closure ninety days before the intended date of closure and a copy of such application will have to be served by him on the representatives of the workmen also;
 - (b) On receipt of such application, Government, after giving a reasonable opportunity of being heard to the applicant and the representatives of the workmen, and after taking into consideration the guidelines laid down in the provision, may grant or refuse to grant the permission asked for. Permission shall be deemed to have been granted if no order of the Government granting or refusing to grant permission is communicated within the specified period;
 - (c) The order of the Government granting or refusing to grant permission is being made final subject to a review by the Government or a reference to the Industrial Tribunal;
 - (d) Where an undertaking is permitted to be closed down, the workmen shall be entitled to closure compensation equivalent to fifteen days average pay for every completed year of continuous service or part thereof in excess of six months.
- (ix) The special provisions relating to lay-off, retrenchment and closure as contained in Chapter V-B of the Act apply at present to establishments, employing 300 workmen or above. With a view to extending this statutory protection to workmen of smaller establishments also, it is proposed to reduce the existing employment limit from 300 to 100.
- (x) There is at present no Central law specifying unfair labour practices on the part of employers, workmen and the Trade Unions of employers and workmen and for

imposing any penalty for resorting to such undesirable practices. Certain State laws as well as Voluntary Codes of Discipline laid down by the Indian Labour Conference specify certain practices as unfair labour practices. The National Commission on Labour which examined this aspect in detail suggested a list of such unfair practices. It is proposed to make suitable provision in the Act to specify certain practices as unfair labour practices on the part of employers, workmen and Trade Unions and to provide for penalties for those indulging in such practices.

3. The Bill seeks to achieve the above objects and to provide for certain other consequential and clarificatory changes in the Act.

Amendment Act 49 of 1984-Statement of Objects and Reasons.-The Industrial Disputes Act, 1947, provides the machinery and procedure for the investigation and settlement of industrial disputes. The provisions of the Act had been amended from time to time in the light of experience gained in its actual workings, case laws and industrial relations policy of the Government.

2. The amendments proposed in the Bill are mainly to clarify certain doubts expressed by Courts on the validity of certain provisions of the Act. The Bill, inter alia, seeks to make the following amendments in the Act, namely:

(i) Difficulties have arisen in the interpretation of the expression "retrenchment". It is proposed to exclude from the definition of "retrenchment" as contained in the Act termination of the service of a workman as a result of the non-renewal of the contract of employment on its expiry and of the termination of such contract in accordance with the provisions thereof;

(ii) Following the decision of the Supreme Court in the Excel Wear case, A.I.R. 1479 S.C. 25: (1978) 4 S.C.C. 224, some High Courts have declared invalid the special provisions relating to lay-off and retrenchment contained in the Act which applied to establishments employing 300 or more workmen. It is proposed to redraft these provisions on the same lines as the amended provision relating to closure, which was inserted by the Industrial Disputes (Amendment) Act, 1982 (46 of 1982), after taking into consideration the observations of the Supreme Court in the above case.

3. The Industrial Disputes (Amendment) Act, 1982, was passed by Parliament in August, 1982. A number of provisions of that Act confer considerable benefits to workmen. In order to provide that the various sections of that Act can be notified for enforcement separately and with effect from different dates, it is proposed to amend suitably section 1(2) of that Act.

Amendment Act 24 of 1996-Statement of Objects and Reasons-The Industrial Disputes Act, 1947, Inter alia, provides for the machinery and procedure for the investigation and settlement of industrial disputes. Clause (a) of section 2 of the Industrial Disputes Act, 1947, defines the term appropriate Government. "Sub-clause (i) of clause (a) stipulates the Central Government as the appropriate Government" in relation to any industrial dispute concerning any industry or activity specially mentioned therein, whereas sub-clause (ii) of that clause designates the State Government as the

"appropriate Government" in relation to all other industrial disputes. According to this scheme, the Central Government was the appropriate Government in relation to any industrial dispute concerning the Indian Airlines and Air India Corporation, the Industrial Finance Corporation of India, the Oil and Natural Gas Commission or the International Airports Authority of India. With the enactment of the Air Corporations (Transfer of Undertakings and Repeal) Act, 1994 the Industrial Finance Corporation (Transfer of Undertaking and Repeal) Act, 1993, and the Oil and Natural Gas Commission (Transfer of Undertaking and Repeal) Act, 1993, the Central Government ceased to be the "appropriate Government" in respect of these establishments. Further with the enactment of the Airports Authority of India Act, 1994, the National Airports Authority of India and the International Airports Authority of India were merged into one single entity named the Airports Authority of India. Meanwhile, a number of private airline companies got incorporated and commenced their operations over Indian skies. For all airline companies and the newly constituted Airports Authority of India, the concerned State Government is the "appropriate Government".

2. As the establishments and activities, related to air transport services, the Airports Authority of India, the Oil and Natural Gas Corporation Limited and the Industrial Finance Corporation of India Limited, are spread across States and have nation-wide ramifications, it was considered expedient and desirable to ensure uniformity in the handling of industrial disputes concerning such establishments/activities. A significant number of industrial disputes concerning employees of the Air India Limited, the Indian Airlines Limited, the Oil and Natural Gas Corporation Limited and the Industrial Finance Corporation of India Limited were pending for settlement through conciliation, arbitration or adjudication for want of competent jurisdiction and hence conclusive resolution of the question of "appropriate Government" for these organisations had acquired an urgency that could brook no further delay without adversely affecting harmonious industrial relations.

3. As Parliament was not in session, the President promulgated the Industrial Disputes (Amendment) Ordinance, 1995 (Ordinance 12 of 1995) on the 11th day of October, 1995 to stipulate the Central Government as the "appropriate Government" in respect of

- (i) any air transport service (including Air India Limited and Indian Airlines Limited as well as private, domestic and international air transport services);
- (ii) Airports Authority of India;
- (iii) Oil and Natural Gas Corporation Limited; and
- (iv) Industrial Finance Corporation of India Limited, by amending sub-clause (i) of clause (a) of section 2

4. The Bill seeks to replace the above Ordinance.

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 [* * *] or by a railway company [or concerning any such controlled industry as may be specified in this behalf by the Central Government]

[* * *] or in relation to an industrial dispute concerning [[[***] [a Dock Labour Board established under section 5-A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948)], or [the Industrial Finance Corporation of India Limited formed and registered under the Companies Act, 1956 (1 of 1956)], or the Employees 'State Insurance Corporation established under section 3 of the Employees 'State Insurance Act, 1948 (34 of 1948),

or the Board of Trustees constituted under section 3-A of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (46 of 1948),

or the Central Board of Trustees and the State Boards of Trustees constituted under section 5-A and section 5-B, respectively, of the Employees 'Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952), [* * *],

or the Life Insurance Corporation of India established under section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956),

or [the Oil and Natural Gas Corporation Limited registered under the Companies Act, 1956 (1 of 1956)],

or the Deposit Insurance and Credit Guarantee Corporation established under section 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961),

or the Central Warehousing Corporation established under section 3 of the Warehousing Corporations Act, 1962 (58 of 1962),

or the Unit Trust of India established under section 3 of the Unit Trust of India Act, 1963,

or the Food Corporation of India established under section 3,

or a Board of Management established for two or more contiguous States under section 16 of the Food Corporations Act, 1964 (37 of 1964),

or [the Airports Authority of India constituted under section 3 of the Airports Authority of India Act, 1994 (55 of 1994)],

or a Regional Rural Bank established under section 3 of the Regional Rural Banks Act, 1976 (21 of 1976),

or the Export Credit and Guarantee Corporation Limited or the Industrial Reconstruction Bank of India Limited, [the National Housing Bank established under section 4 of the National Housing

Bank Act, 1987 (53 of 1987)],

[or an air transport service, or a banking or an insurance company][, a mine, an oil-field] [a Cantonment Board,] or a [major port, any company in which not less than fifty-one percent of the paid-up share capital is held by the Central Government, or any corporation, not being a corporation referred to in this clause, established by or under any law made by Parliament, or the Central public sector undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the Central Government, the Central Government, and]

[(ii) in relation to any other industrial dispute, including the State public sector undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the State Government, the State Government:

Provided that in case of a dispute between a contractor and the contract labour employed through the contractor in any industrial establishment where such dispute first arose, the appropriate Government shall be the Central Government or the State Government, as the case may be, which has control over such industrial establishment.]

[(aa) "arbitrator "includes an umpire;]

[[[aaa]]["average pay "means the average of the wages payable to a workman-

(i) in the case of monthly paid workman, in the three complete calendar months,

(ii) in the case of weekly paid workman, in the four complete weeks,

(iii) in the case of daily paid workman, in the twelve full working days, preceding the date on which the average pay becomes payable if the workman had worked for three complete calendar months or four complete weeks or twelve full working days, as the case may be, and where such calculation cannot be made, the average pay shall be calculated as the average of the wages payable to a workman during the period he actually worked;]

[(b) "award "means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under section 10-A;]

[(bb) "banking company "means a banking company as defined in section 5 of the [Banking Companies Act, 1949 (10 of 1949)], having branches or other establishments in more than one State, and includes [the Export-Import Bank of India,] [the Industrial Reconstruction Bank of India,] [* **], [the Small Industries

Development Bank of India established under section 3 of the Small Industries Development Bank of India Act, 1989 (39 of 1989)] the Reserve Bank of India, the State Bank of India, [a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970),][a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980), and any subsidiary bank,][as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959);]

(c) "Board "means a Board of Conciliation constituted under this Act;

[(cc) "closure "means the permanent closing down of a place of employment or part thereof;]

(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;]

[(ee) "controlled industry "means any industry the control of which by the Union has been declared by any Central Act to be expedient in the public interest;]

[* * *]

(f) "Court "means a Court of Inquiry constituted under this Act;

(g) "employer "means-

(i) in relation to an industry carried on by or under the authority of any department of [the Central Government or a State Government], 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;

[(gg) "executive ", in relation to a trade union, means the body, by whatever name called, to which the management of the affairs of the trade union is entrusted;]

[* * *]

(i) a person shall be deemed to be "independent "for the purpose of his appointment as the Chairman or other member of a 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:

[Provided that no person shall cease to be independent by reason only of the fact that he is a shareholder of an incorporated company which is connected with, or likely to be affected by, such industrial dispute; but in such a case, he shall disclose to the appropriate Government the nature and extent of the shares held by him in such company;]

[(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) "industrial dispute "means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

[(ka) "industrial establishment or undertaking "means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,-

(a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;

(b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;]

[(kk) "insurance company "means an insurance company as defined in section 2 of the Insurance Act, 1938 (4 of 1938), having branches or other establishments in more than one State;]

[(kka) "khadi "has the meaning assigned to it in clause (d) of section 2 of the Khadi and Village Industries Commission Act, 1956 (61 of 1956);]

[[[(kkb)]]["Labour Court "means a Labour Court constituted under section 7;]

[(kkk) "lay-off "(with its grammatical variations and cognate expressions) means the failure, refusal or inability of an employer on account of

shortage of coal, power or raw materials or the accumulation of stocks or the break-down of machinery][or natural calamity or for any other connected reason][to give employment to a workman whose name is borne on the muster rolls of his industrial establishment and who has not been retrenched.

Explanation .-Every workman whose name is borne on the muster rolls of the industrial establishment and who presents himself for work at the establishment at the time appointed for the purpose during normal working hours on any day and is not given employment by the employer within two hours of his so presenting himself shall be deemed to have been laid-off for that day within the meaning of this clause:

Provided that if the workman, instead of being given employment at the commencement of any shift for any day is asked to present himself for the purpose during the second half of the shift for the day and is given employment then, he shall be deemed to have been laid-off only for one-half of that day:

Provided further that if he is not given any such employment even after so presenting himself, he shall not be deemed to have been laid-off for the second half of the shift for the day and shall be entitled to full basic wages and dearness allowance for that part of the day;]

(l) "lock-out "means the [temporary 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;

[(l-a) "major port "means a major port as defined in clause (8) of section 3 of the Indian Ports Act, 1908 (15 of 1908);

(l-b) "mine "means a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);]

[(ll) "National Tribunal "means a National Industrial Tribunal constituted under section 7-B;]

[(lll) "office bearer ", in relation to a trade union, includes any member of the executive thereof, but does not include an auditor;]

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

(n) "public utility service "means-

(i) any railway service [or any transport service for the carriage of passengers or goods by air;]

[(ia) any service in, or in connection with the working of, any major port or dock;]

(ii) any section of an 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 [First Schedule] which the appropriate Government may, if satisfied that public emergency or public interest so requires, by notification in the Official Gazette, 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 one time, if in the opinion of the appropriate Government, public emergency or public interest requires such extension;

(o) "railway company "means a railway company as defined in section 3 of the Indian Railways Act, 1890 (9 of 1890);

[(oo) "retrenchment "means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include-

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or]

[(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or]

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

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

(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;

[(qq) "trade union "means a trade union registered under the Trade Unions Act, 1926 (16 of 1926);]

[(r) "Tribunal "means an Industrial Tribunal constituted under section 7-A and includes an Industrial Tribunal constituted before the 10th day of March, 1957, under this Act;]

[(ra) "unfair labour practice "means any of the practices specified in the Fifth Schedule;

(rb) "village industries "has the meaning assigned to it in clause (h) of section 2 of the Khadi and Village Industries Commission Act, 1956 (61 of 1956);]

[(rr) "wages "means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a workman in respect of his employment, or of work done in such employment, and includes-

(i) such allowances (including dearness allowance) as the workman is for the time being entitled to;

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

(iii) any travelling concession;]

[(iv) any commission payable on the promotion of sales or business or both;]

[but does not include-

(a) any bonus;

(b) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the workman under any law for the time being in force;

(c) any gratuity payable on the termination of his service;]

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

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
- (ii) who is employed in the police service or as an officer or other employee of a prison, or
- (iii) who is employed mainly in a managerial or administrative capacity, or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.]

[2-A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute .- (1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.]

[(2) Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1).]

CHAPTER II

Authorities Under This Act

3. Works Committee .-(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 the

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 (16 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 or concern and endeavour to compose any material difference of opinion in respect of such matters.

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 specified industries and either permanently or for a limited period.

5. Boards of Conciliation .-(1) The appropriate Government may as occasion arises by notification in the Official Gazette constitute a Board of Conciliation for promoting the 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 numbers 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 member, as the case may be, has been appointed.

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 appropriate Government may think fit and where a Court consists of two or more members, one of them shall be appointed as the 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.

[7. Labour Courts .-(1) The appropriate Government may, by notification in the Official Gazette, constitute one or more Labour Courts for the adjudication of industrial disputes relating to any matter specified in the Second Schedule and for performing such other functions as may be assigned to them under this Act.

(2) A Labour Court shall consist of one person only to be appointed by the appropriate Government.

(3) A person shall not be qualified for appointment as the presiding officer of a Labour Court, unless-

[(a) he is, or has been, a Judge of a High Court; or]

[(b) he has, for a period of not less than three years, been a District Judge or an Additional District Judge; or]

[* * *]

[(d)] [he has held any judicial office in India for not less than seven years; or]

[(e)][he has been the presiding officer of a Labour Court constituted under any Provincial Act or State Act for not less than five years.]

[(f) he is or has been a Deputy Chief Labour Commissioner (Central) or Joint Commissioner of the State Labour Department, having a degree in law and at least seven years' experience in the labour department including three years of experience as Conciliation Officer: Provided that no such Deputy Chief Labour Commissioner or Joint Labour Commissioner shall be appointed unless he resigns from the service of the Central Government or State Government, as the case may be, before being appointed as the presiding officer; or

(g) he is an officer of Indian Legal Service in Grade III with three years' experience in the grade.]

7-A. Tribunals .-(1) The appropriate Government may, by notification in the Official Gazette, constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter, whether specified

in the Second Schedule or the Third Schedule, [and for performing such other functions as may be assigned to them under this Act].

(2) A Tribunal shall consist of one person only to be appointed by the appropriate Government.

(3) A person shall not be qualified for appointment as the presiding officer of a Tribunal unless-

(a) he is, or has been, a Judge of a High Court; or

[(aa) he has, for a period of not less than three years, been a District Judge or an Additional District Judge;][*]

[(b) he is or has been a Deputy Chief Labour Commissioner (Central) or Joint Commissioner of the State Labour Department, having a degree in law and at least seven years' experience in the labour department including three years of experience as Conciliation Officer: Provided that no such Deputy Chief Labour Commissioner or Joint Labour Commissioner shall be appointed unless he resigns from the service of the Central Government or State Government, as the case may be, before being appointed as the presiding officer; or

(c) he is an officer of Indian Legal Service in Grade III with three years' experience in the grade.]

(4) The appropriate Government may, if it so thinks fit, appoint two persons as assessors to advise the Tribunal in the proceeding before it.

7-B. National Tribunals .-(1) The Central Government may, by notification in the Official Gazette, constitute one or more National Industrial Tribunals for the adjudication of industrial disputes which, in the opinion of the Central Government, involve questions of national importance or are of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, such disputes.

(2) A National Tribunal shall consist of one person only to be appointed by Central Government.

(3) A person shall not be qualified for appointment as the presiding officer of a National Tribunal [unless he is, or has been, a Judge of a High Court].

(4) The Central Government may, if it so thinks fit, appoint two persons as assessors to advise the National Tribunal in the proceeding before it.

7-C. Disqualifications for the presiding officers of Labour Courts, Tribunals and National Tribunals .-No person shall be appointed to, or continue in, the office of the presiding officer of a Labour Court, Tribunal or National Tribunal, if-

(a) he is not an independent person; or

(b) he has attained the age of sixty-five years.

[8. Filling of vacancies .-If, for any reason a vacancy (other than a temporary absence) occurs in the office of the presiding officer of a Labour

Court, Tribunal or National Tribunal or in the office of the Chairman or any other member of a Board or Court, then, in the case of a National Tribunal, the Central Government and in any other case, the appropriate Government, shall appoint another person in accordance with the provisions of this Act to fill the vacancy, and the proceeding may be continued before the Labour Court, Tribunal, National Tribunal, Board or Court, as the case may be, from the stage at which the vacancy is filled.

9. Finality of orders constituting Boards, etc .-(1) No order of the appropriate Government or of the Central Government appointing any person as the Chairman or any other member of a Board or Court or as the presiding officer of a Labour Court, Tribunal or National Tribunal shall be called in question in any manner; and no act or proceeding before any Board or Court shall be called in question in any manner on the ground merely of the existence of any vacancy in, or defect in the constitution of, such Board or Court.

(2) No settlement arrived at in the course of a conciliation proceeding shall be invalid by reason only of the fact that such settlement was arrived at after the expiry of the period referred to in sub-section (6) of section 12 or sub-section (5) of section 13, as the case may be.

(3) Where the report of any settlement arrived at in the course of conciliation proceeding before a Board is signed by the Chairman and all the other members of the Board, no such settlement shall be invalid by reason only of the casual or unforeseen absence of any of the members (including the Chairman) of the Board during any stage of the proceeding.]

[CHAPTER II-A]

Notice Of Change

9-A. Notice of change .-No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,-

- (a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or
- (b) within twenty-one days of giving such notice:

Provided that no notice shall be required for effecting any such change-

- (a) where the change is effected in pursuance of any [settlement or award]; or
- (b) where the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service

Regulations, Civilians in Defence Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply.

9-B. Power of Government to exempt .-Where the appropriate Government is of opinion that the application of the provisions of section 9-A to any class of industrial establishments or to any class of workmen employed in any industrial establishment affect the employers in relation thereto so prejudicially that such application may cause serious repercussion on the industry concerned and that public interest so requires, the appropriate Government may, by notification in the Official Gazette, direct that the provisions of the said section shall not apply or shall apply, subject to such conditions as may be specified in the notification, to that class of industrial establishments or to that class of workmen employed in any industrial establishment.

[CHAPTER IIB

Grievance Redressal Machinery

9C. Setting up of Grievance Redressal Machinery. - (1) Every industrial establishment employing twenty or more workmen shall have one or more Grievance Redressal Committee for the resolution of disputes arising out of individual grievances.

(2) The Grievance Redressal Committee shall consist of equal number of members from the employer and the workmen.

(3) The chairperson of the Grievance Redressal Committee shall be selected from the employer and from among the workmen alternatively on rotation basis every year.

(4) The total number of members of the Grievance Redressal Committee shall not exceed more than six:

Provided that there shall be, as far as practicable, one woman member if the Grievance Redressal Committee has two members and in case the number of members are more than two, the number of women members may be increased proportionately.

(5) Notwithstanding anything contained in this section, the setting up of Grievance Redressal Committee shall not affect the right of the workman to raise industrial dispute on the same matter under the provisions of this Act.

(6) The Grievance Redressal Committee may complete its proceedings within thirty days on receipt of a written application by or on behalf of the aggrieved party.

(7) The workman who is aggrieved of the decision of the Grievance Redressal Committee may prefer an appeal to the employer against the decision of Grievance Redressal Committee and the employer shall, within

one month from the date of receipt of such appeal, dispose off the same and send a copy of his decision to the workman concerned.

(8) Nothing contained in this section shall apply to the workmen for whom there is an established Grievance Redressal Mechanism in the establishment concerned]

OLD LAW ▼

Prior to substitution Chapter II-B read as -

[CHAPTER II-B]

Reference Of Certain Individual Disputes To Grievance Settlement Authorities

9-C. Setting up of grievance settlement authorities and reference of certain individual disputes to such authorities .-(1) The employer in relation to every industrial establishment in which fifty or more workmen are employed or have been employed on any day in the preceding twelve months, shall provide for, in accordance with the rules made in that behalf under this Act, a Grievance Settlement Authority for the settlement of industrial disputes connected with an individual workman employed in the establishment.

(2) Where an industrial dispute connected with an individual workman arises in an establishment referred to in sub-section (1), a workman or any trade union of workmen of which such workman is a member, refer, in such manner as may be prescribed, such dispute to the Grievance Settlement Authority provided for by the employer under that sub-section for settlement.

(3) The Grievance Settlement Authority referred to in sub-section (1) shall follow such procedure and complete its proceedings within such period as may be prescribed.

(4) No reference shall be made under Chapter III with respect to any dispute referred to in this section unless such dispute has been referred to the Grievance Settlement Authority concerned and the decision of the Grievance Settlement Authority is not acceptable to any of the parties to the dispute.

CHAPTER III

Reference Of Disputes To Boards, Courts Or Tribunals

10. Reference of dispute to Boards, Courts or Tribunals .-(1) [Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time], 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 or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or

(d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication:

Provided that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under clause (c):]

[Provided further 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 that any other proceedings under this Act in respect of the dispute may have commenced:]

[Provided also that where the dispute in relation to which the Central Government is the appropriate Government, it shall be competent for the Government to refer the dispute to a Labour Court or an Industrial Tribunal, as the case may be, constituted by the State Government.]

[(1-A) Where the Central Government is of opinion that any industrial dispute exists or is apprehended and the dispute involves any question of national importance or is of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, such dispute and that the dispute should be adjudicated by a National Tribunal, then, the Central Government may, whether or not it is the appropriate Government in relation to that dispute, at any time, by order in writing, refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a National Tribunal for adjudication.]

(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, [Labour Court, Tribunal or National Tribunal], the appropriate Government, if satisfied that the persons applying represent the majority of each party, shall make the reference accordingly.

[(2-A) An order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this section shall specify the period within which such Labour Court, Tribunal or National Tribunal shall submit its award on such dispute to the appropriate Government:

Provided that where such industrial dispute is connected with an individual workman, no such period shall exceed three months:

Provided further that where the parties to an industrial dispute apply in the prescribed manner, whether jointly or separately, to the Labour Court, Tribunal or National Tribunal for extension of such period or for any other

reason, and the presiding officer of such Labour Court, Tribunal or National Tribunal considers it necessary or expedient to extend such period, he may for reasons to be recorded in writing, extend such period by such further period as he may think fit:

Provided also that in computing any period specified in this sub-section, the period, if any, for which the proceedings before the Labour Court, Tribunal or National Tribunal had been stayed by any injunction or order of a Civil Court shall be excluded:

Provided also that no proceedings before a Labour Court, Tribunal or National Tribunal shall lapse merely on the ground that any period specified under this sub-section had expired without such proceedings being completed.]

(3) Where an industrial dispute has been referred to a Board, [Labour Court, Tribunal or National 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.

[(4) Where in an order referring an industrial dispute to] [a Labour Court, Tribunal or National Tribunal] [under this section or in a subsequent order, the appropriate Government has specified the points of dispute for adjudication,][the Labour Court or the Tribunal or the National Tribunal, as the case may be,][shall confine its adjudication to those points and matters incidental thereto.

(5) Where a dispute concerning any establishment or establishments has been, or is to be, referred to a] [Labour Court, Tribunal or National Tribunal][under this section and the appropriate Government is of opinion, whether on an application made to it in this behalf or otherwise, that the dispute is of such a nature that any other establishment, group or class of establishments of a similar nature is likely to be interested in, or affected by, such dispute, the appropriate Government may, at the time of making the reference or at any time thereafter but before the submission of the award, include in that reference such establishment, group or class of establishments, whether or not at the time of such inclusion any dispute exists or is apprehended in that establishment, group or class of establishments.]

[(6) Where any reference has been made under sub-section (1-A) to a National Tribunal, then notwithstanding anything contained in this Act, no Labour Court or Tribunal shall have jurisdiction to adjudicate upon any matter which is under adjudication before the National Tribunal, and accordingly,-

(a) if the matter under adjudication before the National Tribunal is pending in a proceeding before a Labour Court or Tribunal, the proceeding before the Labour Court or the Tribunal, as the case may

be, in so far as it relates to such matter, shall be deemed to have been quashed on such reference to the National Tribunal; and

(b) it shall not be lawful for the appropriate Government to refer the matter under adjudication before the National Tribunal to any Labour Court or Tribunal for adjudication during the pendency of the proceeding in relation to such matter before the National Tribunal.]

[*Explanation* .-In this sub-section, "Labour Court "or "Tribunal "includes any Court or Tribunal or other authority constituted under any law relating to investigation and settlement of industrial disputes in force in any State.]

[(7) Where any industrial dispute, in relation to which the Central Government is not the appropriate Government, is referred to a National Tribunal, then, notwithstanding anything contained in this Act, any reference in section 15, section 17, section 19, section 33-A, section 33-B and section 36-A to the appropriate Government in relation to such dispute shall be construed as a reference to the Central Government but, save as aforesaid and as otherwise expressly provided in this Act, any reference in any other provision of this Act to the appropriate Government in relation to that dispute shall mean a reference to the State Government.]

[(8) No proceedings pending before a Labour Court, Tribunal or National Tribunal in relation to an industrial dispute shall lapse merely by reason of the death of any of the parties to the dispute being a workman, and such Labour Court, Tribunal or National Tribunal shall complete such proceedings and submit its award to the appropriate Government.]

[10-A. Voluntary reference of disputes to arbitration .-(1) Where any industrial dispute exists or is apprehended and the employer and the workmen agree to refer the dispute to arbitration, they may, at any time before the dispute has been referred under section 10 to a Labour Court or Tribunal or National Tribunal, by a written agreement, refer the dispute to arbitration and the reference shall be to such person or persons (including the presiding officer of a Labour Court or Tribunal or National Tribunal) as an arbitrator or arbitrators as may be specified in the arbitration agreement.]

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

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

(3) A copy of the arbitration agreement shall be forwarded to the appropriate Government and the conciliation officer and the appropriate

Government shall, within] [one month][from the date of the receipt of such copy, publish the same in the Official Gazette.]

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

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

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

[(5) Nothing in the Arbitration Act, 1940 (10 of 1940), shall apply to arbitrations under this section.]

CHAPTER IV

Procedure, Powers And Duties Of Authorities

11. Procedure and power of conciliation officers, Boards, Courts and Tribunals .- [(1) Subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think fit.]

(2) A conciliation officer or a member of a Board, [or Court or the presiding officer of a Labour Court, Tribunal or National Tribunal]may, for the purpose of inquiry into any existing or apprehended industrial dispute, after giving reasonable notice, enter the premises occupied by any establishment to which the dispute relates.

(3) Every Board, Court, [Labour Court, Tribunal and National Tribunal] shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 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, [Labour Court, Tribunal or National Tribunal], shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860).

(4) A conciliation officer [may enforce the attendance of any person for the purpose of examination of such person or call for] and inspect any document which he has ground for considering to be relevant to the industrial dispute [or to be necessary for the purpose of verifying the implementation of any award or carrying out any other duty imposed on him under this Act, and for the aforesaid purposes, the conciliation officer shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908),][in respect of enforcing the attendance of any person and examining him or of compelling the production of documents.]

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

(6) All conciliation officers, members of a Board or Court and the presiding officers of a Labour Court, Tribunal or National Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

(7) Subject to any rules made under this Act, the costs of, and incidental to, any proceeding before a Labour Court, Tribunal or National Tribunal shall be in the discretion of that Labour Court, Tribunal or National Tribunal and the Labour Court, Tribunal or National Tribunal, as the case may be, shall have full power to determine by and to whom and to what extent and subject to what conditions, if any, such costs are to be paid, and to give all necessary directions for the purposes aforesaid and such costs made, on application made to the appropriate Government by the person entitled, be recovered by that Government in the same manner as an arrear of land revenue.]

[(8) Every][Labour Court, Tribunal or National Tribunal] [shall be deemed to be a Civil Court for the purposes of][sections 345, 346 and 348 of the Code of Criminal Procedure, 1973 (2 of 1974)].]

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

(10) The Labour Court or Tribunal or National Tribunal, as the case may be, shall transmit any award, order or settlement to a Civil Court having jurisdiction and such Civil Court shall execute the award, order or settlement as if it were a decree passed by it.]

[11-A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen .-

Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or

National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require:

Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.]

12. Duties of conciliation officers .-(1) Where 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 section 22 has been given, shall, hold conciliation proceedings 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 matters in dispute is arrived at in the course of the conciliation proceedings, the conciliation officer shall send a report thereof to the appropriate Government [or an officer authorised in this behalf by 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, [Labour Court, Tribunal or National Tribunal], it may make such reference. Where the appropriate Government does not make such a reference, it shall record and communicate to the parties concerned its reasons therefor.

(6) A report under this section shall be submitted within fourteen days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate Government: [Provided that,][subject to the approval of the conciliation officer,][the time for the submission of the

report may be extended by such period as may be agreed upon in writing by all the parties to the dispute.]

13. Duties of Board .-(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 [Labour Court, Tribunal or National Tribunal] under section 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 [on which the dispute was referred to it] 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 the 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 on in writing by all the parties to the dispute.

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.

[15. Duties of Labour Courts, Tribunals and National Tribunals .- Where an industrial dispute has been referred to a Labour Court, Tribunal or National Tribunal for adjudication, it shall hold its proceedings expeditiously and shall,][within the period specified in the order referring such industrial dispute or the further period extended under the second proviso to sub-

section (2-A) of section 10][, submit its award to the appropriate Government.]

16. Form of report or award .-(1) The report of a Board or Court shall be in writing and shall be signed by all the members of the Board or Court, as the case may be:

Provided that nothing in this section shall be deemed to prevent any member of the Board or Court from recording any minute of dissent from a report or from any recommendation made therein.

(2) The award of a Labour Court or Tribunal or National Tribunal shall be in writing and shall be signed by its presiding officer.

17. Publication of reports and awards .-(1) Every report of a Board or Court together with any minute of dissent recorded therewith, every arbitration award and every award of a Labour Court, Tribunal or National Tribunal shall, within a period of thirty days from the date of its receipt by the appropriate Government, be published in such manner as the appropriate Government thinks fit.

(2) Subject to the provisions of section 17-A, the award published under sub-section (1) shall be final and shall not be called in question by any Court in any manner whatsoever.

17-A. Commencement of the award .-(1) An award (including an arbitration award) shall become enforceable on the expiry of thirty days from the date of its publication under section 17:

Provided that-

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

(b) if the Central Government is of opinion, in any case where the award has been given by a National Tribunal, that it will be inexpedient on public grounds affecting national economy or social justice to give effect to the whole or any part of the award, the appropriate Government, or as the case may be, the Central Government may, by notification in the Official Gazette, declare that the award shall not become enforceable on the expiry of the said period of thirty days.

(2) Where any declaration has been made in relation to an award under the proviso to sub-section (1), the appropriate Government or the Central Government may, within ninety days from the date of publication of the award under section 17, make an order rejecting or modifying the award, and shall, on the first available opportunity, lay the award together with a copy of the order before the Legislature of the State, if the order has been made by a State Government, or before Parliament, if the order has been made by the Central Government.

(3) Where any award as rejected or modified by an order made under sub-section (2) is laid before the Legislature of a State or before Parliament,

such award shall become enforceable on the expiry of fifteen days from the date on which it is so laid; and where no order under sub-section (2) is made in pursuance of a declaration under the proviso to sub-section (1), the award shall become enforceable on the expiry of the period of ninety days referred to in sub-section (2).

(4) Subject to the provisions of sub-section (1) and sub-section (3) regarding the enforceability of an award, the award shall come into operation with effect from such date as may be specified therein, but where no date is so specified, it shall come into operation on the date when the award becomes enforceable under sub-section (1) or sub-section (3), as the case may be.

[17-B. Payment of full wages to workman pending proceedings in higher Courts .-Where in any case, a Labour Court, Tribunal or National Tribunal by its award directs reinstatement of any workman and the employer prefers any proceedings against such award in a High Court or the Supreme Court, the employer shall be liable to pay such workman, during the period of pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period and an affidavit by such workman had been filed to that effect in such Court:

Provided that where it is proved to the satisfaction of the High Court or the Supreme Court that such workman had been employed and had been receiving adequate remuneration during any such period or part thereof, the Court shall order that no wages shall be payable under this section for such period of part, as the case may be.]

18. Persons on whom settlements and awards are binding .- [(1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.]

(2) [Subject to the provisions of sub-section (3), an arbitration award which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]

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

(a) all parties to the industrial dispute;

(b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] [Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were 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 the dispute and all persons who subsequently become employed in that establishment or part.

19. Period of operation of settlements and awards .-(1) A settlement [* * *] shall come into operation on such date as is agreed upon by the parties to the dispute, and if no date is agreed upon, on the date on which the memorandum of the 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 [from the date on which the memorandum of settlement is signed by the parties to the dispute], 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 shall, subject to the provisions of this section, remain in operation for a period of one year][from the date on which the award becomes enforceable under section 17-A]:

[Provided that the appropriate Government may reduce the said period and fix such period as it thinks fit: Provided further that the appropriate Government may, before the expiry of the said period, extend the period of operation by any period not exceeding one year at a time as it thinks fit, so, however, that the total period of operation of any award does not exceed three years from the date on which it come into operation.]

(4) Where the appropriate Government, whether of its own motion or on the application of any party bound by the award, considers that since the award was made, there has been a material change in the circumstances on which it was based, the appropriate Government may refer the award or a part of it [to a Labour Court, if the award was that of a Labour Court or to a Tribunal, if the award was that of a Tribunal or of a National Tribunal], for decision whether the period of operation should not, by reason of such change, be shortened and the decision of [Labour Court or the Tribunal, as the case may be on such reference shall,][* * *][be final.

(5) Nothing contained in sub-section (3) shall apply to any award which by its nature, terms or other circumstances does not impose, after it has been given effect to, any continuing obligation on the parties bound by the award.

(6) Notwithstanding the expiry of the period of operation under sub-section (3), the award shall continue to be binding on the parties until a period of two months has elapsed from the date on which notice is given by any party bound by the award to the other party or parties intimating its intention to terminate the award.]

[(7) No notice given under sub-section (2) or sub-section (6) shall have effect, unless it is given by a party representing the majority of persons bound by the settlement or award, as the case may be.]

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 section 22 is received by the 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 section 17, as the case may be; or
- (c) when a reference is made to a Court, [Labour Court, Tribunal or National Tribunal] under section 10 during the pendency of conciliation proceedings.

(3) Proceedings before an arbitrator under section 10-A or [before a Labour Court, Tribunal or National Tribunal] shall be deemed to have commenced on the date of the [reference of the dispute for arbitration or adjudication, as the case may be,] and such proceedings shall be deemed to have concluded [on the date on which the award becomes enforceable under section 17-A].

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, [Labour Court, Tribunal, National Tribunal or an arbitrator] in the course of any investigation or inquiry as to a 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, [Labour Court, Tribunal, National Tribunal or an arbitrator] if the trade union, person, firm or company, in question has made a request in writing to the conciliation officer, Board, Court, Labour Court, Tribunal, National Tribunal or arbitrator, 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, [or Court or the presiding officer of the Labour Court, Tribunal or National Tribunal or the arbitrator] 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 a prosecution under section 193 of the Indian Penal Code (45 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 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.

(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 services.

(4) The 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 persons employed by him any such notices as are referred to in sub-section (2), he shall within five 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.

23. General prohibition of strikes and lock-outs .-No workman who is employed in any industrial establishment shall go on strike in breach of contract and no employer of any such workman shall declare a lock-out-

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

(b) during the pendency of proceedings before [a Labour Court, Tribunal or National Tribunal] and two months, after the conclusion of such proceedings; [*]

[(bb) during the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings, where a notification has been issued under sub-section (3-A) of section 10-A; 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.

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 [or sub-section (4-A) of section 10-A].

(2) Where a strike or lock-out in pursuance of an industrial dispute has already commenced and is in existence at the time of the reference of the dispute to a Board, [an arbitrator, a] [Labour Court, Tribunal or National 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 [or sub-section (4-A) of section 10-A].

(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.

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 V-A]

Lay-Off And Retrenchment

25-A. Application of sections 25-C to 25-E .-(1) Sections 25-C to 25-E inclusive [shall not apply to industrial establishments to which Chapter V-B applies, or-]

- (a) to industrial establishments in which less than fifty workmen on an average per working day have been employed in the preceding calendar month; or
- (b) to industrial establishments which are of a seasonal character or in which work is performed only intermittently.

(2) If a question arises whether an industrial establishment is of a seasonal character or whether work is performed therein only intermittently, the decision of the appropriate Government thereon shall be final.

[*Explanation.* -In this section and in sections 25-C, 25-D and 25-E, "industrial establishment "means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948); or
- (ii) a mine as defined in clause (j) of section 2 of the Mines Act, 1952 (35 of 1952); or
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951).]

[25-B. Definition of continuous service .-For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
 - (ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) ninety-five days, in the case of a workman employed below ground in a mine; and
- (ii) one hundred and twenty days, in any other case.

Explanation .-For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

- (i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under this Act or under any other law applicable to the industrial establishment;
- (ii) he has been on leave with full wages, earned in the previous years;
- (iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- (iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.]

[25-C. Right of workmen laid-off for compensation .-Whenever a workman (other than a *badli* workman or a casual workman) whose name is borne on the muster-rolls of an industrial establishment and who has completed not less than one year of continuous service under an employer is laid-off, whether continuously or intermittently, he shall be paid by the employer for all days during which he is so laid-off, except for such weekly holidays as may intervene, compensation which shall be equal to fifty per cent. of the total of the basic wages and dearness allowance that would have been payable to him had he not been so laid-off:

Provided that if during any period of twelve months, a workman is so laid-off for more than forty-five days, no such compensation shall be payable in respect of any period of the lay-off after the expiry of the first forty-five days, if there is an agreement to that effect between the workman and the employer:

Provided further that it shall be lawful for the employer in any case falling within the foregoing proviso to retrench the workman in accordance with the provisions contained in section 25-F at any time after the expiry of the first forty-five days of the lay-off and when he does so, any compensation paid to the workman for having been laid-off during the preceding twelve months may be set-off against the compensation payable for retrenchment.

Explanation .- "Badli workman "means a workman who is employed in an industrial establishment in the place of another workman whose name is borne on the muster-rolls of the establishment, but shall cease to be regarded as such for the purposes of this section, if he has completed one year of continuous service in the establishment.]

25-D. Duty of an employer to maintain muster-rolls of workmen .- Notwithstanding that workmen in any industrial establishment have been laid-off, it shall be the duty of every employer to maintain for the purposes of this Chapter a muster-roll, and to provide for the making of entries therein by workmen who may present themselves for work at the establishment at the appointed time during normal working hours.

25-E. Workmen not entitled to compensation in certain cases .-No compensation shall be paid to a workman who has been laid-off-

- (i) if he refuses to accept any alternative employment in the same establishment from which he has been laid-off, or in any other establishment belonging to the same employer situate in the same town or village or situate within a radius of five miles from the establishment to which he belongs, if, in the opinion of the employer, such alternative employment does not call for any special skill or previous experience and can be done by the workman, provided that the wages which would normally have been paid to the workman are offered for the alternative employment also;
- (ii) if he does not present himself for work at the establishment at the appointed time during normal working hours at least once a day;
- (iii) if such laying-off is due to a strike or slowing-down of production on the part of workmen in another part of the establishment.

25-F. Conditions precedent to retrenchment of workmen .-No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month 's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

[* * *]

- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days 'average pay [for every completed year of continuous service] or any part thereof in excess of six months; and

- (c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette.]

[25-FF. Compensation to workmen in case of transfer of undertakings .-

Where the ownership or management of an undertaking is transferred, whether by agreement or by operation of law, from the employer in relation to or that undertaking to a new employer, every workman who has been in continuous service for not less than one year in that undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched:

Provided that nothing in this section shall apply to a workman in any case where there has been a change of employers by reason of the transfer, if-

- (a) the service of the workman has not been interrupted by such transfer;
- (b) the terms and conditions of service applicable to the workman after such transfer are not in any way less favourable to the workman than those applicable to him immediately before the transfer; and
- (c) the new employer is, under the terms of such transfer or otherwise, legally liable to pay to the workman, in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by the transfer.]

[25-FFA. Sixty days 'notice to be given of intention to close down any undertaking .-

(1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to-

- (a) an undertaking in which-
 - (i) less than fifty workmen are employed, or
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,
- (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.

(2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.]

25-FFF. Compensation to workmen in case of closing down of undertakings .-(1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25-F, shall not exceed his average pay for three months.

[*Explanation* .-An undertaking which is closed down by reason merely of-

(i) financial difficulties (including financial losses); or

(ii) accumulation of undisposed of stocks; or

(iii) the expiry of the period of the lease or licence granted to it; or

(iv) in case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which operations are carried on, shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.]

[(1-A) Notwithstanding anything contained in sub-section (1), where an undertaking engaged in mining operations is closed down by reason merely of exhaustion of the minerals in the area in which such operations are carried on, no workman referred to in that sub-section shall be entitled to any notice or compensation in accordance with the provisions of section 25-F, if-

(a) the employer provides the workman with alternative employment with effect from the date of closure at the same remuneration as he was entitled to receive, and on the same terms and conditions of service as were applicable to him, immediately before the closure;

(b) the service of the workman has not been interrupted by such alternative employment; and

(c) the employer is, under the terms of such alternative employment or otherwise, legally liable to pay to the workman, in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by such alternative employment.

(1-B) For the purposes of sub-sections (1) and (1-A), the expressions "minerals "and "mining operations "shall have the meanings respectively assigned to them in clauses (a) and (d) of section 3 of the Mines and Minerals (Regulation and Development) Act, 1957 (67 of 1957).]

(2) Where any undertaking set-up for the construction of buildings, bridges, roads, canals, dams or other construction work is closed down on account of the completion of the work within two years from the date on which the undertaking had been set-up, no workman employed therein shall be entitled to any compensation under clause (b) of section 25-F, but if the construction work is not so completed within two years, he shall be entitled to notice and compensation under that section for every [completed year of continuous service or any part thereof in excess of six months.]

25-G. Procedure for retrenchment .-Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.

25-H. Re-employment of retrenched workmen .-Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity [to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen] who offer themselves for re-employment shall have preference over other persons.

25-I. Recovery of moneys due from employers under this Chapter .-[Repealed by *the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956, section 19 (w.e.f. 10-3-1957).*]

25-J. Effect of laws inconsistent with this Chapter .-(1) The provisions of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in any other law [including standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946):

[Provided that where under the provisions of any other Act or rules, orders or notifications issued thereunder or under any standing orders or under any award, contract of service or otherwise, a workman is entitled to benefits in respect of any matter which are more favourable to him than those to which he would be entitled under this Act, the workman shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that he receives benefits in respect of other matters under this Act.]

(2) For the removal of doubts, it is hereby declared that nothing contained in this Chapter shall be deemed to affect the provisions of any other law for the time being in force in any State insofar as that law provides for the settlement of industrial disputes, but the rights and liabilities of employers and workmen insofar as they relate to lay-off and retrenchment shall be determined in accordance with the provisions of this Chapter.

[CHAPTER V-B]

Special Provisions Relating To Lay-Off, Retrenchment And Closure In Certain Establishments

25-K. Application of Chapter V-B .-(1) The provisions of this Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than [one hundred] workmen were employed on an average per working day for the preceding twelve months.

(2) If a question arises whether an industrial establishment is of a seasonal character or whether work is performed therein only intermittently, the decision of the appropriate Government thereon shall be final.

25-L. Definitions .-For the purposes of this Chapter,-

(a) "industrial establishment "means-

(i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);

(ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952); or

(iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);

(b) notwithstanding anything contained in sub-clause (ii) of clause (a) of section 2,-

(i) in relation to any company in which not less than fifty-one per cent. of the paid-up share capital is held by the Central Government, or

(iii) in relation to any corporation [not being a corporation referred to in sub-clause (i) of clause (a) of section 2 established by or under any law made by Parliament, the Central Government shall be the appropriate Government.

25-M. Prohibition of lay-off .-(1) No workman (other than a *badli* workman or a casual workman) whose name is borne on the muster-rolls of an industrial establishment to which this Chapter applies shall be laid-off by his employer except [with the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority), obtained on an application made in this behalf, unless such lay-off is due to shortage of power or to natural calamity, and in the case of a mine, such lay-off is due also to fire, flood, excess of inflammable gas or explosion].

[(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended lay-off and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where the workmen (other than *badli* workmen or casual workmen) of an industrial establishment, being a mine, have been laid-off under sub-section (1) for reasons of fire, flood or excess of inflammable gas or explosion, the employer, in relation to such establishment, shall, within a period of thirty days from the date of commencement of such lay-off, apply, in the prescribed manner, to the appropriate Government or the specified authority for permission to continue the lay-off.

(4) Where an application for permission under sub-section (1) or sub-section (3) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the persons interested in such lay-off, may, having regard to the genuineness and adequacy of the reasons for such lay-off, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(5) Where an application for permission under sub-section (1) or sub-section (3) has been made and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

(6) An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of sub-section (7), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order.

(7) The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (4) or refer the matter or, as the case may be, cause it to be referred, to a Tribunal for adjudication:

Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

(8) Where no application for permission under sub-section (1) is made, or where no application for permission under sub-section (3) is made within the period specified therein, or where the permission for any lay-off has been refused, such lay-off shall be deemed to be illegal from the date on which the workmen had been laid-off and the workmen shall be entitled to all the benefits under any law for the time being in force as if they had been not laid-off.

(9) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the

employer or the like, it is necessary so to do, by order, direct that the provisions of sub-section (1), or, as the case may be, sub-section (3) shall not apply in relation to such establishment for such period as may be specified in the order.]

[(10)] The provisions of section 25-C (other than the second proviso thereto) shall apply to cases of lay-off referred to in this section.

Explanation .-For the purposes of this section, a workman shall not be deemed to be laid-off by an employer if such employer offers any alternative employment (which in the opinion of the employer does not call for any special skill or previous experience and can be done by the workman) in the same establishment from which he has been laid-off or in any other establishment belonging to the same employer, situate in the same town or village, or situate within such distance from the establishment to which he belongs that the transfer will not involve undue hardship to the workman having regard to the facts and circumstances of his case, provided that the wages which would normally have been paid to the workman are offered for the alternative appointment also.

[25-N. Conditions precedent to retrenchment of workmen .-(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

(a) the workman has been given three months 'notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where an application for permission has been made under sub-section (1) and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

(5) An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of sub-section (6), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order.

(6) The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (3) or refer the matter or, as the case may be, cause it to be referred, to a Tribunal for adjudication:

Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

(7) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.

(8) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct that the provisions of sub-section (1) shall not apply in relation to such establishment for such period as may be specified in the order.

(9) Where permission for retrenchment has been granted under sub-section (3) or where permission for retrenchment is deemed to be granted under sub-section (4), every workman who is employed in that establishment immediately before the date of application for permission under this section shall be entitled to receive, at the time of retrenchment, compensation which shall be equivalent to fifteen days 'average pay for every completed year or continuous service or any part thereof in excess of six months.]

[25-O. Procedure for closing down an undertaking .-(1) An employer who intends to close down an undertaking of an industrial establishment to which this Chapter applies shall, in the prescribed manner, apply, for prior permission at least ninety days before the date on which the intended closure is to become effective, to the appropriate Government, stating clearly the reasons for the intended closure of the undertaking and a copy of

such application shall also be served simultaneously on the representatives of the workmen in the prescribed manner:

Provided that nothing in this sub-section shall apply to an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work.

(2) Where an application for permission has been made under sub-section (1), the appropriate Government, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen and the persons interested in such closure may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the general public and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(3) Where an application has been made under sub-section (1) and the appropriate Government does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

(4) An order of the appropriate Government granting or refusing to grant permission shall, subject to the provisions of sub-section (5), be final and binding on all the parties and shall remain in force for one year from the date of such order.

(5) The appropriate Government may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (2) or refer the matter to a Tribunal for adjudication:

Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

(6) Where no application for permission under sub-section (1) is made within the period specified therein, or where the permission for closure has been refused, the closure of the undertaking shall be deemed to be illegal from the date of closure and the workmen shall be entitled to all the benefits under any law for the time being in force as if the undertaking had not been closed down.

(7) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that the provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

(8) Where an undertaking is permitted to be closed down under sub-section (2) or where permission for closure is deemed to be granted under sub-section (3), every workman who is employed in that undertaking immediately before the date of application for permission under this section, shall be entitled to receive compensation which shall be equivalent of fifteen days 'average pay for every completed year of continuous service or any part thereof in excess of six months.]

25-P. Special provision as to restarting of undertakings closed down before commencement of the Industrial Disputes (Amendment) Act, 1976 .-If the appropriate Government is of opinion in respect of any undertaking or an industrial establishment to which this Chapter applies and which closed down before the commencement of the Industrial Disputes (Amendment) Act, 1976 (32 of 1976)-

- (a) that such undertaking was closed down otherwise than on account of unavoidable circumstances beyond the control of the employer;
- (b) that there are possibilities of restarting the undertaking;
- (c) that it is necessary for the rehabilitation of the workmen employed in such undertaking before its closure or for the maintenance of supplies and services essential to the life of the community to restart the undertaking or both; and
- (d) that the restarting of the undertaking will not result in hardship to the employer in relation to the undertaking, t may, after giving an opportunity to such employer and workmen, direct, by order published in the Official Gazette, that the undertaking shall be restarted within such time (not being less than one month from the date of the order) as may be specified in the order.

25-Q. Penalty for lay-off and retrenchment without previous permission .-Any employer who contravenes the provisions of section 25-M or [* * *] of section 25-N 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.

25-R. Penalty for closure .-(1) Any employer who closes down an undertaking without complying with the provisions of sub-section (1) of section 25-O shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

(2) Any employer, who contravenes [an order refusing to grant permission to close down an undertaking under sub-section (2) of section 25-O or a direction given under section 25-P], shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both, and where the contravention is a continuing one, with a further fine which may extend to two thousand

rupees for every day during which the contravention continues after the conviction. [* * *]

25-S. Certain provisions of Chapter V-A to apply to an industrial establishment to which this Chapter applies .-The provisions of sections 25-B, 25-D, 25-FF, 25-G, 25-H and 25-J in Chapter V-A shall, so far as may be, apply also in relation to an industrial establishment to which the provisions of this Chapter apply.

[CHAPTER V-C]

Unfair Labour Practices

25-T. Prohibition of unfair labour practice .-No employer or workman or a trade union, whether registered under the Trade Unions Act, 1926 (18 of 1926), or not, shall commit any unfair labour practice.

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

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 .-(1) 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 furtherance or support of any illegal strike or lock-out shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

[29. Penalty for breach of settlement or award .-Any person who commits a breach of any terms of any settlement or award, which is binding

on him under this Act, shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both,][and where the breach is a continuing one, with a further fine which may extend to two hundred rupees for every day during which the breach continues after the conviction for the first][and the Court trying the offence, if it fines the offender, may direct that the whole or any part of the fine realised from him shall be paid, by way of compensation, to any person who, in its opinion, has been injured by such breach.]

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.

[30-A. Penalty for closure without notice .-Any employer who closes down any undertaking without complying with the provisions of section 25-FFA shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both.]

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.

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.

[33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings .-(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before][an arbitrator or][a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall-

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

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.

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

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

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

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

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

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

(b) by discharging or punishing, whether by dismissal or otherwise, such protected workman, save with the express permission in writing of the authority before which the proceeding is pending.

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

(4) In every establishment, the number of workmen to be recognised as protected workmen for the purposes of sub-section (3) shall be one per cent. of the total number of workmen employed therein subject to a minimum number of five protected workmen and a maximum number of one hundred

protected workmen and for the aforesaid purpose, the appropriate Government may make rules providing for the distribution of such protected workmen among various trade unions, if any, connected with the establishment and the manner in which the workmen may be chosen and recognised as protected workmen.

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

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

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

[33-A. Special provision for adjudication as to whether conditions of service, etc., changed during pendency of proceedings .-Where an employer contravenes the provisions of section 33 during the pendency of proceedings] [before a conciliation officer, Board, an arbitrator, Labour Court, Tribunal or National Tribunal] [, any employee aggrieved by such contravention, may make a complaint in writing,] [in the prescribed manner,-

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

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

[33-B. Power to transfer certain proceedings .-(1) The appropriate Government may, by order in writing and for reasons to be stated therein, withdraw any proceeding under this Act pending before a Labour Court, Tribunal or National Tribunal and transfer the same to another Labour Court, Tribunal or National Tribunal, as the case may be, for the disposal of the proceeding and the Labour Court, Tribunal or National Tribunal to which the proceeding is so transferred may, subject to special directions in the order of transfer, proceed either *de novo* or from the stage at which it was so transferred:

Provided that where a proceeding under section 33 or section 33-A is pending before a Tribunal or National Tribunal, the proceeding may also be transferred to a Labour Court.

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

[33-C. Recovery of money due from an employer .-(1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of][Chapter V-A or Chapter V-B][, the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue:

Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer:

Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government][within a period not exceeding three months:]

[Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.]

[(3) For the purposes of computing the money value of a benefit, the Labour Court may, if it so thinks fit, appoint a Commissioner who shall, after taking such evidence as may be necessary, submit a report to the Labour Court and the Labour Court shall determine the amount after considering the report of the Commissioner and other circumstances of the case.

(4) The decision of the Labour Court shall be forwarded by it to the appropriate Government and any amount found due by the Labour Court may be recovered in the manner provided for in sub-section (1).

(5) Where workmen employed under the same employer are entitled to receive from him any money or any benefit capable of being computed in terms of money, then, subject to such rules as may be made in this behalf, a single application for the recovery of the amount due may be made on behalf of or in respect of any number of such workmen.

Explanation .-In this section "Labour Court "includes any Court constituted under any law relating to investigation and settlement of industrial disputes in force in any State.]

34. Cognizance of offences .-(1) No Court shall take cognizance of any offence punishable under this Act or of the abetment of any such offence, save on complaint made by or under the authority of the appropriate Government.

(2) No Court inferior to that of [a Metropolitan Magistrate or a Judicial Magistrate of the first class] shall try any offence punishable under this Act.

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 any fine or penalty, or to deprivation of any right or benefit to which he or his legal representatives would otherwise be entitled, or be liable to be placed in any respect, either directly or indirectly, under any disability or at any disadvantage as compared with other members of the union or society, anything to the contrary in the rules of a trade union or society notwithstanding.

(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 .-(1) A workman who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by-]

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

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

(c) where the worker is not a member of any trade union, by] [any member of the executive or other office bearer][of any trade union connected with, or by any other workman employed in, the industry in

which the worker is employed and authorised in such manner as may be prescribed.

(2) An employer who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by-

- (a) an officer of an association of employers of which he is a member;
- (b) an officer of a federation of associations of employers to which the association referred to in clause (a) is affiliated;
- (c) where the employer is not a member of any association of employers, by an officer of any association of employers connected with, or by any other employer engaged in, the industry in which the employer is engaged and authorised in such manner as may be prescribed.

(3) No party to a dispute shall be entitled to be represented by a legal practitioner in any conciliation proceedings under this Act or in any proceedings before a Court.

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

[36-A. Power to remove difficulties .-(1) If, in the opinion of the appropriate Government, any difficulty or doubt arises as to the interpretation of any provision of an award or settlement, it may refer the question to such Labour Court, Tribunal or National Tribunal as it may think fit.

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

[36-B. Power to exempt .-Where the appropriate Government is satisfied in relation to any industrial establishment or undertaking or any class of industrial establishments or undertakings carried on by a department of that Government that adequate provisions exist for the investigation and settlement of industrial disputes in respect of workmen employed in such establishment or undertaking or class of establishments or undertakings, it may, by notification in the Official Gazette, exempt, conditionally or unconditionally such establishment or undertaking or class of establishments or undertakings from all or any of the provisions of this Act.]

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 pursuance 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 officers, Boards, Courts, [Labour Courts, Tribunals and National Tribunals] including rules as to the summoning of witnesses, the production of documents relevant to the subject-matter of an inquiry or investigation, the number of members necessary to form a quorum and the manner of submission of reports and awards;

[(aa) The form of arbitration agreement,][the manner in which it may be signed by the parties, the manner in which a notification may be issued under sub-section (3-A) of section 10-A,][the powers of the arbitrator named in the arbitration agreement and the procedure to be followed by him;]

(aaa) the appointment of assessors in proceedings under this Act;

[* * *]

(b) the constitution and functions 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 salaries and allowances and the terms and conditions for appointment of the presiding officers of the Labour Court, Tribunal and the National Tribunal including the allowances admissible to members of Courts, Boards and to assessors and witnesses]

(d) the ministerial establishment which may be allotted to a Court, Board, [Labour Court, Tribunal or National Tribunal] and the salaries and allowances payable to members of such establishment;

(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, [Labour Court, Tribunal or National 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.

[(4) All rules made under this section shall, as soon as possible after they are made, be laid before the State Legislature or, where the appropriate Government is the Central Government, before both Houses of Parliament.]

[(5) Every rule made by the Central Government under this section shall be laid, as soon as may be after it is made, before each House of Parliament

while it is in session for a total period of thirty days which may be comprised in one session or in]two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid][, both Houses agree in making any modification in the rule, or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]

[39. Delegation of powers .-The appropriate Government may, by notification in the Official Gazette, direct that any power exercisable by it under this Act or rules made thereunder shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also,-

- (a) where the appropriate Government is the Central Government, by such officer or authority subordinate to the Central Government or by the State Government, or by such officer or authority subordinate to the State Government, as may be specified in the notification; and
- (b) where the appropriate Government is a State Government, by such officer or authority subordinate to the State Government as may be specified in the notification.]

[40. Power to amend Schedules .-(1) The appropriate Government may, if it is of opinion that it is expedient or necessary in the public interest so to do, by notification in the Official Gazette, add to the First Schedule, any industry, and on any such notification being issued, the First Schedule shall be deemed to be amended accordingly.

(2) The Central Government may, by notification in the Official Gazette, add to or alter or amend the Second Schedule or the Third Schedule and on any such notification being issued, the Second Schedule or the Third Schedule, as the case may be, shall be deemed to be amended accordingly.

(3) Every such notification shall, as soon as possible after it is issued, be laid before the Legislature of the State, if the notification has been issued by a State Government, or before Parliament, if the notification has been issued by the Central Government.]

[THE FIRST SCHEDULE]

[See section 2(n)(vi)]

INDUSTRIES WHICH MAY BE BE DECLARED TO BE PUBLIC UTILITY SERVICES UNDER SUB-CLAUSE (VI) OF CLAUSE (N) OF SECTION 2

1. Transport (other than railways) for the carriage of passengers or goods, [by land or water.]
2. Banking.

3. Cement.
4. Coal.
5. Cotton textiles.
6. Food-stuffs.
7. Iron and Steel.
8. Defence establishments.
9. Service in hospitals and dispensaries.
10. Fire Brigade Service.
- [11. India Government Mints.
12. India Security Press.]
- [13. Copper Mining.
14. Lead Mining.
15. Zinc Mining.]
- [16. Iron Ore Mining.]
- [17. Service in any oilfield.]
- [***]
- [19. Service in the Uranium Industry.]
- [20. Pyrites Mining.]
21. Security Paper Mills, Hoshangabad.
- [22. Services in the Bank Note Press, Dewas.]
- [23. Phosphorite Mining.]
- [24. Magnesite Mining.]
- [25. Currency Note Press.]
- [26. Manufacture or production of mineral oil (crude oil), motor and aviation spirit, diesel oil, kerosene oil, fuel oil, diverse hydrocarbon oils and their blends including synthetic fuels, lubricating oils and the like.]
- [27. Service in the International Airports Authority of India.]
- [28. Industrial establishments manufacturing or producing Nuclear Fuel and Components, Heavy Water and Allied Chemicals and Atomic Energy.]
- [29. Processing or Production or distribution of Fuel Gases, (Coal Gas, Natural gas and the like).]

STATE AMENDMENTS ▼

THE SECOND SCHEDULE

(See section 7)

MATTERS WITHIN THE JURISDICTION OF LABOUR COURTS

1. The propriety or legality of an order passed by an employer under the standing orders;
2. The application and interpretation of standing orders;
3. Discharge or dismissal of workmen including reinstatement of, or grant of relief to, workmen wrongfully dismissed;
4. Withdrawal of any customary concession or privilege;
5. Illegality or otherwise of a strike or lock-out; and

6. All matters other than those specified in the Third Schedule.

State Amendment-[Madhya Pradesh].-In its application to the State of Madhya Pradesh, the Second Schedule shall be renumbered as Part-A thereof and in the Second Schedule, after Part-A, as to so renumbered insert the following, namely :-

"PART-B

[See section 7(l -A)]

CENTRAL ACTS OFFENCES WHEREUNDER TRIABLE BY LABOUR COURT

1. The Trade Unions Act, 1926.
2. The Payment of Wages Act, 1936.
3. The Factories Act, 1948.
4. The Minimum Wages Act, 1948.
5. The Employees' State Insurance Act, 1948.
6. The Employees' Provident Fund and Miscellaneous Provisions Act, 1952.
7. The Working journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955.
8. The Motor Transport Workers Act, 1961.
9. The Maternity Benefits Act, 1961.
10. The Payment of Bonus Act, 1965.
11. The Beedi and Cigar Workers (Conditions of Employment) Act, 1966.
12. The Contract Labour (Regulation and Abolition) Act, 1970.
13. The Payment of Gratuity Act, 1972.
14. The Sales Promotion Employees (Conditions of Service) Act, 1976.
15. The Equal Remuneration Act, 1976.
16. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979".-See M.P. Act 43 of 1981, Section 3(tv) (w.e.f. 26-1-1982).

THE THIRD SCHEDULE

(See section 7-A)

MATTERS WITHIN THE JURISDICTION OF INDUSTRIAL TRIBUNALS

1. Wages, including the period and mode of payment.
2. Compensatory and other allowances.
3. Hours of work and rest intervals.
4. Leave with wages and holidays.
5. Bonus, profit sharing, provident fund and gratuity;
6. Shift working otherwise than in accordance with standing orders;
7. Classification by grades;
8. Rules of discipline;
9. Rationalisation;

10. Retrenchment of workmen and closure of establishment; and
11. Any other matter that may be prescribed.

THE FOURTH SCHEDULE

(See section 9-A)

CONDITIONS OF SERVICE FOR CHANGE OF WHICH NOTICE IS TO BE GIVEN

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

COMMENTS

The words "discharge" and "dismissal" as employed by the legislature in Item I of Sch. IV covered different types of situations and circumstances under which they are passed. It is, therefore, not possible to agree with the submission that unless the respondent shows that he was discharged by way of penalty, he cannot invoke any of the clauses of item I of Sch. IV : Lokmat Newspapers (P.) Ltd. v. Shanknrprasad, A.I.R. 1999 S.C. 2423 : (1999) 6 S.C.C. 275.

An employee who makes a grievance against an order of discharge or dismissal passed against him can invoke any of the listed Cls. (a) to (g) of Item I of Sch. IV. First it should be alleged by the complainant employee that he was discharged or dismissed from service by the employer and then he has to further show whether such an order attracted any of the Cls. (a) to (g) of Item 1 of Sch. IV : Lokmat Newspapers (P.) Ltd. v. Shankarprasad, A.I.R. 1999 S.C. 2423: (1999) 6 S.C.C. 275.

[THE FIFTH SCHEDULE

[See section 2(ra)]

UNFAIR LABOUR PRACTICES

I. On the part of employers and trade unions of employers

1. To interfere with, restrain from, or coerce, workmen in the exercise of their right to organise, form, join or assist a trade union or to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, that is to say--
 - (a) threatening workmen with discharge or dismissal, if they join a trade union,
 - (b) threatening a lock-out or closure, if a trade union is organised,
 - (c) granting wage increase to workmen at crucial periods of trade union organisation, with a view to undermining the efforts of the trade union organisation.
2. To dominate, interfere with or contribute support, financial or otherwise, to any trade union, that is to say-
 - (a) an employer taking an active interest in organising a trade union of his workmen; and
 - (b) an employer showing partiality or granting favour to one of several trade unions attempting to organise his workmen or to its members, where such a trade union is not a recognised trade union.
3. To establish employer sponsored trade unions of workmen.
4. To encourage or discourage membership in any trade union by discriminating against any workman, that is to say-
 - (a) discharging or punishing a workman, because he urged other workmen to join or organise a trade union,
 - (b) discharging or dismissing a workman for taking part in any strike (not being a strike which is deemed to be an illegal strike under this Act),
 - (c) changing seniority rating of workmen because of trade union activities,
 - (d) refusing to promote workmen to higher posts on account of their trade union activities,
 - (e) giving unmerited promotions to certain workmen with a view to creating discord amongst other workmen, or to undermine the strength of their trade union,
 - (f) discharging office-bearers or active members of the trade union on account of their trade union activities.
5. To discharge or dismiss workmen-
 - (a) by way of victimisation;

- (b) not in good faith, but in the colourable exercise of the employer's rights;
- (c) by falsely implicating a workman in a criminal case on false evidence or on concocted evidence;
- (d) for patently false reasons;
- (e) on untrue or trumped up allegation of absence without leave;
- (f) in utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste;
- (g) for misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record or service of the workman, thereby leading to a disproportionate punishment.

6. To abolish the work of a regular nature being done by workmen, and to give such work to contractors as a measure of breaking a strike.

7. To transfer a workman from one place to another, under the guise of following management policy.

8. To insist upon individual workmen, who are on a legal strike to sign a good conduct bond, as a pre-condition to allowing them to resume work.

9. To show favouritism or partiality to one set of workers regardless of merit.

10. To employ workmen as "*badlis*", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen.

11. To discharge or discriminate against any workman for filing charges or testifying against an employer in any enquiry or proceeding relating to any industrial dispute.

12. To recruit workmen during a strike which is not an illegal strike.

13. Failure to implement award, settlement or agreement.

14. To indulge in acts of force or violence.

15. To refuse to bargain collectively, in good faith with the recognised trade unions.

16. Proposing or continuing a lock-out deemed to be illegal under this Act.

II-On the part of workmen and trade unions of workmen.

1. To advise or actively support or instigate any strike deemed to be illegal under this Act.

2. To coerce workmen in the exercise of their right to self-organisation or to join a trade union or refrain from joining any trade union, that is to say :-

- (a) for a trade union or its members to picketing in such a manner that non-striking workmen are physically debarred from entering the work places;

(b) to indulge in acts of force or violence or to hold out threats of intimidation in connection with a strike against non-striking workmen or against managerial staff.

3. For a recognised union to refuse to bargain collectively in good faith with the employer.
4. To indulge in coercive activities against certification of a bargaining representative.
5. To stage, encourage or instigate such forms of coercive actions as willful "go slow", squatting on the work premises after working hours or "gherao" of any of the members of the managerial or other staff.
6. To stage demonstrations at the residences of the employers or the managerial staff members.
7. To incite or indulge in wilful damage to employer's property connected with the industry.
8. To indulge in acts of force or violence or to hold out threats of intimidation against any workman with a view to prevent him from attending work.]