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LABOUR & INDUSTRIAL LAWS

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INDUSTRIAL DISPUTES ACT, 1947

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know as to what they have to do and in what manner they have to do the work entrusted to them. The Schedule to the Act contains matter, on which the terms and conditions must be clear.

Although only enactment of law is not sufficient but the steps have been properly taken to minimise the number of industrial disputes among the employers and their workmen. What required is that the employers and the workmen should co-operate and do their best to increase the production and thereby uplift the nation as a whole.

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INDUSTRIAL DISPUTES ACT, 1947

CHAPTER-I
PRELIMINARY

Historical Background, Objects and Reasons.—

The history of trade union movement highlights clearly conflict of interests between capital and labour, between haves and haves-not from the years together constantly giving rise to various trade or industrial disputes against the exploitation of the labour by the capitalists. It is only after a great strife the workers succeeded in achieving the legal status of their unions in 1871 in England and in 1926 in India. In order to provide appropriate relief in cases of industrial disputes our welfare state further codified Industrial Disputes Act in 1947.

In order to restate the objects of the Act[1] in the present socio-political economic conditions in our country the Supreme Court peeps in to the history of the law of industrial disputes in India and brings out the real philosophy of the Act, and observes that the history of the legislation with respect to the industrial disputes shows that for the first time in the year 1920 the Trade Disputes Act, was enacted which provided for Courts of enquiry and Conciliation Boards and forbade strikes in public utility services without a statutory notice in writing. The Act did not make any provision for any machinery for setting of industrial disputes. The said Act was repealed and replaced by the Trade Disputes Act, 1929 which started the State intervention in the settlement of industrial disputes. This Act, was amended in the year 1938 authorising the Central and Provincial Governments to appoint Conciliation Officers for mediating in or promoting the industrial disputes. Shortly thereafter the Government of India promulgated the Defence of India Rules to meet the exigency created by the Second World War. Rule 81-A gave powers to the Government to intervene in industrial disputes and was intended to provide speedy remedies for industrial disputes by referring them compulsorily to conciliation or adjudication by making the awards legally binding on the parties and by prohibiting strikes and lock-outs during the pendency of the conciliation or adjudication proceedings. The Industrial Employment (Standing Orders) Act, 1946 was enacted which made provision for framing and certifying of standing orders covering various aspects of service conditions in the industry.

The Industrial Disputes Bill was introduced in the Central Legislative Assembly on 8-10-1945 which embodied the essential principles of Rule 81-A of the Defence of India Rules and also certain provisions of the Trade Disputes Act, 1929 concerning industrial disputes. The Bill was passed by the Assembly in March, 1947 and became the law with effect from 1-4-1947. The present Act was enacted with the objects as referred to herein above and provided machinery and forum for the investigation of industrial disputes, their settlement for purposes analogous and incidental thereto. The emergence of the concept of

1. *Ajaib Singh* v. *Sirhind Co-operative Marketing-cum-Processing Service Society Ltd. and another*, 1999 SCC (L&S) 1054.

welfare State implied an end to the exploitation of the workmen and as a corollary to that collective bargaining came to its own. The legislature had intended to protect workmen against victimization and exploitation by the employer and to ensure termination of industrial disputes in a peaceful manner. The object of the Act, therefore, is to give succour to weaker sections of society which is pre-requisite for a welfare state. To ensure industrial peace and to pre-empt industrial tension, the Act further aims at enhancing the industrial production which is acknowledged to be the lifeblood of a developing society. The Act provides a machinery for investigation and settlement of industrial disputes ignoring the legal technicalities with a view to avoid delays, by specially authorised Courts which are not supposed to deny the relief on account of the procedural wrangles. The Act contemplates realistic and effective negotiations, conciliation and adjudication as per the need of the society keeping in view of the fast-changing social norms of a developing country like India. It cannot be disputed that the Act was brought on the statute-book with the object to ensure social justice to both the employers and employees and advance the progress of industry by brining about the existence of harmony and cordial relationship between parties. It is a piece of legislation providing and regulating the service conditions of the workers. The object of the Act is to improve the service conditions of industrial labour so as to provide for them the ordinary amenities of life and by the process, to bring about industrial peace which would in its turn accelerate productive activity of the country resulting in its prosperity. The prosperity of the country in its turn, helps to improve the conditions of labour. The Act is intended not only to make provision for investigation and settlement of industrial disputes but also to serve industrial peace so that it may result in more production and improve the national economy.

In the present socio-political economic system, it is intended to achieve co-operation between the capital and labour which has been deemed to be essential for maintenance of increased production and industrial peace. The Act, provides to ensure fair terms to workmen and to prevent disputes between the employer and the employees so that the large interests of the public may not suffer.

The Supreme Court has observed in *Workmen of Dimakuchi Tea Estate* v. *The Management of Dimakuchi Tea Estate*,[2] that an examination of the salient provisions of the Industrial Disputes Act shows that the principal objects of the Act are:

(1) the promotion of measures for securing and preserving amity and good relations between the employer and workmen;

(2) an investigation and settlement of industrial disputes, between employers and employers, employers and workmen, or workmen and workmen, with a right of representation by a registered trade union, or federation of trade unions or association of employers or a federation of associations of employers;

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

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

(5) collective bargaining.

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

2. (1958) SCR 1156.

Again dealing with the objects of the Act in *Budge Budge Municipality case*,[3] the Supreme Court said, "When our Act came to be passed, labour disputes had already assumed big proportions and there were clashes between workmen and employers in several instances. We assume that it was to meet such a situation that the Act was enacted, and it is consequently necessary to give the terms employed in the Act referring to such disputes as wide an import as reasonably possible."

In order to understand the objects of the Act it is necessary to examine the salient provisions of the Act and the definitions of the expressions used in the different provisions of the Act as contained in Section 2 of the Act. All the provisions must be read together to find out the intention of the legislature. Industrial peace and the smooth supply to the community are among the aims and objects the Legislature had in view, as also the nature, variety, range and area of disputes between employers and employees. These factors must inform the construction of the provisions.[4] All the provisions of the Act are geared to secure and preserve industrial peace by regulating the relations of employers and workmen resulting in the social and economic upliftment of labour, increased productivity and in the ultimate analysis, national prosperity.

It has been very correctly observed by the Chief Justice of India, that the Act seeks to provide for in the interests of industrial peace and harmony between the employers and employees so that the welfare of the nation is secured. The result is that we have to turn to the preamble to find the object of the Act itself, to the legislative history of the Act and to the socio-economic ethos and aspirations and needs of the times in which the Act was passed.[5] If the preamble is read with the historical background for the passing of the Act, it is manifest that the Act was introduced as an important step in achieving social justice. The Act seeks to ameliorate the service conditions of the workers, to provide a machinery for resolving their conflicts and to encourage co-operative effort in the service of the community. The history of labour legislation both in England and India also shows that it was aimed more to ameliorate the conditions of service of the labour in organised activities than to anything else. The Act was not intended to reach the personal service which do not depend upon the employment of a labour force."[6]

It has been observed by the Supreme Court in *U.P. State Brassware Corpn.* v. *Uday Narain Pandey*,[7] that the Industrial Disputes Act was principally established for the purpose of pre-empting industrial tensions, providing the mechanics of dispute resolutions and setting up the necessary infrastructure so that energies of partners in production may not be dissipated in the counter-productive battles and assurance of industrial justice may create a climate of goodwill. Industrial Courts, while adjudicating on disputes between the management and the workmen, therefore, must take such decisions which would be in consonance with the purpose the law seeks to achieve. When justice is the buzzword in the matter of adjudication under the Industrial Disputes Act, it would be wholly improper on the part of the superior courts to make them apply the cold letter of the statutes to act mechanically. Rendition of justice would bring within its purview giving a person what is due to him and not what can be given to him in law. A person is not entitled to get something

3. AIR 1953 SC at p. 61; *State of Bombay* v. *Hospital Mazdoor Sabha*, AIR 1960 SC 610; *The Workmen of ISI* v. *The Management of ISI*, AIR 1976 SC 145.
4. *Bangalore Water Supply and Sewerage Board* v. *A. Rajappa and others*, AIR 1978 SC 548 at p. 566.
5. *Bangalore Water Supply case*, AIR 1978 at p. 553.
6. *Bangalore Water Supply and Sewerage Board* v. *A. Rajappa and others*, AIR 1978 SC 548 at p. 570.
7. 2006 SCC (L&S) 250.

only because it would be lawful to do so. If that principle is applied, the functions of an Industrial Court shall lose much of their significance.

The changes brought about by the subsequent decisions[8] of the Supreme Court, probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing, is evident.

3. Relevant Amendments.—A series of amendments have been made from time to time to supplement the provisions of the Act to meet special situations and requirements, in the light of experience gained in its actual working, judicial precedents, and the industrial policy of the Government. The amendments made in the recent past are very significant and important. By way of insertion, omission and substitution of certain expressions, clauses and new provisions, the machinery for investigation and settlement of industrial disputes has been made more effective to impart speedy justice.

The Trade Unions and the Industrial Disputes (Amendment) Bill, 1988

In the light of the experience gained, the views expressed by all concerned and recommendations of the National Commission on Labour, it was considered necessary to undertake comprehensive amendment to the Trade Unions Act, 1926 and the Industrial Disputes Act, 1947 with the intention of promoting healthy industrial relations, effective bargaining Councils at unit, industry or national levels and finally, expeditious settlement of industrial disputes through a system of Industrial Relations Commissions with labour Courts working under them from whose decisions appeals would lie only to the Supreme Court. The Trade Unions and the Industrial Disputes (Amendment) Bill 1988 had been passed by the Lok Sabha in the light of the above observations and had been introduced in the Rajya Sabha on May 13, 1988. It sought to amend provisions of the above two Acts.

However, the Bill could not be passed due to pressure of public opinion against it. The Bill was introduced by the Congress (I) Government in 1988.

The Industrial Disputes (Amendment) Act, 2010 .

The Amending Act 24 of 2010 has made significant amendments in the existing law of industrial disputes.

The Ministry of Labour and Employment has held tripartite consultations with stake holders and formulated proposals for amendments mainly on the issues on which consensus was arrived at. The consequent amendments in the Act were made and enforced with effect from 15.9.2010. To summarise the main amendments are in relevant sections dealing with Appropriate Government, workmen in supervisory capacity, direct reference to Labour Court or Industrial Tribunal, Grievance Redressal Machinery, eligibility of Presiding Officers of Labour Courts or Industrial Tribunals, Empowerment of Labour Courts or Industrial Tribunals to execute their awards as a decree of a Civil Court, and specific provision to empower the appropriate Government to make rules regarding the salaries and allowances and the terms and conditions for appointment of the Presiding Officers of the Labour Court, Tribunal and the National Tribunal etc.

All the amendments have been incorporated in the book at the appropriate places.

4. Extent and Scope.—The Act extends to whole of India. The Act has been extended to the State of Jammu and Kashmir.[9] It has also been extended to Union Territories of Goa, Daman and Diu,[10] Pondicherry[11] and *Lakka* Dive, Minicoy and Amindivi Islands.[12]

8. Hombe Gowda Educational Trust v. State of Karnataka, 2006 SCC (L&S) 133.
9. By Act (LI of 1970).
10. By Regulation (XII of 1962).
11. By Regulation (VII of 1963).
12. By Regulation (VIII of 1965). For details see 2nd Edn. of this book, pp. 385-86.

Section 2. Definitions.—In this Act, unless there is anything repugnant in the subject or contract,—

(a) "appropriate Government" means.—

(i) in relation to any Industrial Disputes concerning [13][* * *] any industry carried on by or under the authority of the Central Government [14][***] or by a railway company [15][or concerning any such controlled industry as may be specified in this behalf by the Central Government[16][* * *] or in relation to an Industrial Dispute concerning [17][18][a Dock Labour Board established under Section 5-A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), or [19][the Industrial Finance Corporation of India Limited formed and registered under the Companies Act, 1956], or the Employee's 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). [* * *][20], or the Life Insurance Corporation of India established under Section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956), or [21][the Oil and Natural Gas Corporation Limited registered under the Companies Act, 1956 (1 of 1956) or the Deposit Insurance and Credit Guaranttee 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 Ware Housing Corporations Act, 1962 (58 of 1962), or the Unit Trust of India established under Section 3 of the Unit Trust of India Act, 1963 (52 of 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 Corporation Act, 1964 (37 of 1964), or [22][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,t 1976 (21 of 1976), or the Export Credit and Guarantee Corporation Limited or the Industrial Reconstruction Corporation of India Limited)], or [23][the Banking Service Commission established, under Section 3 of the Banking Service Commission Act, 1975, or[24 an air transport service, or] [25][a banking or an insurance company, a mine, an

13. Certain words and figures *inserted* by Act 10 of 1963, Section 47 and Schedule II, Part II have been *omitted* by Act 36 of 1964, Section 2 (w.e.f. 19.12.1964).
14. The words "by the Federal Railway Authority" *omitted* by the A.O., 1948.
15. *Ins.* by Act 65 of 1951, Section 32.
16. The words "operating a Federal Railway" *omitted* by the A.I. 1950.
17. *Ins.* by Act 47 of 1961, Section 51 and Sch. II, Pt. III (w.e.f. 1.1.1962).
18. *Subs.* by Act 46 of 1982, Section 2 (w.e.f. 21. 8.1984).
19. *Subs.* by Act 24 of 1996, Section 2 (w.e.f. 11.10.1995).
20. The words 'or the "Indian Airlines" and "Air India" Corporation establishment under Section 3 of the Air Corporation Act, 1953 (27 of 1953); *omitted* by Act 24 of 1996, Section 2 (w.e.f. 11.10.1995).
21. *Subs.* by Act 24 of 1996, Section 2 (w.e.f. 11.10.1995).
22. *Subs.* by Act 24 of 1996, Section 2 (w.e.f. 11.10.1995).
23. *Ins.* by Act 42 of 1975, Section 29. This Act was *repealed* by Act 20 of 1978 and *re-enacted* as Act 44 of 1984. See Section 29 of the later Act.
24. *Ins.* by Act 24 of 1996. Section 2 (w.e.f. 11.10.1995)
25. *Subs.* by Act 54 of 1949, Section 3 for "a mine, oil-field".

oilfield] [26][a Cantonment Board) or a [27][major port, any company in which not less than fifty-one per cent 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]

[28][(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.]

In *Tata Memorial Hospital Workers Union* v. *Tata Memorial Centre*[29] the concept of appropriate Government has been discussed by the Supreme Court with reference to its earlier leading decisions. The basic question in this case was as to whether or not the State Government was the appropriate Government for the purposes of application of Section 2 (3) of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971.

Section 2 (a) of the Industrial Disputes Act, 1947 defines "appropriate Government' and it is clear that under the Industrial Disputes Act, the Central Government is the "appropriate Government" in relation to industrial disputes concerning the industries specified under Section 2 (a) (i) and for the industries carried on by or under the authority of the Central Government. Excluding these two categories of industries in relation of any other industrial dispute, it is the State Government which is the appropriate Government. The Court observed that it becomes necessary to examine as to how the concept of appropriate Government has been explained by the judiciary in the leading decisions and takes note of cases one by one for clarity and precision.

In *Heavy Engg. Mazdoor Union* v. *State of Bihar*,[30] the Supreme Court observed that the words "under the authority of" mean pursuant to the authority such as an agent or servant acts under or pursuant to the authority such as a principal or master. The question whether a corporation is an agent of the State must depend on the facts of each case. The Court further observed that the definition of the "employer" under the Act on the contrary suggests that an industry carried on by or under the authority of Government means either the industry carried on directly by a departmental of the Government such as the Posts and Telegraphs or Railways, or one carried on by such department through the instrumentality of an agent. All these facts led to hold that Heavy Engineering Corporation could not be said to be an industry carried on under the authority of the Central Government.

The next judgment of significance is *Hindustan Aeronautics Ltd.* v. *Workmen*[31]. The Supreme Court followed the dicta in *Heavy Engg.* v. *Mazdoor Union* and observed : "The

26. *Ins.* by Act 36 of 1964, Section 2 (w.e.f. 19.12.1964).
27. *Subs.* by Act 24 of 2010, Section 2 (w.e.f. 15.9.2010).
28. *Subs.* by Act 24 of 2010, Section 2 (w.e.f. 15.9.2010).
29. (2010) 2 SCC (L&S) 649.
30. (1969) 1 SCC 765.
31. 1975 SCC (L&S) 377.

workers were receiving their pay package at Barrackpore and were under the control of the officers of the company stationed there. If there was any disturbance of industrial peace at Barrackpore where a considerable number of workmen were working the appropriate Government concerned in the maintenance of the industrial peace was the West Bengal Government. The reference, therefore, for adjudication of such a dispute by the Governor of West Bengal was good and valid".

In *Rashtriya Mill Mazdoor Sangh* v. *Model Mills*,[32] the Supreme Court held : "the fact that the authorised controller is appointed by the Central Government and that he has to work subject to the directions of the Central Government does not render the industrial undertaking an agent of the Central Government and therefore, could not be said to be an establishment engaged in an industry carried on by or under the authority of the Central Government." It approved the view of the Calcutta High Court in *Carlsbad Mineral Water Mfg. Co. Ltd.* v. *P.K. Sarkar*,[33] that business which is carried on by or under the authority of the Central Government must be a Government business. It was further held that in any industry to be carried on under the authority of the Central Government it must be an industry belonging to the Central Government, that is to say, its own undertaking.

The judgment in Rashtriya Mill Mazdoor Sangh was followed in *Workers Union* v. *Food Corporation of India*,[34] holding that for the regional offices and warehouses which were situated in various states, the State Governments were the appropriate Government and not the Central Government.

In *Air India Statutory Corporation* v. *United Labour Union*,[35] the Supreme Court held in this case that the Central Government was the appropriate Government. The Corporations and companies held and controlled by the State Governments will be institutions of those states within the meaning of Article 12 of the Constitution. A priori, in relation to corporations and companies held and controlled by the Central Government, the appropriate Government will be the Central Government. The Supreme Court observed :

"From this perspective and on deeper consideration, we are of the considered view that the two-Judge Bench in *Heavy Engg. Mazdoor Union* case narrowly interpreted the words "appropriate Government" on the common law principles which no longer bear any relevance when it is tested on the anvil of Article 14."

The question concerning the interpretation of the concept of "appropriate Government" in Section 21 (1) (a) of the CLRA Act, 1970 and in Section 2 (a) of the Industrial Disputes Act, 1947 was subsequently referred to a Constitution Bench in *SAIL* v. *National Union Waterfront Workers*.[36] The Constitution Bench examined the relevant provisions and the judgments including those in *Ramana Dayaram Shetty* v. *International Air-Port Authority of India*,[37] and *Ajay Hasia* v. *Khalid Mujib Sehravardi*.[38] After the consideration the Supreme Court held that merely because the Government companies, corporations and societies are instrumentalities or agencies of the Government, they do not become agents of the Central or the State Government for all purposes. It was further observed : "Thus, it is clear that the criterion is whether an undertaking/ instrumentality of the Government is carrying on an

32. 1985 SCC (L&S) 154.
33. AIR 1952 Cal. 6.
34. 1985 SCC (L&S) 456.
35. 1997 SCC (L&S) 1344 overruled on this point.
36. 2001 SCC (L&S) 1121 followed.
37. (1979) 3 SCC 489.
38. 1981 SCC (L&S) 258.

industry under the authority of the Central Government and not whether the undertaking is an instrumentality or agency of the Government for the purposes of Article 12 of the Constitution, be it of the Central Government or the State Government. To hold that the Central Government is the appropriate Government in relation to an establishment, the Court must be satisfied that the particular industry in question is carried on by or under the authority of the Central Government. If this aspect is kept in mind it would be clear that the Central Government will be the appropriate Government under the CLRA Act, 1970 and the ID Act provided the industry in question is carried on by a Central Government company/an undertaking under the authority of the Central Government. Such an authority may be conferred, either by a statute or by virtue of the relationship of principal and agent or delegation of power. This is a question of fact and has to be ascertained on the facts and in the circumstances of each case".

After due consideration of the rulings of the Supreme Court laid down in leading cases aforementioned the Supreme Court applied the principles to the facts of the case namely, *Tata Memorial Hospital Workers Union* v. *Tata Memorial Centre* and held that even on the test of control and management of the Hospital and the Centre, they are functioning independently under the first respondent society. They cannot be said to be "under the control" of the Central Government. In the circumstances the Court held that the State Government was the appropriate Government for the first respondent for the purposes of Industrial Disputes Act, 1947 and consequently the MRTU Act. The Division Bench has clearly erred in its consideration of the judgment in SAIL case. Thus, the appeal was allowed and the order passed by the Industrial Court as confirmed by single Judge was restored.

In *Delhi International Airport (P.) Ltd.* v. *Union of India*,[39] the Supreme Court while considering the definition of 'appropriate Government" as contained in Industrial Disputes Act, 1947 observed that : Firstly, the Central Government is the "appropriate Government" in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government. Secondly, the Central Government is the "appropriate Government" in relation to industrial disputes concerning AAI. Thirdly, the Central Government is the "appropriate Government" in relation to industrial disputes concerning an air traffic service. Thus, if DIAL's industry is carried on "under the authority" of the Central Government, if the dispute in question can be said to concern AAI, or the dispute in question can be said to concern an "air transport service", then the Central Government is the "appropriate Government" both under the ID Act and CLRAA.

In these appeals, the validity of the Notification dated 26-7-2004 issued by the Central Government under Section 10 (1) of CLRAA was assailed by AAI and DIAL. It was also urged that the Notification dated 26-7-2004 cannot bind DIAL. It was further contended the DIAL is not an agent of AAI and DIAL cannot be considered as a "delegate" of such an entity.

We have carefully heard the learned Counsel for the parties and perused the written submissions filed by them. In our considered view, the Central Government is the appropriate Government for DIAL for the following reasons :

(i) DIAL could not have entered into a contract with AAI without approval of the Central Government according to the mandate of Section 12-A of the AAI Act. In this view

39. (2012) 1 SCC (L&S) 133.

of the matter, it is abundantly clear that DIAL functions "under the authority" of the Central Government.

(ii) AAI clearly acts under the authority of the Central Government and DIAL acts under the authority of AAI because of its contract with DIAL. Then it can be logically stated that DIAL works under the authority of the Central Government.

(iii) The privatisation of the airports does not mean that the "appropriate Government" cannot be the Central Government. According to the Constitution Bench judgment of this Court in SAIL, [40] the definition of "establishment" in CLRAA takes in its fold purely private undertakings....." . Concerns about privatization are, therefore, unfounded.

(iv) Since industries concerning air transport service function under the authority of the Central Government, and since AAI has transferred its "air transport service" responsibilities to DIAL, the Central Government must be held to be the appropriate Government for DIAL.

For the foregoing reasons, it is clear that the Notification dated 26-7-2004 was equally binding on DIAL under CLRAA and, therefore, DIAL must abolish all contract labour as per the terms of the notification.

We have no hesitation in coming to the conclusion that the Central Government Notification dated 26-7-2004 is clearly binding and applicable to DIAL. DIAL's obligation with regard to the contract labour in general is clear from the said notification. They are liable to be regularised as regular employees of DIAL. DIAL has replaced many of the workers with other trolley retrievers and it would be unrealistic to except DIAL to regularise the employment of their current trolley retrievers and member of the workers' union alike and inequitable to leave the current workers jobless so as to make room for erstwhile workers of DIAL.

In view of the peculiar facts and circumstances of these cases directing DIAL to regularise services of trolley retrievers who worked with DIAL till 2003 would be harsh, unrealistic and not a pragmatic approach, therefore, in the interest of justice, we deem it proper to direct DIAL to pay rupees five lakhs to each of the erstwhile 136 workers of DIAL who were working for them as trolley retrievers till 2003 and in case any worker has expired, then his or her legal heirs would be entitled to the said amount. This compensation is paid to the workers in lieu of their permanent absorption/reinstatement with DIAL and their claim of back wages. This is in full and final settlement of the entire claims of the erstwhile 136 workers of DIAL.

We direct DIAL to pay the amount to these 136 erstwhile workers of DIAL within three months after proper verification. In case the amount, as directed, is not paid within the prescribed period, then it would carry interest at the rate of 12% per month from that point till the amount is paid.

These appeals are accordingly disposed of in the aforementioned terms. In the facts and circumstances of these cases, we direct the parties to bear their own costs.

(aa) 'Arbitrator' includes an umpire;

(aaa) 'Average Pay' means the average of the wages payable to a workman—

40. *SAIL* v. *National Union Water Front Workers*, 2001 SCC (L&S) 1121 and *Gammon India Ltd.* v. *Union of India*, 1974 SCC (L&S) 252 *followed* : *Indira Gandhi Airport TDI Karamchari* v. *Union of India*, 2010 LLR (SN) 214 (Del) affirmed.

(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.

In *Guru Jambheswar University* v. *Dharampal*,[41] it has been held that sub-section (b) of Section 25-F requires payment of retrenchment compensation to a workman which shall be equivalent to 15 days' average pay for every completed year of service or any part thereof in excess of six months. Average pay has been defined in Section 2 (aaa) of the Act and, therefore, average pay has to be determined strictly in accordance with the aforesaid provision and not on the basis of some hypothetical calculation. Section 2 (aaa) contemplates four different kinds of wage period for payment of wages. Clause (i) speaks of monthly paid workman and here wage has to be calculated by arriving at the average or mean of three complete calendar months. Clause (ii) refers to weekly paid workman where the average pay would be the average or mean of four complete weeks. Clause (iii) deals with daily wage workman and in this case the average pay would be average or mean of wages in 12 full working days. The fourth category would be a case where it is not covered by way of sub-clauses (i), (ii) or (iii) and in this case average pay shall be calculated as the average of wages payable to a workman during the period he had actually worked.

The language used in Section 2 (aaa) is absolutely plain and clear and there is not the slightest ambiguity in the same. It is well settled principle that the words of a statute are first understood in the natural, ordinary or popular sense and phrases and sentences are construed according to their grammatical meaning, unless that leads to some absurdity or there is something in the context or in the object of statute to suggest to the contrary.

The Supreme Court considered various decisions and observed that the principle laid down in *Jeewanlal Ltd.* v. *Appellate Authority* and *Shri Digvijay Woollen Mills Ltd.* v. *M.P. Buch* can have no application for determining the retrenchment compensation under Section 25-F(b) of the Act as the words "average pay" occurring herein has been defined in Section 2 (aaa). The concept of 26 working days was evolved having regard to the definition of the word "wages" as given in Section 2 (s) of the Payment of Gratuity Act, which uses the expression "all emoluments which are earned by an employee while on duty or on leave". Therefore, there is no warrant or justification for importing the principle of 26 working days for determining the compensation which is payable in terms of Section 25-F(b) of the Industrial Disputes Act.

There is another important feature which deserves notice. Subsequent to decision in *Jeewanlal* case in 1987 an explanation has been added after second proviso to Section 4 (2) of the Payment of Gratuity Act namely "Explanation—In the case of a monthly rated employee, the fifteen days' wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty six and multiplying the quotient by fifteen".

The Supreme Court observed that by adding the explanation, the legislature has brought the statute in line with the principle laid down in *Jeewanlal* case and has given

41. (2007) 1 SCC (L&S) 792 ; *Jeewanlal Ltd.* v. *Appellate Authority*, 1984 SCC (L&S) 753 ; *Shri Digvijay Woollen Mills Ltd.* v. *Mahendra Pratap Rai Buch*, 1980 SCC (L&S) 1944, distinguished.

statutory recognition to the principle evolved *viz.* that in case of monthly rated employee the "fifteen day" wages shall be calculated by dividing the monthly rate of wages by twenty-six and multiplying the quotient by fifteen. But no such amendment has been made in the Industrial Disputes Act. This is an additional reasons for holding that the principle of twenty-six working days is not to be applied for determining the retrenchment compensation under Section 25-F(b) of the Act.

Therefore, it was held that the view taken by the Labour Court is clearly erroneous in law and has to be set aside. The High Court did not go into the question and summarily dismissed the writ petition by one line order that the compensation offered to the workman was short of the amount actually due. It was held that the University had paid the retrenchment compensation to the respondent Dharampal in accordance with law and there is no infirmity in the said order passed whereby his services were terminated.

(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 National Housing Bank established under Section 4 of National Housing Bank Act, 1987 [the Small Industries Development Bank of India], the Reserve Bank of India, the State Bank of India [42][Corresponding new Bank constituted under Section 3 of the Banking Companies (Acquisition and Transfer of Undertaking), Act, 1970 and any subsidiary Bank as defined in the State of India (Subsidiary Banks) Act, 1959;]

(c) "Board"[43] means a Board of Conciliation constituted under the Act;

(cc) "Closure" means the permanent closing down a place of employment or part thereof. The clause (oo) defining the expression closure has been inserted by Act No. 46 of 1982 with effect from 21-8-1984. Prior to this amendment there was no definition of closure.

In *J.K. Synthetics* v. *Rajasthan Trade Union Kendra and others*,[44] where the appellant company had a lay off in 1983. According to the appellant the lay off became necessary because there was a 100% power cut and the company's own generators were under repairs. Thereafter the company terminated the services of 1164 workmen which was necessitated because of closure of a section of the nylon plant. This unit had to be closed because of huge losses and also because of lack of power. Later on another 1201 workmen were retrenched by the appellant company. The Trade Union filed a writ petition challenging the termination and retrenchment of the workmen concerned. The company lifted its lay off on 17-2-1983. However, the workmen refused to report for duty and proceeded on a strike. On 7-3-1983 the company filed a writ petition challenging the constitutional validity of Section 25-N. On 28-8-1983, the full Bench allowed the writ petition of the appellant company and dismissed the writ petition filed by the Trade Union. The Trade Union preferred a special leave petition against the judgment of the High Court.

42. Subs. by Act No. 40 of 1980.
43. Industrial Disputes Act, 1947, Section 2 (c).
44. 2001 SCC (L&S) 329.

The Supreme Court held that the Division Bench erred in coming to the conclusion that the Tribunal could not have gone into the question of closure. It became absolutely necessary for the Tribunal to first ascertain whether there was a closure and whether such closure was *bona fide*. The Court observed that it must be remembered that at the time the disputes were referred to the Industrial Tribunal the term "closure" had not been incorporated in the Act. However, the concept of closure was well known. Even prior to the dispute being referred the appellant company had been claiming that there was discontinuance of process in the textile section of the nylon plant. They were claiming that it was a permanent discontinuance. A permanent discontinuance necessarily meant closure. It cannot be denied that the closure need not be of the entire plant. A closure can also be a part of the plant.

The Single Judge upheld the award of the Industrial Tribunal, confirming the findings of the Tribunal in regard to the illegal strike and closure. The findings of the Tribunal that 1164 workmen have been terminated because of closure and that there was no retrenchment were also upheld by the Single Judge. However, the Single Judge held that in view of *Meenakshi Mills Ltd.*,[45] the 1201 workers would be entitled to full wages.

The Supreme Court observed that the Division Bench has affirmed the findings of the Single Judge based upon the decision of *Meenakshi Mills Ltd.* case and these findings are correct and cannot be disturbed. The Supreme Court restored the judgment of Single Judge and set aside the judgment of the Division Bench on certain matters regarding reinstatement of 1164 workmen with full wages and closure. Appeals were disposed of accordingly.

(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 [46][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) "independent" a person shall be deemed to be independent for the purpose of his appointment as a Chairman or other member of 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 share-

45. *Workmen* v. *Meenakshi Mills Ltd.* 1992 SCC (L&S) 679 followed ; *Express News Papers Ltd.* v. *Workmen and Staff*, AIR 1963 SC 569 and *Pipraich Sugar Mills Ltd.* v. *Mazdoor Union*, AIR 1957 SC 95 followed.

46. Subs. by the A.O. 1948 for "Government in British India".

holder 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 shares held by him in such company;

(j) "industry"[47] means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen.

Substituted Definition of Industry.[48] "Industry" means any systematic activity carried on by co-operation between an employer and his workmen (whether such workmen are employed by such employer directly or by or through any agency including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), whether or not—

(i) any capital has been invested for the purpose of carrying on such activity; or

(ii) such activity is carried on with a motive to make any gain or profit, and includes—

(a) any activity of the Dock Labour Board established under Section 5-A of the Dock Workers (Regulation of Employment) Act, 1948,

(b) any activity relating to the promotion of sales or business or both carried on by an establishment, but does not include—

(1) any agricultural operation except where such agricultural operation is carried on in an integrated manner with any other activity (being any such activity as is referred to in the foregoing provisions of this clause) and such other activity is the predominant one;

Explanation.—For the purposes of this sub-clause, "agricultural operation" does not include any activity carried on in a plantation as defined in clause (f) of Section 2 of the Plantations Labour Act, 1951; or

(2) hospitals or dispensaries; or

(3) educational, scientific, research or training institutions; or

(4) institutions owned or managed by organizations wholly or substantially engaged in any charitable, social or philanthropic service; or

(5) khadi or village industries; or

(6) any activity of the Government relatable to the sovereign functions of the Government including all the activities carried on by the departments of the Central Government dealing with defence, research, atomic energy and space; or

(7) any domestic service; or

(8) any activity, being a profession practised by an individual or body of individuals, if the number of persons employed by the individual or body of individuals, in relation to such profession is less than ten; or

47. Industrial Disputes Act, 1947, Section 2 (j).

48. Substituted by Section 2 (c) of the Industrial Disputes (Amendment) Act, No. 46 of 1982. The definition has not been brought into force as a date has not yet been notified by the Central Government for enforcement.

(9) any activity, being an activity carried on by a Co-operative society or a club or any other like body of individuals, if the number of persons employed by the Co-operative society, club or other like body of individuals in relation to such activity is less than ten].

Since the substituted definition of "industry" has not been brought into force, our discussion must reasonably concentrate on the original definition of industry as contained in Section 2 (j) of the Act. However, the effect of substituted definition would be desirable wherever judicial precedents have been modified. It would be indicated in the course of discussion as and when required.

The original definition of industry is in two parts. One part defines industry from the view point of the employer and the other part from the stand point of employees. If an activity falls under either part of the definition, it would be an industry within the meaning of this Act. The first part says that it means any business, trade, undertaking, manufacture or calling of employers and then it goes on to say in the second part that it includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen, the Supreme Court sought to expand the concept of industry by a process of judicial interpretation to meet the changing requirements of modern currents of socio-economic thought by laying down working principle[49] that an activity systematically or habitually undertaken for the production or distribution of goods or for rendering of material service to community at large or a part of such community with the help of employees is an undertaking.

The Supreme Court after considering several decisions given earlier held in *Workmen of Indian Standards Institution* v. *The Management of Indian Standards Institution*,[50] that an activity can be regarded as an industry within the meaning of Section 2 (j) only if there is relationship of employer and employees and the former is engaged in business, trade, undertaking, manufacture, or calling of employers and later, in any calling, service, employment, handicraft or industrial occupation or avocation. Though undertaking is the word of large import and it means anything undertaken or any project or enterprise, in the context in which it occurs, it must be read as meaning an undertaking analogous to trade or business. In order that an activity may be regarded as an undertaking analogous to trade or business it must be organized or arranged in a manner in which trade or business is generally organized or arranged. It must not be casual nor must it be for oneself nor for pleasure. And it must rest on co-operation, between employer and employees who associate together with a view to production, sale or distribution of material goods or material service. It is entirely irrelevant whether or not there is profit motive or investment of capital in such activity. Even without these two features an activity can be an undertaking analogous to trade or business. It is also immaterial "that its objects are charitable or that it does not make profits or even where profits are made, they are not distributed amongst the members",[51] or that its activities subsidized by the Government. Again it is not necessary that "employer must always be a private individual. The Act in terms, contemplates cases of industrial disputes where the Government or a local authority or public utility services may be the employer".[52] It also makes no difference that the material services rendered by the undertaking are in public interest. The concept of public interest in a modern welfare State where new social values are fast emerging and old dying out, is

49. *State of Bombay* v. *Hospital Mazdoor Sabha*, AIR 1960 SC 610.
50. AIR 1976 SC 145.
51. *Management of FICCI* v. *Workmen*, AIR 1972 SC 763 at. p. 777.
52. *Madras Gymkhana Club case*, AIR 1968 SC 554 at p. 563.

indeed so wide and so broad and comprehensive in this spectrum and range that many activities which admittedly fall within the category of industry are clearly designed to subserve public interest. In fact, whenever any industry is carried on by the Government, it would be in public interest, for the Government can act only in public interest. Whether an activity is carried on in public interest or not can, therefore, never be a criterion for determining its character as an industry.

In *The Workmen of I.S.I.* v. *Management of I.S.I.* having examined the legal concept of industry as expounded in its earlier decisions the Supreme Court proceeded to consider whether the activity of the institution can be characterized as an industry in the light of the broad test discussed above. The institution prepares and publishes Indian standards on different subjects and some of these Indian standards are also revised so as to keep abreast with the latest developments in manufacturing and testing techniques and to improve the quality of goods. Indian standards thus published are sold by the sales service of the institution at its headquarters. The institution has also several laboratories for the purpose of carrying out testing operations. It maintains libraries at the headquarters and at the branch offices which render useful service to the subscribing members, the committee members, the staff members and others.

The Supreme Court observed that it is clear from the resume of activities of the institution given above that the undertaking of the institution answers the broad tests and therefore must be held to be an industry. The activities of the Institution are carried on in a systematic manner and are organized or arranged in a manner in which trade or business is ordinarily organized or arranged.

The term "industry" has been the most controversial term in the field of labour adjudication. Ever since the Industrial Disputes Act, 1947 has come into force the term industry as contained in Section 2 (j) of the Act has been in process of interpretation. The term has been variously interpreted by different judicial tribunals. Sometimes even entirely different meaning has been given to the word. Such contradictory judicial pronouncements have brought the meaning of the term in the state of confusion.

Under these confusing state of affairs the Supreme Court has critically examined the earlier decisions and has interpreted the term "industry" so as to cope with the modern socio-economic currents and to keep pace with the industrial developments in our country in *Bangalore Water Supply and Sewerage Board* v. *A. Rajappa*,[53] where matter came in a special leave appeal under Article 136 of the Constitution of India from the Karnataka High Court which rejected the contention of the Sewerage Board that it was an industry within the scope of Section 2(j); wherein respondent employees challenged the imposition of fines by it and claimed protection.

It was observed that an industry is a continuity, is an organized activity, is a purposeful pursuit—not any isolated adventure, desultory excursion or casual, fleeting engagement motivelessly undertaken. Such is this common feature of a trade, business, calling, manufacture—mechanical or handicraft, service, employment, industrial occupation or avocation. The expression 'undertaking' cannot be torn off the words whose company it keeps. If birds of a feather flock together and *noscitur a socis* is a commonsense guide to construction, 'undertaking' must be read down to conform to the restrictive characteristic shared by the society of words before and after. Nobody will torture

53. AIR 1978 SC 548.

'undertaking' in Section 2 (j) to mean meditation or *musheira* which are spiritual and aesthetic undertakings. Wide meanings must fall in line and discordance must be excluded from a sound system. From Banerjee[54] to Safder Jung[55] and beyond, this limited criterion has passed muster and we see no reason, after all the marathon of argument to shift from this position.

Likewise, an 'industry' cannot exist without co-operative endeavour between employer and employee. No employer, no industry, no employee, no industry, not as a dogmatic proposition in economics but as an articulate major premise of the definition and the scheme of the Act, and as a necessary postulate of industrial disputes and statutory resolution thereof.

Any industry is not a futility but geared to utilities in which the community has concern. And in this mundane world where law lives now, economic utilities.....material goods and services, not transcendental flights nor intangible achievements.....are the functional focus of industry.

This much flows from a plain reading of the purpose and provision of the legislation and its western origin and the ratio of all the rulings.

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

To sum up, the personality of the whole statute, be it remembered, has a welfare basis, it being a beneficial legislation which protects labour, promotes their contentment and regulates situations of crisis and tension where production may be imperiled by untenable strikes and blackmail lock-out. The mechanism of the Act is geared to conferment or regulated benefits to workmen and resolution according to a sympathetic rule of law, of the conflicts, actual or potential, between managements and workmen. Its goal is amelioration of the conditions of workers, tempered by a practical sense of peaceful co-existence, to the benefit of both—not a neutral position but restrains on *laissez faire* and concern for the welfare of the weaker lot. Moreover, it is legitimate to project the value-set of the Constitution, especially Part IV, in reading the meaning of even pre-Constitution statute. Part IV sets out Directive Principles of State Policy which must guide the judiciary, like other instrumentalities, in interpreting all legislation. Statutory construction is not a petrified process and the old bottle may, to the extent language and realism permit be filled with new wine. Of course, the bottle should not break or lose shape."

After careful consideration of expressions used in the definition of "industry", traditional attributes of trade or business, *i.e.*, capital and profit motive, statements of International Labour Organization in respect of industry, purposes and provisions of the legislation as a whole, Indian as well as foreign rulings, keeping in clear view the

54. AIR 1953 SC 58.
55. AIR 1970 SC 1407.

Directive Principles of State Policy of our country, hopefully to resolve contradictions, to abolish blurred edges, illumine penumbral areas, filling dynamic content and over-ruling contrary judicial precedents the Supreme Court has laid down following principles holding 'industry' of wide import:—

I. 'Industry', as defined in Section 2(j) has a wide import.

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

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

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

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

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

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

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

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

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

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

IV. The dominant nature test :

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

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

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

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

On the basis of principles laid down in the case the Supreme Court has overruled the cases whose ratio runs counter to the principles enumerated in this case. However, the *State of Bombay* v. *Hospital Mazdoor Sabha*[56] has been rehabilitated.

The sweeping effect of the ratio in *Bangalore Water Supply* case would have been that a great variety of activities fell within the purview of industry. Realising such effect of flexibility or the expression 'industry' to the widest extent the Supreme Court visualized the necessity of suitable legislative step to restructure the definition of industry presenting a legislative synthesis, between judicial thesis and antithesis disclosed in two decades. Under these circumstances the Parliament has redefined the term 'industry' to be substituted for the original definition as contained in Section 2 (j) of the Act. The substituted definition is almost a new but it is based on the principles laid down by the Supreme Court in *Bangalore Water Supply* case. However, it has excluded certain institutions from its scope which are otherwise within the purview of industry in view of the principles laid down in *Bangalore Water Supply* case. As the substituted definition has not been enforced so far, the principles of law laid down by the Supreme Court in *Bangalore Water Supply* case still hold good and shall remain in force unless the case itself is overruled by the Supreme Court or substituted definition is brought into force.

In *Indian Navy Sailors' Home* v. *Bombay Gymkhana Club Caterers and Allied Employee's Union and another*.[57] In fact, standing orders relating to Indian Navy Sailors'

56. AIR 1960 SC 610.
57. (1986) II LLJ 154.

Home regulate the organisation and functioning of the petitioner Home. It is an integral part of the total Naval Organisation and is designed to provide facilities and amenities which cannot be provided in Naval Ships and Establishments due to lack of space and exigencies of service. It is successor to the old Cornwallis Fleet Canteen. Referring ruling in *Bangalore Water Supply* case Mr. Justice Sujata V. Manohar observed that every aspect of activity which can be said to be analogous to the carrying on of trade or business would be covered by the definition and the profit motive is not essential for an industry. Therefore, Indian Navy Sailors' Home is covered within the ambit of industry as defined by the Industrial Disputes Act, 1947.

The Division Bench decision of the Bombay High Court in *Indian Sailor's Home Society* v. *R.D. Tulpule*,[58] where Indian Sailors' Home Society was held outside the scope of Industry is no longer good law as it was decided prior to decision of the Supreme Court in *Bangalore Water Supply* case which overruled all the contrary rulings existing in this field. Similarly activities carried on by the Karnataka State Road Transport Corporation have been considered within the scope of industry by the Supreme Court in *S. Govindaraju* v. *K.S.R.T. Corporation and another*.[59] In accordance with principles laid down in *Bangalore Water Supply* the High Court of Bombay in *Shri Cutchi Visa Oswal Derawasi Jan Mahajan* v. *B.D. Barude*,[60] recently held the petitioner Trust to be an industry within the meaning of Section 2 (j) of the Act.

There is a case recently decided by the Supreme Court wherein all the above decisions have been referred and followed. The instant case is of *Karnani Properties Ltd.* v. *State of West Bengal and others*,[61] where the company was engaged in business of real estate which rented several flats in buildings owned by it. The company also rendered to the tenants services like arrangements for supply of water, free supply of electricity, washing and cleaning floors, lift services etc. For offering these services the company had employed a number of workmen and these services which undoubtedly conferred material benefits on the tenants and constituted material services, were rendered by the employees.

It was held by the Supreme Court that from the aforesaid findings recorded by the High Court of Calcutta with which there is no reason to disagree, it is evident that the activity carried on by the appellant falls within the ambit of the expression 'industry' as construed by this Court in *Bangalore Water Supply and Sewerage Board* case.

So far the definition of industry has been discussed in general, now it would be specifically discussed in view of the principles laid down in *Bangalore Water Supply* case, other recent rulings and effect of substituted definition of industry, if any.

Hospital—Whether an industry?

In this specific area there has been a state of uncertainty due to contrary rulings till the decision of the Supreme Court in *Bangalore Water Supply* case decided in 1978. In *State of Bombay* v. *Hospital Mazdoor Sabha*,[62] the hospitals were held to be industry but in the *Management of Safdarjung Hospital* v. *Kuldeep Singh Sethi*,[63] the Supreme Court overruled the earlier case and held that hospital is not an industry. Again in 1978 Supreme Court in

58. (1974) II LLJ 227.
59. (1986) II LLJ 351 SC.
60. (1987) I LLJ 81.
61. AIR 1990 SC 2047.
62. AIR 1960 SC 610.
63. AIR 1960 SC 1407.

Bangalore Water Supply case overruled the *Safdarjung* and *Rehabilitated Hospital Mazdoor Sabha* case. It would be desirable to give certain very important cases showing gradual development of law in this area.

The *State of Bombay* v. *The Hospital Mazdoor Sabha*,[64] is an important case on the point. The facts of the case were as under :

Mrs. Vatsala Narayan and Mrs. Isaac were employed in J.J. Group of Hospitals. The Superintendent terminated the services of these employees after serving a notice. Later on, two State servants discharged from Civil Supplies Department were appointed in their places. The Hospital Mazdoor Sabha a registered trade union of the employees of hospitals in the State of Bombay. Filed a writ petition in the Bombay High Court claiming *mandamus* directing the State of Bombay to reinstate these employees in their posts. It was contended that the retrenchment of the employees was illegal as it did not comply with the mandatory provision of Sections 25-F and 25-H of the Industrial Disputes Act, 1947.

The writ petition was resisted by the State of Bombay on the grounds that the termination order was not invalid, and the writ was unjustified. It was misconceived as much as J.J. Group of Hospitals did not constitute an industry. Therefore relevant provisions of the Industrial Disputes Act are inapplicable.

After reference to decision of the Supreme Court in D.N. Banerji[65] and certain other foreign rulings, Chief Justice Chagla speaking for the Division Bench of the High Court observed that when we look at the definition of 'industry" it is not confined to an activity of a commercial character. Nor does it import necessarily a profit motive or the employment of capital. Industry is not only any business or trade or manufacture, but it is also an undertaking or calling of employers, and no expression could have been used with a wider import and connotation than the expression 'undertaking'. Undertaking is nothing more than any work or project which a person might engage in. Work or project may have no commercial implications. It might not be engaged in with the object of making it. It might be engaged in from the motives of philanthropy, and even so it would be an undertaking in the wider sense in which that expression is used in the definition of industry. It was clearly observed that the Government is not making any profit out of this hospital. In every industry run by the Government the employees are bound to be Government servants. In every industry run by Government the profit motive must be absent; the only profit that Government should think of is the welfare of its citizens. Therefore, the true test is not the absence of any commercial element in the running of this hospital, nor the fact that servants are Government servants, but the test is, whether the running of hospital is a function so essential to Government that it can only be discharged by Government and cannot be discharged by any private agency.

The Bombay High Court rejected the objections raised by the State of Bombay and decided in favour of the employees, the writ of *mandamus* was issued in favour of the employees holding that Jamshedji Jeejeebhoy Group of Hospitals to be industry within the meaning of Section 2 (j). Thus the State of Bombay filed an appeal in the Supreme Court and argued on the same lines.

The Supreme Court realised the difficulty in stating the possible attributes of industry. However, it searched out a working principle. It observed that—

64. AIR 1960 SC 610.
65. AIR 1953 SC 58.

(1) An activity, systematically or habitually undertaken—
   (a) for the production or distribution of goods, or
   (b) for rendering of material service to community at large, or a part of such community with the help of employees is an undertaking.
(2) Such activity generally involves the co-operation of employer and employees;
(3) The object is the satisfaction of material human needs;
(4) It must be arranged or organized in a manner in which trade or business is generally arranged or organized;
(5) It must not be casual nor must it be for oneself nor for pleasure.

The Supreme Court held that judged by this test there would be no difficulty in holding that the State is carrying on an undertaking when it runs J.J. Group of Hospitals. It was further observed that First Schedule of the Act enumerates Industries which may be declared as public utility services. The three entries were added in the relevant year : (1) Defence establishments, (2) Service in hospitals and dispensaries, and (3) Fire Brigade Service. The intention of the Legislature in adding these industries in first Schedule is clear. The Services in the hospitals is an undertaking under Section 2 (j) of the Industrial Disputes Act, 1947.

The Supreme Court thus dismissed the appeal of the State of Bombay and decided in favour of ward servants approving the decision of the Bombay High Court.

On the basis of this working principle Lalit Hari Ayurvedic College of Pharmacy was held to be an industry.[66] But the Supreme Court overruled the *Hospital Mazdoor Sabha* case[67] in the *Management of Safdar Jung Hospital, New Delhi* v. *Kuldeep Singh Sethi*[68] and held that Kurji Holy Family Hospital was not an industry on the ground that is was essentially charitable institution carrying on work of training, research and treatment, Safdar Jung Hospital, New Delhi and T.B. Hospital, New Delhi were also held not to be industry. In accordance with the ratio in *Safdar Jung Hospital* case[69] the hospital run by the State Government were held outside the purview of industry.[70] The Supreme Court following the same principle in *Dhanraj Giriji Hospital* v. *The Workmen*,[71] held that Dhanraj Girji Hospital, Sholapur was not an industry as the activities carried on by this hospital were not analogous to the carrying out of a trade or business, the main activity being imparting of training in nursing and beds kept and maintained in the hospital were just to provide necessary equipment for practical training.

In such a state of contrary rulings the Supreme Court with a view to abolish uncertainty overruled the *Management of Safdar Jung Hospital* v. *Kuldeep Singh Sethi*, *Dhanraj Giriji Hospital* v. *The Workmen and other* similar precedents and rehabilitated *State of Bombay* v. *Hospital Mazdoor Sabha in Bangalore, Water Supply and Sewerage Board* v. *A. Rajappa*, in 1978. In consequence all the Hospitals, dispensaries, medical colleges whether run by the Government, or private sector are within the scope of industry as defined in Section 2 (j) if they fulfil triple test laid down in *Bangalore Water Supply* case.

66. *Lalit Hari Ayurvedic College of Pharmacy v. Workers Union*, AIR 1960 SC 1261.
67. AIR 1960 SC 610.
68. AIR 1970 SC 1406.
69. Ibid.
70. *Management of Hospitals* v. *Their Workmen*, AIR 1971 SC 1259.
71. AIR 1975 SC 2032.

Effect of Substituted Definition

As it has been already mentioned that the Industrial Disputes (Amendment) Act, 1982 has been passed by the Parliament substituting the definition of Industry which expressly excludes hospitals or dispensaries. The position has thus been changed by legislative measure. But as the definition has not been brought into force so far, therefore the principles laid down in *Bangalore Water Supply* case still hold good.

Liberal Professions like Solicitors, whether Industry?

The liberal professions render service of vital importance to the community. Individual specialised skill and knowledge are distinctive features. In this category there are many special areas of services such as solicitors, tax advisors, counsels, architects, physicians etc. The question is whether services rendered by these experts are within the scope of industry. There is a very important case on the point. In *National Union of Commercial Employees* v. *Industrial Tribunal*,[72] popularly known as Solicitors' case, the point of contest was whether a firm of solicitors rendering services with the help of certain employees is industry. The Supreme Court held it not to be industry.

Two grounds were given by Gajendragadkar, J., 'The doctrine of direct co-operation and the features of liberal professions were given as good reasons to barricade professional enterprises from the limitant clamour for more by lay labour. The learned Judge expressed himself on the first plea that the co-operation between capital and labour or between the employer and his employees which is treated as a working test in determining whether any activity amounts to an industry, is the co-operation which is directly involved in the production of goods or in the rendering of service. It cannot be suggested that every form or aspect of human activity in which capital and labour co-operate or employer and employees assist each other is an industry.

"The second reason for exclusion is qualitative. The very concept of the liberal professions has its own special and distinctive features which do not readily permit the inclusion of the liberal professions into the four corners of industrial law. The essential basis of an industrial dispute is that it is a dispute arising between capital and labour combine to produce commodities or to render service. This essential basis would be absent in the case of liberal professions."

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

In *Rabindra Nath Sen and others* v. *First Industrial Tribunal, West Bengal*,[73] also it has been held that services rendered by physicians, counsels and solicitors based on their individual skill and experience do not satisfy the description of industry and therefore they are outside the scope of the expression 'industry'.

But Solicitors' case has been overruled by the Supreme Court in *Bangalore Water Supply*[74] case expressing contrary reasoning :

The more serious argument of exclusion urged to keep the professions out of the coils of industrial disputes and the employees' demands backed by agitations 'red in tooth and

72. (1962) Supp. (3) SCR 157 : AIR 1962 SC 1080.
73. AIR 1963 Cal. 310.
74. AIR 1978 SC 548.

claw' is a sublimated version of the same argument. The clerks and stenos, the bell boys and doormen, the sweepers and menials have no art or part in the soul of professional functions with its higher code of ethics and intellectual proficiency, their contribution being peripheral and low-grade, with no relevance to clients' wants and requirements. In the large solicitors' firms, architects' office, medical polyclinic and surgeries, we find a humming industry, each section doing its work with its special flavour and culture and code, and making the end product with its price. In a regular factory you have highly skilled technicians whose talent is of the essence, managers whose ability organizes and workmen whose coordinated input is from one angle, secondary, from another, is significant. The lawyer is no better and just cannot function without the specialised supportive tools of para-professionals like secretaries, librarians, and law-knowing steno-typists or even the messengers and telephone girls. A solicitor's firm or lawyer's firm becomes successful not merely by the talent of a single lawyer but by the co-operative operations of several specialists, juniors and seniors. Likewise the ancillary service of competent stenographers, para-legal supportive services are equally important. The same test applies to other professions.

The result of this discussion is that the *Solicitors's* case[75] is wrongly decided and must, therefore, be overruled. A single lawyer, a rural medical practitioner or urban doctor with a little assistant and or menial servant may ply a profession but may not be said to run an industry. The image of industry or even quasi-industry is one of a plurality of workmen, not an isolated or single little assistant or attendant. The latter category is more or less like personal avocation for livelihood taking some paid or part-time from another. The whole purpose of the Industrial Disputes Act is to focus on resolution of industrial disputes and regulation of industrial relations and not to meddle with every little carpenter in a village or blacksmith in a town who sits with his son or assistant to work for the customers who trek in. The ordinary spectacle of a cobbler and his assistant or a cycle repairer with a helper, we come across in the pavements of cities and towns, repels the idea of industry and industrial dispute. For this reason, which applies all along the line, to small professions, petty handicraftsmen, domestic servants and the like, the solicitor or doctor or rural engineer, even like the butcher, the baker and the candle-stick maker, with an assistant or without, does not fall within the definition of industry. In regular industries, of course, even a few employees are enough to bring them within Section 2 (j). Otherwise automated industries will slip through the net.

Education or Educational Institutions—Whether industry?—The question was raised in *Delhi University* v. *Ram Nath*.[76]

In this case one Mr. Ram Nath was employed as driver by University College for Women on 1st October, 1949. Another Mr. Asgar Masih was employed in the fir.. instance by University of Delhi as driver but was later on transferred to the University College for Women on 1st October, 1949. The University of Delhi found that running the buses for the convenience of the girl students attending the College has resulted in loss and so it was decided to discontinue the amenity. Inevitably the services of two drivers had to be retrenched.

Mr. Ram Nath and Asgar Masih were served with a notice on the 1st May, 1961 that since their services were no longer required they would be discharged from their employment on payment of one month's salary in lieu of notice.

75. AIR 1962 SC 1080.
76. AIR 1963 SC 1873.

It was common ground that running the buses for convenience of girl students attending the college resulted in loss and so bus services were discontinued and consequently services of two drivers had to be retrenched and so there is no dispute that the retrenchment is genuine and no element of *mala fides* or unfair labour practices involved in it.

It was also common ground that if the employees are workmen within the meaning of the Act and the work carried on by the appellants is an industry under Section 2 (j), Section 25-F has not been complied with and retrenchment amount payable under it has not been paid to respondents. The drivers filed petitions before the Industrial Tribunals for retrenchment compensation.

The petitions made by the respondents were resisted by the appellant No. 1, the University of Delhi on the preliminary ground that the University of Delhi was not an employer under Section 2(g) of the Industrial Disputes Act, and secondly on the ground that the work carried on by it was not an industry under Section 2 (j) and so the applications made under Section 33 -C(2) were incompetent.

The Tribunals rejected the objections raised by the appellants Delhi University etc. and passed order directing the appellants to pay Rs. 1050 to each one of the respondents (drivers) as retrenchment compensation.

The Delhi University and another challenged the validity of the award of the Tribunals before the Supreme Court on the only ground that work carried on by the University of Delhi is not an industry. The appellants contended that the Tribunal was in error in giving the definition of the word 'industry' under Section 2(j) its widest denotation by adopting a mechanical and literal construction and it is urged that policy of the Act clearly is to leave education and educational institutions out of the purview of the Act.

1. On the other hand, the respondents contended that Section 2(j) has defined the word "industry" deliberately in words of widest amplitude and there is no justification for putting any artificial restraint on the meaning of the word "industry". In support of this argument reliance was placed on the decision of the Supreme Court in the *State of Bombay* v. *The Hospital Mazdoor Sabha*, where the word "undertaking" has been explained.

2. The respondent further contended that the concept of service which is expressly included in the definition of word 'industry' need not be confined to material service and ought to be held to include educational or cultural service and in that sense the educational work carried on by the Delhi University must be held to be an industry.

3. The respondents contended that the function of the educational institution is to impart education to students and that imparting of education is industry and in reference to which the educational institution is the employer and the teachers who co-operate with the institution and assist it with their labour in imparting education, are the employees of the institution, within the meaning of this Act and so they are entitled to benefits of this Act.

4. It was also contended that the co-operation between employer and employees or co-operation between capital and labour to which reference is always made by the industrial adjudication must find its parallel in the co-operation between the educational institution and its teachers, so education should be described as industry and teachers as workmen.

5. The respondents contended that the test of the character of predominant activity of the institution should be applied which was laid down in the *Corporation of City of Nagpur* v. *Employees*,[77] and the work of imparting education should be held industry.

77. AIR 1960 SC 675.

The Supreme Court considered the definitions of industry, employer and workman together and held :

1. That teachers employed by educational institutions whether the said institutions are imparting primary, secondary, collegiate or post-graduate education are not workmen under Section 2(s) and so it follows that the whole body of employees with whose co-operation the work of imparting education is carried on by educational institutions do not fall within the purview of Section 2 (s) and any disputes between them and the institution which employed them are outside the scope of the Act.

2. That the omission of whole class of teachers from definition prescribed by Section 2 (s) shows that it could not have been the policy of the Act that the education should be treated as industry for the benefit of a very minor and insignificant number of persons employed by the educational institutions to carry on the duties of the subordinate staff.

3. The Hon'ble Court observed that, "It is not surprising that the Act should have excluded the education from its scope because the distinctive purpose and object of education would make it very difficult to assimilate it to the position of any trade, business or calling or service within the meaning of Section 2 (j). Education seeks to build up personality of the pupil by assessing his physical, intellectual, moral and emotional development.

4. It is well known that the Delhi University does not contribute capital of itself in carrying out its work of imparting higher education.

5. The Supreme Court further held that education in its true respect is more a mission and a vocation rather than a profession or trade or business. The creation of a well educated healthy young generation imbued with a rational progressive outlook on life which is the sole aim of education cannot still be compared or assimilated with what may be described as an industrial process.

6. The Supreme Court distinguished this case from *State of Bombay* v. *The Hospital Mazdoor Sabha*, [78] and held it to be irrelevant, because the court was not then expressing any opinion on the question as to whether running an educational institution would be an industry.

7. It was further held that if the test of the character of the predominant activity of the institution which was applied to corporation in *The Corporation of City of Nagpur* v. *Its Employees*, is applied to the University of Delhi, the answer would be plainly against the respondents. The predominant activities of the University is outside the Act, because teaching and teachers connected with it do not come within its purview and so the minor and incidental activity carried on by subordinate staff which may fall within the purview of the Act cannot alter the pre-dominant character of the institution.

The Supreme Court allowed the appeals and the orders passed by the Industrial Tribunal were set aside and the petitions filed by the respondents under Section 33-C (2) of the Industrial Disputes Act were dismissed.

But the Supreme Court critically examined and overruled *Delhi University* v. *Ram Nath*,[79] in *Bangalore Water Supply*[80] case making clear remarks :

78. AIR 1960 SC 610.
79. AIR 1963 SC 1873.
80. AIR 1978 SC 548.

"We dissent, with utmost deference, these propositions and are inclined to hold as the Corporation of Nagpur,[81] held, that education is industry, and as Issacs, J., held in the Australian case,[82] that education is pre-eminently service." Undoubtedly, education is a sublime cultural service, technological training and personality-builder. A man without education is a brute and nobody can quarrel with the proposition that education in its spectrum, is significant service to the community.

The actual decision in *University of Delhi*[83] case was supported by another ground, namely, that the predominant activity of the university was teaching and since teachers did not come within the purview of the Act, only the incidental activity of the subordinate staff could fall within its scope but that could not alter the predominant character of the institution.

Secondly, there are a number of other activities of the University Administration, demonstrably industrial which are severable although ancillary to the main cultural enterprise. For instance, a university may have a large printing press as a separate but considerable establishment. It may have a large fleet of transport buses with an army of running staff. It may have a tremendous administrative strength of officers and clerical cadres. It may have *Karamcharis* of various hues. As the Corporation of Nagpur,[84] has effectively ruled, these operations, viewed in severalty or collectively, may be treated as industry.

The final ground accepted by the Court was that education is a mission and vocation, rather than a profession or trade or business. The most that one can say is that this is an assertion which does not prove itself. Indeed, all life is a mission and a man without a mission is *sourutyakky* still-born. The high mission of life is the manifestation of the divinity already in man. To christen education as a mission even if true, is not to negate its being an industry.

It may well be said by realists in the cultural field that educational managements depend so much on governmental support and some of them charge such high fees that schools have become trade, and managers merchants.

The Supreme Court advanced contrary arguments and in consequence overruled *Delhi University*,[85] case holding that education can be and is, in its institutional form, an industry. Christian Medical College Hospital as an educational institution was held to be industry on this basis.[86]

It has been held that a clerk in the university is a workman and the university is industry unless re-drafted definition of industry is enforced.[87]

Statutory Corporations, Government Departments, Local Bodies etc.—Whether industry?

The leading case on the point is *D.N. Banerjee* v. *P.R. Mukherjee*,[88] where the Budge Municipality dismissed two employees, Mr. P.C. Mitra, head clerk and Mr. P.N. Ghose,

81. AIR 1960 SC 675.
82. *Federated State School Teachers' Association of Australia* v. *State of Victoria*, (1928-29) 41 CLR 569 (Aus).
83. AIR 1963 SC 1873.
84. AIR 1960 SC 675.
85. AIR 1963 SC 1873.
86. *Christian Medical College* v. *Govt. of India*, (1983) 2 LLJ 372 (Mad.).
87. *Suresh Chandra Mathe* v. *Jiwaji University*, (1994) II LLJ 462 (M.P.).
88. AIR 1953 SC 58.

sanitary inspector, on complaint against them for negligence, insubordination and indiscipline. The municipal workers, union of which the dismissed employees were members questioned the propriety of the dismissal. With the result the matter was referred to the industrial tribunal. The tribunal directed reinstatement but the municipality challenged the award before the High Court and ultimately before the Supreme Court on the grounds that a Municipality in discharging its normal duties connected with local self-government was not engaged in any industry. So the provisions of the Industrial Disputes Act were not applicable, dispute was not an industrial dispute and therefore there could be no reference to Industrial Tribunal

Holding municipal corporation to be an industry Chandrashekhar Aiyer, J., observed that in the ordinary or non-technical sense, according to what is understood by the man in the street, industry or business means an undertaking where capital and labour co-operate with each other for the purpose of producing wealth in the shape of goods, tools, etc., and for making profits. The concept of industry in this ordinary sense applied even to agriculture, pisciculture and so on and so forth. It is also clear that every aspect of activity in which the relationship of employer and employees exists or arises does not thereby become an industry as commonly understood. We hardly think in terms of an industry, when we have regard, for instance, to the rights and duties of master and servant, or of a Government and its secretariat, or the members of the medical profession working in a hospital. There is nothing however to prevent a statute from giving the word 'industry' and the words 'industrial dispute' a wider and more comprehensive import in order to meet the requirements of rapid industrial progress and to bring about in the interests of industrial peace and economy, a fair and satisfactory adjustment of relations between employers and workmen in a variety of fields of activity.

Enlarging the scope of undertaking it was observed that 'undertaking' in the first part of the definition and 'industrial occupation' or avocation in the second part obviously mean much more than what is ordinarily understood by trade or business. The definition was apparently intended to include within its scope what might not strictly be called a trade or business.

The Supreme Court in order to hold capital and profit motive to be irrelevant for industry considered the definition of public utility service contained in section 2 (n) and observed that a public utility service such as railways, telephones and the supply of power, light or water to the public may be carried on by private companies or business corporations. Even conservancy or sanitation may be so carried on, though after the introduction of Local Self-Government this work has almost in every country been assigned as a duty to the local bodies like our Municipalities, or District Boards or Local Boards.

The very idea underlying the entrustment of such duties or functions to local bodies is not to take them out of the sphere of industry but to secure the substitution of public authorities in the place of private employers and to eliminate the motive of profit making as far as possible.

Having considered the definitions of employer, industry, industrial dispute, workman, the aims and objects that legislature had in view and the nature, variety and range of disputes that occur between the employers and the employees, and foreign rulings[89] the Supreme Court concludingly remarked that the definition in the Act includes also disputes

89. *Bolton Corporation*, 1943 AC 166, *Melbourne Corporation*, 26 CLR 508.

that might arise between municipalities and their employees in branches of that work and be said to be analogous to the carrying out of trade or business.

The limiting role of *D.N. Banerji*,[90] case must also be noticed so that a total view is gained. For instance, 'analogous to trade or business' cuts down 'undertaking' a word of fantastic sweep. Spiritual undertakings, casual undertakings, domestic undertakings, war waging, policing, justicing, legislating, tax collecting and the like are, *prima facie*, pushed out. Wars are not merchantable, nor justice saleable, nor divine grace marketable. So, the problem shifts to what is 'analogous to trade or business'. The same judgment has negatived the necessity for profit motive and included charity impliedly, has virtually equated private sector and public sector operations and has even perilously hinted at 'professions' being 'trade'. In this perspective, the comprehensive reach of 'analogous' activities must be measured. The similarity stressed relates to 'branches of work'; and more; the analogy with trade or business is in the 'carrying out' of the economic adventure. So, the parity is in the *modus operandi*, in the working not in the purpose of the project nor in the disposal of the proceeds but in the organisation of the venture, including the relations between the two limbs, *viz.*, labour and management. If the mutual relation, the methods of employment and the process of co-operation in the carrying out of the work bear close resemblance to the organization, method, remuneration, relationship of employer and employees and the like, then it is industry, otherwise not. This is the kernel of the decision.[91]

In the process of construction next to *D.N. Banerji*[92] case comes *Corporation of Nagpur v. Its Employees*,[93] which spreads the canvas wide and illumines the expression 'analogous to trade or business', although it comes a few days after *Hospital Mazdoor Sabha*[94] case decided by the same Bench. This case was concerned with a dispute between Nagpur Corporation and its employees. The major issue considered there was the meaning of much disputed expression 'analogous to the carrying on of a trade or business' and the issue whether all the departments of municipal corporation are within the scope of industry.

The Court explained the import of the words 'analogous to the carrying out of a trade or business' and took the view that the emphasis was more on 'the nature of the organized activity implicit in trade or business than to equate the other activities with trade or business'. Obviously, non-trade operations were in many cases 'industry'. Relying on the *Fabricated Engine Drivers*[95] case Subba Rao, J., observed :

> "It is manifest from this decision that even activities of a municipality which cannot be described as trading activities can be the subject-matter of an industrial dispute."

Speaking for the unanimous bench Justice Subba Rao concisely summarized the principles in the following words : (1) The definition of 'industry' in the Act is very comprehensive. It is in two parts : one part defines it from the standpoint of the employer and the other from the standpoint of the employee. If an activity falls under either part of the definition, it will be an industry within the meaning of the Act. (2) The history of industrial disputes and the legislation recognized the basic concept that the activity shall be an organized one and not that which pertains to private or personal employment. (3)

90. AIR 1953 SC 58.
91. *Bangalore Water Supply* case, AIR 1978 SC 548.
92. AIR 1953 SC 58.
93. AIR 1960 SC 675.
94. AIR 1960 SC 610.
95. (1913) 16 CLR 245 (Aus.) at p. 682-683.

The regal functions described as primary and inalienable functions of State though statutorily delegated to a corporation are necessarily excluded from the purview of the definition. Such regal functions shall be confined to legislative power, administration of law and judicial power. (4) If a service rendered by an individual or private person would be an industry, it would equally be an industry, in the hands of a Corporation. (5) If a service rendered by a corporation is an industry, the employees in the departments connected with that service whether financial, administrative or executive, would be entitled to the benefits of the Act. (6) If a department of a municipality discharged many functions, some pertaining to industry as defined in the Act and other non-industrial activities, the predominant functions of the department shall be the criterion for the purpose of the Act.

On the basis of these principles the departments of Education, Health, Tax and even General Administration department of municipality were held to be industry. *Banerji*[96] and *Baroda Borough Municipality*[97] was affirmed. The Supreme Court again in *Bangalore Water Supply*[98] expanded to its logical length the principles enunciated in the cases of *D.N. Banerji*[99] and *Nagpur Corporation*[1] and *Hospital Mazdoor Sabha*[2] and clearly held that all organized activity possessing the triple elements of systematic activity, organized co-operation between employer and employees and production and distribution of goods and services calculated to satisfy human wants and wishes, although not trade or business may still be industry provided the nature of the activity, namely, the employer-employee basis bears resemblance to what is found in trade or business. This takes into the fold of industry, undertakings, callings, services and adventures analogous to the carrying on of trade or business.

Where a complex of activities some of which qualify for exemption and others not, involves employees on the total undertaking some of whom are not workmen or some departments are not productive of goods and services if isolated, even then the predominant nature of the services and the integrated nature of the departments will be true test. The whole undertaking will be industry although those who are not workmen by definition may not benefit by the status.

Sovereign functions strictly understood alone qualify for exemption, not the welfare activities or economic adventures undertaken by Government or statutory bodies. Even though sovereign functions of the State cannot be included in industry, if there are industrial units severable from the essential or sovereign functions and possess an entity of their own it may be plausible to hold that the employees of those units are workmen and those undertakings are industries.

In *Umayammal* v. *State of Kerala*,[3] where provisional or temporary employees working in Government Departments, Government Companies, Statutory Corporations and Local Bodies questioned the action of the respective authorities concerned taken for terminating their services on the ground that they were governed by the Industrial Disputes Act, 1947 and so discharge of the persons or refusal to continue their employment after the stipulated period, amounts to retrenchment under the Act. The High Court of Kerala applying the

96. AIR 1953 SC 58.
97. AIR 1957 SC 110.
98. AIR 1978 SC 548.
99. AIR 1953 SC 58.
1. AIR 1960 SC 675.
2. AIR 1960 SC 610.
3. (1983) 1 LLJ 267.

principles laid down in *Bangalore Water Supply,*[4] holding authorities namely the Coir Board, the Community Development of the Government, Kerala State Civil Supplies Corporation Ltd., Health Services, Trichur Municipal Council, Public Health Department, Kerala State Electricity Board, Municipality to be industry observed that an establishment can be taken out of the pale of industry only if it exercises inalienable Government functions, sovereign functions strictly understood. Even in departments discharging sovereign functions if there are units which are industries and they are substantially severable then they can be considered to come within Section 2 (j) of the Act.

Coming to *State of Punjab* v. *Kuldeep Singh,*[5] it was found that the question for decision was whether the construction and maintenance of National and State High Ways by the State fell within the ambit of industry. As a complete and conclusive answer to this question was not available in the landmark judgment of the Supreme Court in *Bangalore Water Supply and Sewerage Board* v. *A. Rajappa*, the matter was gone into by the Bench independently. For that purpose, the State or Governmental activities were classified into four categories as under :

(1) The sovereign or the regal functions of the State which are the primary and inalienable rights of constitutional Government.

(2) Economic adventures clearly partaking of the nature of trade and business undertaken by it as part of its welfare activities.

(3) Organized activity not stamped with the total indicia of business yet bearing a resemblance to or being analogous to trade and business.

(4) The residuary organized governmental activity which may not come within the ambit of the aforesaid three categories.

On consideration of the entire matter it was held :

Category (1) : That the sovereign and regal functions of State (however much they may tend to come within the wide-ranging words of Section 2 (j) of the Act) are to be judicially excluded from the ambit of industry.

Category (2) : That where the State enters the field of economic adventures clearly akin to trade and business, such an activity because of its intrinsic nature would remain within the ambit of industry.

Category (3) : That the activities falling within this category may come within the most liberal and wide-ranging ambit of being analogous to or resemble trade or business or welfare economic venture, is now authoritatively within the ambit of industry notwithstanding the fact that it may be conducted exclusively by the State.

Category (4) : That the Governmental activity which is neither strictly trade or business in nature nor even remotely resembling or analogous thereto, would be a governmental function outside the ambit of the term industry as defined in Section 2(j) of the Act.

The Court observed that water is a State subject as per Entry 17 in List II of the Seventh Schedule of the Constitution. Even before coming into force of the Constitution, water of rivers and steams was considered to be belonging to State. Further, the construction of canals, dams, barrages and other projects cannot be entrusted to some

4. AIR 1978 SC 548.
5. (1984) 65 FJR 74.

private hands. The construction of these works involves compulsory acquisition of land which can alone be done by the State. Merely this fact that water is supplied by charging certain rates cannot warrant a finding that the State is indulging in a trade or business or an activity which is analogous to trade, business or economic venture. The factors which weighed in holding that the construction and maintenance of National and State High Ways by the State does not come within the ambit of industry in *Kuldeep Singh*'s case (supra), are present so far as the Irrigation Department is concerned. In this view of the matter the functions of the Irrigation Department are essentially government functions and these functions neither partake of the nature of trade and business nor are even remotely analogous thereto. Therefore, this Department does not come within the ambit of industry.

However, the Supreme Court of India decided this point in the negative holding Irrigation Department to be an industry.

In Des Raj etc. v. *State of Punjab,*[6] the question before the Supreme Court was whether State Irrigation Department is an industry. The Supreme Court while deciding the case considered all earlier relevant decisions such as *D.N. Banerji* v. *P.R. Mukharji; State of Bombay* v. *Hospital Mazdoor Sabha, Bangalore Water Supply and Sewerage Board* v. *A Rajappa etc.* and observed that on the tests, as already laid down we do not think these facts found in this case can take the Irrigation Department outside the purview of the definition of Industry. We have already referred to the Dominant Nature test evolved by Krishna Iyer J. The main functions of the Irrigation Department when subjected to the Dominant Nature test clearly come within the definition of industry.

In *Executive Engineer, National High Ways* v. *Industrial Tribunal,*[7] it has been held that National High Ways Division of the Works Department of the Government is an industry on the basis of dominant nature test evolved by Krishna Iyer, J. because tolls and taxes are collected over the bridge constructed by the High Ways Division. Similarly in *Exe. Engr. Canal, Lining Areas Divn.* v. *Surjeet Raj, Store Choukidar Irrigation Department,*[8] has been held to be industry.

By no stretch of imagination can it be said that the Tourism Deptt. discharges sovereign functions to qualify for exemption. It is meant to promote tourism to which end it has to devise means to attract tourists and ensure their convenience and safety. Basically its activities have commercial and economic features quite apart from what the state does or is expected to do in the discharge of its sovereign functions. It is industry.[9]

Similarly it has been held in *Mahesh Bhargava* v. *State of M.P.,*[10] that giving legal aid and legal advice are functions which any private person can and may undertake. They are not inalienable functions of the government necessary for governance. These functions may help to secure justice. But by exercise of those functions the Legal Aid and Advice Board does not administer justice. Those functions of the Board are therefore in no sense sovereign functions or even instance of exercise of sovereign functions delegated to the Board. The Board therefore cannot justly claim exemption from the scope of definition of industry on that score.

6. (1988) II LLJ 149 SC.
7. (1995) I LLJ 470; *Orissa, Bangalore Water Supply and Sewerage Board* v. *A. Rajappa,* (1978) I LLJ 349 (S.C.) and *Des Raj* v. *State of Punjab,* 1988 II LLJ 149 (S.C.) followed.
8. (1995) I LLJ 41 (Punjab H.C.) *Des Raj* v. *State of Punjab,* (1988) II LLJ 149 followed.
9. *Mohanan* v. *State of Kerala,* (1994) II LLJ 1041.
10. (1994) I LLJ 1113 (MP).

Even in the department discharging sovereign function if there are units, which are industries and they are substantially severable, then they should be considered to come within the fold of Section 2 (j) of the Industrial Disputes Act. The Central Ordinance Depot, being a severable unit of the Defence Department and is carrying on a systematic activity with the co-operation of employees and employer, thus it is an industry.[11]

Ministry of Defence has two wings, *i.e.*, Defence Services and Defence Productions. Under the Ministry of Defence Production all Ordinance Factories relating to defence productions are functioning. Such factories are industries. Merely because it is a Military Department maintained under the exercise of the regal sovereign functions of the Central Government, the establishment does not cease to be an industry. Sovereign functions, strictly understood alone qualify for exemption.[12]

In *Raj Kumari and another* v. *State of Himachal Pradesh*,[13] the question for decision was whether the Forest Department of the Government is industry or not. In view of the earlier decision on the point the Court observed that there is no warrant for presuming and proclaiming that the Department of the State Government or certain activities therein carried on can never answer the definition of the word industry. Besides, if there is a dispute on a question of law such as to whether particular activity amounts to industry or not, it is not for the State Government to reach final decision on such a question while exercising powers under Section 10 (1) read with Section 12 (5) of the Act. Those matters fall appropriately within the jurisdiction of the Industrial Tribunal, Labour Court.

In *Vasudeo Ambre* v. *State of Maharashtra and others*,[14] where the question for decision was whether a trade union is covered within the term industry. The Court observed that, no provision is pointed out indicating that a trade union may not carry on any activity other than trade unionism. It is, therefore, conceivable that a trade union may in certain circumstances be an industry and, if it is an industry, a reference would be called for. In refusing to refer upon the ground stated the first respondent, might, therefore, be held to have indulged in adjudication, which is impermissible. In *Rashtriya Mills Mazdoor Sangh* v. *K.B. Wagh*,[15] the trade union has been held to be industry.

In *Najeema Beevi* v. *Public Service Commission*,[16] the High Court of Kerala affirming the ruling in *Umayammal*,[17] held that there are some functions which by their very nature cannot be assigned to Private Bodies. The functions of the Public Service Commission, like the administration of justice, are inalienable as envisaged by the Constitution itself and these functions are exercised in order to safeguard the constitutional rights of the citizens. As such the Public Service Commissions cannot be termed as industry. In this view the provisions of Chapter V-A of the Act will not be available to the employees of the Public Service Commission. Therefore, only those services which are governed by separate rules and constitutional provisions such as Articles 310 and 311 of the Constitution of India, should strictly speaking be excluded from the sphere of industry by necessary implication.[18]

11. *Union of India* v. *Presiding Officer, Central Government Industrial Tribunal and others.*, (1995) I LLJ 994 (M.P.).
12. *Soundararajan and others* v. *Secretary to Government of India, Ministry of Labour*, (1994) II LLJ 665 (Mad.).
13. (1989) II LLJ 421.
14. (1988) I LLJ 465 (Bom.).
15. (1995) I LLJ 629 (Bom.) Bangalore Water Supply followed.
16. (1983) I LLJ 433.
17. *Umayammal* v. *State of Kerala*, (1983) I LLJ 267.
18. *Bangalore Water Supply Case*, AIR 1978 SC 548.

In *H.K. Makwana* v. *State of Gujarat and others*,[19] it has been held that the employment offered to the person on the scarcity relief works as undertaken by the state cannot be said to be employment in industry because (a) it is a primary and inalienable function of the state to provide livelihood to the persons who are affected by the natural calamities such as famine, earthquake, epidemic, flood, scarcity etc. and (b) admittedly, the relief work is not a business or trade and with regard to the undertaking, the activity is not analogous to trade or business or that it is not a systematic activity but is carried out casually at different places depending on the calamities in a particular area.

In the light of triple tests in Bangalore Water Supply it may not be incorrect to say that several departments of the Government and many statutory incorporations, have come within the canvass of the industry. In such circumstances the Corporation of Cochin,[20] Bihar Khadi Gramodyog Sangh,[21] Karnataka State Road Transport Corporation[22] have been held to be within the scope of industry. The Supreme Court of India in *S. Govindaraju* v. *K.S.R.T. Corporation*,[23] has held Karnataka State Road Transport Corporation to be an industry. Similarly activities carried on by the Department of Telephone[24] & Telegraph[25] have been held to be covered within the fold of industry. The Allahabad High Court has very recently held 'Doordarshan'[26] to be covered within the scope of industry.

In *Municipal Corpn. of Delhi* v. *Female Workers (Muster Roll)*,[27] it has been observed by the Supreme Court that the municipal corporations or boards have already been held to be industry within the meaning of Industrial Disputes Act. In *Budge Municipality* v. *P R Mukherjee*,[28] it was observed that the municipal activity would fall within the expression "undertaking" and as such would be an industry. The decision was followed in *Baroda Borough Municipality* v. *Workmen*,[29] in which the Court observed that those branches of work of the municipalities which could be regarded as analogous to the carrying-on of a trade or business would be industry and the dispute between municipalities and their employees would be treated as an "industrial dispute". This view was reiterated in *Corpn. of City of Nagpur* v. *Employees*.[30] In this case, various departments of the municipality were considered and certain departments including the General Administration Department and the Education Department were held to be covered within the meaning of "Industry". The Punjab and Haryana High Court in *Municipal Committee Bhiwani* v. *Padam Singh*,[31] held that the Fire Brigade service, maintained by the Municipal Committee was an industry. But a contrary view was taken by the Bombay High Court in *Administrator of the City of Nagpur Municipal Corpn.* v. *Labour Court*,[32] *Nagpur* which

19. (1995) I LLJ 801 (Guj.); *J.J. Shrimali* v. *Distt. Development Officer*, (1990) I LLJ 451 (Guj.) followed. *Bihar Relief Committee Case*, (1979) II LLJ 53 distinguished on the ground that the work is not organised by society but it is organised by the State in discharge of its inalienable duty.
20. *Corporation of Cochin* v. *Julaja and others*, (1984) I ILJ 526 (Kerala).
21. *Gopalji Jha Shastri* v. *State of Bihar*, (1983) II, LLJ 22 (Supreme Court).
22. *Hariba* v. *K.S.R.T. Corpn.*, (1983) II, LLJ 76 (Karnataka).
23. (1986) II LLJ 351, per Singh J.
24. *Tapan Kumar Jana* v. *Central Manager, Calcutta Telephones*, (1981) Lab. I.C. (NOC) 68 (Cal.).
25. *K. Bhaskaran* v. *Sub-Divisional Officer, Telegraphs Changanassery*, (1983) Lab. I C. 135 (Ker.).
26. *Doordarshan Karmchari Congress* v. *Union of India*, (1988) II LLJ 83.
27. 2000 SCC (L&S) 331.
28. (1953) 1 LLJ 195 : AIR 1953 SC 58.
29. AIR 1957 SC 110.
30. AIR 1960 SC 675.
31. 43 FJ R 382 (P&H).
32. 1967 Lab. IC 107 (Bom).

held that the fire brigade service, maintained by the Municipal Corpn. was not an "industry". The Court emphasised that this Court has already held some of the departments of the Municipal Corporation to be an "industry". The High Courts have also held the running of a dispensary as also sanitary and conservancy activities to be an "industry". The relevant cases are *Sirur Municipality* v. *Workmen*,[33] and *Municipal Council Washim* v. *Manguji Zenduji Dhamani*.[34] The Andhra Pradesh High Court in *Rajendra Nagar Municipality* v. *B. Perraju*,[35] has held that storing and distribution of water was a systematic activity of the corporation which would fall within the definition of "industry".

Taking into consideration the enunciation of law as settled by this Court as also the High Courts in various decisions, referred to above, the activity of Delhi Municipal Corpn. by which the construction work is undertaken or roads are laid or repaired or trenches are dug would fall within the definition of "industry". The workmen or for that matter, those employed on muster roll for carrying on these activities would, therefore, be workmen and the dispute between them and the Corpn. would have to be tackled as an industrial dispute in the light of various statutory provisions of the Industrial Law, one of which is the Maternity Benefit Act, 1961. This is the domestic scenario. Internationally, the scenario is not different. Central Public Works Department has been held to be industry recently in *Executive Engineer, Central Public Works Deptt.* v. *Madhukar Purshottam Kolharkar and another*.[36]

In *Parmanand* v. *Nagar Palika Dehradun and others*,[37] where the appellant's services were terminated without any prior notice or information or after holding a domestic enquiry, much less based on any reason who raised a dispute under the UP. Industrial Disputes Act, 1947 which was referred to Labour Court, Dehraduń.

The Labour Court examined the matter on all aspects raised before it and held that the Engineering Department of the Nagar Palika was engaged in an activity which can be termed to be an industry and therefore held that the appellant fell within the definition of "workman". The Labour Court concluded that the appellant was entitled to reinstatement with full back wages, and passed an award accordingly. However, the High Court took the view that the concept of industry should be excluded to the extent the appointments are regulated by statutory rules in a department and relied upon the decision of the Supreme Court in *Himanshu Kumar Vidyarthi* v. *State of Behar*,[38] and further held that the appellant's work had not been found satisfactory, as such, his services were terminated.

Against the order of the High Court an appeal was filed before the Supreme Court. The Supreme Court considered its earlier rulings.

The Supreme Court in *Corpn. of the City of Nagpur* v. *Employees*,[39] held that the activity of Municipal Corporation carried on in any of the departments except those dealing with assessment and levy of house tax, assessment and levy of octroi, removal of encroachment and removal and pulling down of dilapidated houses, prevention and control of food adulteration and maintenance of cattle pounds, to fall within the definition of

33. (1960) 2 LLJ 657 (Bom).
34. 1978 Lab. IC 881.
35. 1995 Lab. IC 2102 (A.P.)
36. 2000 SCC (L&S) 1087 *Bangalore Water Supply Case*, AIR 1978 SC 548 followed.
37. 2003 SCC (L&S) 1237.
38. 1997 SCC (L&S) 1079.
39. AIR 1960 SC 675.

industry as arising under the Industrial Disputes Act. The decision was reiterated in *Bangalore Water Supply and Sewerage Board* v. *A Rajappa*.[40] It was further explained by this Court in *Samishta Dube* v. *City Board Etawah*,[41] with reference to municipalities in the State of U.P. In that view of the matter the Supreme Court concludingly held that inclusion of municipalities in the Constitution by itself would not dilute the effect of the decision referred to above. Hence, the High Court is not justified in holding that Nagar Palika is not an industry for the purpose of the Act.

The labour Court was perfectly justified in setting aside the order of termination and directing his reinstatement with full back wages. The order of the High Court was set aside restoring order or the labour Court. The appeal was accordingly allowed with costs quantified at Rs. 10,000-00.

In *Asha Ram* v. *Divisional Engineer, Telecom Deptt*,[42] the Telecom Department has been held to be industry.

Research institutions.

We may proceed to consider the applicability of Section 2 (j) to institutions whose objectives and activities cover the research field in the significant way. This has been the bone of contention in a few cases in the past. In the *Ahmedabad Textile Industries Research Association* case,[43] the Court has taken the view that even research institutes are roped in by the definition but latter judicial thinking at the High Court and Supreme Court levels has been in favour of exemption where profit motive has been absent. The *Kurji Holy Family Hospital*,[44] was held not to be an industry because it was a non-profit making body and its work was in the nature of training, research and treatment. Likewise in *Dhanrajgirji Hospital* v. *Workmen*,[45] it was held that the charitable trust which ran a hospital and served research purposes and training of nurses was not an industry. The High Courts of Madras and Kerala have also held that research institutes such as the Pasteur Institute, the C.S.I.R. and the Central Plantation Crops Research Institute are not industries. The Supreme Court has taken same view in *Safdarjung Hospital*.[46] We may briefly examine the rival view points.

Does, research involve collaboration between employer and employee? It does. The employer is the institution, the employees are the scientists, para-scientists and other personnel. Is scientific research service? Undoubtedly it is. Its discoveries are valuable contributions to the wealth of the nation. Such discoveries may be sold for a heavy price in the industrial or other markets. Research benefits industry. Even though a research institute may be a separate entity disconnected from the many industries which founded the institute itself, it can be regarded as an organization, propelled by systematic activity, modelled on co-operation between employer and employee and calculated to throw up discoveries and inventions and useful solutions which benefit individual industries and the nation in terms of goods and services and wealth. It follows that research institutes, run without profit-motive, are industries. The Supreme Court overruled the *Safdarjang* case,[47] in *Bangalore Water Supply* case. However it was observed that little research labs,

40. 1978 SCC (L&S) 215.
41. 1999 SCC (L&S) 592.
42. 2003 SCC (L&S) 464; *GM Telecom.* v. *A Srinivassa Rao*, 1998 SCC (L&S) 6 followed.
43. AIR 1961 SC 484.
44. AIR 1970 SC 1407.
45. AIR 1975 SC 2032.
46. AIR 1970 SC 1407.
47. AIR 1970 SC 1407.

may qualify for exemption if, in simple ventures substantially and going by the dominant nature criterion, substantively, no employees are entertained but in minimal matters, marginal employees are hired without destroying the non-employee character of the unit.[48] Thus, the activities of the Central Institute of Fisheries, Nautical and Engineering Training engaged only in imparting training to the personnel in deep sea fishing and allied operations hiring marginal employees to attend to certain minimal matters in the institute was held not to be an industry.[49]

In the light of *Bangalore Water Supply* case, the Central Machine Tool Institute[50] was held to be industry.

Effect of substituted definition

The liberal spirit of the *Bangalore Water Supply* case covers research institutions, within the ambit of industry but the substituted definition expressly excludes educational, scientific, research or training institutions from the purview of industry. So such research institutions shall be out of scope of industry. As soon as the substituted definition is enforced the flexible canvass shall stand curtailed.

Clubs—Whether industry?

Clubs, speaking generally, are social institutions enlivening community life and are fresh breath of relaxation in a faded society. They are open to the public for membership subject to their own by-laws and rules. But any member of the community complying with those conditions and waiting for his turn has a reasonable chance of membership, none can deny the cultural value of club-life. People join clubs to enjoy life, relieve tension and establish social and cultural relations and sometimes even economic considerations solicit them to join clubs. In this field also contrary judicial precedents catch out attention. The Supreme Court of India ruled in Gymkhana and Cricket Club of India that the clubs are not industries but in Bangalore Water Supply it overruled the earlier decisions and held that clubs are industries. Later on the Industrial Disputes (Amendment) Act, 1982 gives statutory sanction prescribing minimum number of employees to be engaged therein. The law has developed in the area in question in a gradual process. Let us examine this shift of reasoning.

In *Madras Gymkhana Employees' Union* v. *Management*,[51] the Supreme Court ruled that the Gymkhana Club being non-proprietary members' club with multifarious activities providing a venue for sports and games and facilities for recreation, entertainment and for catering of food and refreshment was not industry on the ground that it was self-serving-institution.

In *Cricket Club of India* v. *Bombay Labour Union*,[52] Supreme Court again on similar lines held that Cricket Club of India being a self-serving-institution was not an industry notwithstanding its catering facilities provided to its members.

In *Bangalore Water Supply* case,[53] Mr. Justice Krishna Iyer has critically examined these leading cases in the light of principles laid down in this case namely triple tests and

48. *Bangalore Water Supply and Sewerage Board* v. *A. Rajappa*, AIR 1978 SC 548.
49. *P. Jose* v. *Director, Central Institute of Fisheries*, (1986) Lab. I.C. 1564 Ker.
50. *Central Machine Tool Institute* v. *Asstt. Labour Commissioner*, (1979) LLJ 192. See also the *Workmen of ISI* v. *The Management of ISI*, AIR 1976 SC 145.
51. AIR 1968 SC 554.
52. AIR 1969 SC 276.
53. AIR 1978 SC 548.

has given very fine reasoning. The gentlemen's club, proprietary clubs, service clubs, military clubs or other brands of recreational association when X-rayed from the industrial angle, project a picture on the screen typical of employers hiring employees for wages for rendering services and/or supplying goods on a systematic basis at specified hours. There is a co-operation, the club management providing the capital, the raw-material, the appliances and auxiliaries and the cooks, waiters, bell boys, pickers, bar maids or other servants making available enjoyable eats, pleasures and other permissible services for price paid by way of subscriptions or bills charged. The club life, the warm company, the enrichment of the spirits and freshening of the mind are there. But these blessings do not contradict the co-existence of an "industry" in the technical sense. Even tester, hired for high wages, or commercial art groups or games teams remunerated fantastically, enjoy company, taste, travel and games, but, elementally, they are workmen with employers above and together constitute not merely entertainment groups but industries under the Act.

It is a common phenomenon in parts of our country that workers, harijans, student youth at the lower rungs of the socio-economic ladder, weaker sections like women and low-income groups, quench their cultural thirst by forming gregarious organisations mainly for recreation. A few books and magazines, a manuscript house magazine contributed by and circulated among members, a football or volleyball game in the evening—not golf, billiards or other expensive games—a music or drama group, an annual day, a compensation and pretty little prizes and family get-together and even organizing occasional meeting inviting V.I.Ps. Even these people's organs cannot be non-industries unless one strict condition is fulfilled. They should be—and usually are—self-serving.

These self-service clubs too do not have hired employees to cook or serve, to pick or chase balls, to tie up nets or arrange the cards table, the billiards table, the bar and the bath or do those elaborate business management chores of the well-run city or country clubs. The members come and arrange things for themselves. The secretary, and elected member, keeps the key. Those interested in particular pursuits organize those terms themselves. Even the small accounts or clerical items are maintained by one member or the other. On special evenings all contribute efforts to make a goods show, excursion, joy picnic or anniversary celebration. The dynamic aspect is self-service. In such an institution a part-time sweeper or scavenger or multi-purpose attendant may sometimes exist. He may be an employee. The central trust of our proposition is that if a club or other like, collectivity has a basic and dominant self-service mechanism. The small Man's Nehru Club, Gandhi Granthasala, Anna Manram, Netaji Youth Centre, Brother Music Club, Muslim Sports Club and like organs often named after national or provincial heroes and manned by members themselves are contrasted with the Gymkhana Club, Cosmopolitan Club, Cricket Club of India, National Sports Club of India whose Badge is pleasure paid for and provided through skilled or semi-skilled catering staff. Only if they answer the test laid down affirmatively they qualify.

The Supreme Court while overruling Madras Gymkhana[54] Club which offers choice facilities for different game and sports, dinners and refreshment or other pleasurable service for members and non-members for fulfilment of its objects the club-employees, officers, caterers and others on reasonable salaries, observed that it involves cooperation of employer and employees, organised like in a trade and calculated to supply pleasurable

54. AIR 1968 SC 554.

utilities to members and others. The ingredients necessary for an industry are present and yet Hidayatullah, C.J. ruled that the club was not an industry because the club belongs to the members only. The Court said that a company belongs to the share-holders only, a co-operative belongs to the members only; a firm of experts belongs to partners only. And yet, if they employ workmen with whose co-operation goods and services are made available to a section of the community and the operations are organised in the manner typical of business method and organisation, the conclusion is irresistible that an 'industry' emerges. Likewise, the members of a club may own the institution and become the employers for that reason. Assigning these reasons the Supreme Court overruled this case, the result of which is that clubs are industries.

With reference to the Cricket Club[55] of India the Supreme Court in *Bangalore Water Supply*[56] case observed that Cricket Club of India stands in worse position. It is a huge undertaking with activities wide-ranging, with big budgets, army of staff and profit making adventures. Indeed, the members share in gains of these adventures by getting money's worth by cheaper accommodation, free or low priced tickets for entertainment and concessional refreshment; and yet Bhargava, J. speaking for the Court held this mammoth industry a non-industry. Why! When all these services are rendered by hired employees, how can the nature of the activity be described as self-service without taking liberty with reality? The testimony of the activities can leave none in doubt that this colossal 'club' is a vibrant collective undertaking which offers goods and services to a section of the community for payment and there is co-operation between employer and employees in this project. The plea of non-industry is unpresentable. This case also thus stands overruled.

Co-operatives

Co-operative societies ordinarily cannot fall outside Section 2(j). After all, the society, a legal person, is the employer. The members and/or others are employees and the activity partakes of the nature of trade. Merely because co-operative enterprises deserve State encouragement the definition cannot be distorted. Even if the society is worked by the members only, the entity (save where they are few and self-serving) is an industry because the member-workers are paid wages and there can be disputes about rates and different scales of wages among the categories, *i.e.*, workers and workers or between workers and employer. These societies—credit societies, marketing co-operatives, producers' or consumers' societies or apex societies, are industries.[57]

The credit unions, organised on a co-operative basis, scale the definitional walls of industry. The judgment of the Australian High Court in the *Queen* v. *Marshall ; Ex parte Federated Clerks Union of Australia*,[58] helps to reach this conclusion. There, a credit union, which has a co-operative association which pooled the saving of small people and made loans to its members at low interest, was considered from the point of view of industry. Admittedly, they were credit unions incorporated as co-operative societies and the thinking of Mason, J. was that such institutions were industrial in character.

Mason, J. went a step further to hold that even if such credit unions were an adjunct of industry, they could be regarded as industry.

55. AIR 1969 SC 266.
56. AIR 1978 SC 548.
57. *Bangalore Water Supply Case*, AIR 1978 SC 548.
58. 1975 (132) CLR 595 (Ref. By Krishna Iyer, J.).

It is enough, therefore, if the activities carried on by credit unions, can accurately be described as incidental to industry or to the organized production, transportation or distribution of commodities or other forms of material wealth.[59]

In *Bangalore Water Supply* case,[60] the Supreme Court examined the question whether the co-operatives are industries. It may be recalled that *Bangalore Water Supply* case was decided and the principles were laid down and other cases which were tagged with this case were left to be decided individually on merits in accordance with these principles. Among the tagged cases *Andhra Pradesh State Co-operative Union Ltd.* v. *The Labour Court, Gujarat State Co-operative Union, Ahmedabad* v. *Workmen Employed under Gujarat State Co-operative Union* were related directly to this question. The Supreme Court after careful analysis of earlier decisions such as Safdarjung Hospital,[61] Gymkhana Club,[62] Cricket Club of India,[63] Hospital Mazdoor Sabha,[64] Indian Standards Institution,[65] D.N. Banerji,[66] Ahmedabad Textile Research,[67] Nagpur Corporation[68] and many other Indian cases and also foreign rulings came to the conclusion that the co-operatives are industries. Thus Andhra Pradesh State Co-operative Union Ltd. and Gujarat State Cooperative Union[69] were held industries accordingly. On the reasoning that they or any other co-operatives fulfil the triple tests enunciated in this case. On the same lines Rajasthan Co-operative Credit institutions cadre authority is an industry.[70]

Domestic Service

In *Som Vihar Apartment Owners' Housing Maintenance Society Ltd.* v. *Workmen*,[71] the Supreme Court held that indeed, this Court noticed the distinction between such classes of workmen as domestic servants who render personal service to their masters from those covered by the definition in Section 2(j) of the Act. It should not be understood that all services and callings would come within the purview of definition. Services rendered by a domestic servant purely in a personal or domestic matter or even in a casual way would fall outside the definition. The whole purpose of the Industrial Disputes Act, is to focus on resolution of industrial disputes and the regulation will not meddle with every little carpenter or a blacksmith, a cobbler or a cycle repairer who comes outside the idea of industry and industrial dispute. The rationale, which applies all along the line to small professions like that of domestic servants would apply to those who are engaged by a group of flatowners for rendering personal services even if that group is not amorphous but crystallised into an association or a society. The decision in Rajappa case if correctly understood is not an authority for proposition that domestic servants are also to be treated to be workmen even when they carry on work in respect of one or many masters.

59. *Bangalore Water Supply Case*, AIR 1978 SC 548.
60. Ibid.
61. AIR 1970 SC 1407.
62. AIR 1963 SC 554.
63. AIR 1969 SC 276.
64. AIR 1960 SC 610.
65. AIR 1976 SC 145.
66. AIR 1953 SC 58.
67. AIR 1962 SC 1080.
68. AIR 1960 SC 675.
69. AIR 1978 SC 548.
70. *Rajasthan Rajya Sahkari Samitiyan Vyavasthapak Union* v. *Industrial Tribunal*, (1985) Lab. I.C. 1023.
71. 2002 SCC (L&S) 1099; *Bangalore Water Supply and Sewerage Board* v. *A Rajappa*, 1978 SCC (L&S) 215 explained and relied on.

It is clear when personal services are rendered to the members of a society and that society is constituted only for the purposes of those members to engage the services of such employees, we do not think, its activity should be treated as an industry nor are they workmen. In this view of the matter so far as the appellant is concerned it must be held not to be an industry. Therefore, the award made by the tribunal cannot be sustained. The appeal was allowed accordingly.

Charitable Institutions.—Can charity be "industry"? This paradox can be unlocked only by examining the nature of the activity of the charity for there are charities and charities. The grammar of labour law in a pluralist society tells us that the worker is concerned with wages and conditions of service, the employer with output and economics and the community with peace, production and stream of supply. This complex of work, wealth and happiness, firmly grasped, will dissolve the dilemma of the law bearing on charitable enterprises.

The Supreme Court in *Bangalore Water Supply* case has examined this question. For this purpose it analysed the elements of charitable economic enterprises, established and maintained for satisfying human wants and indicated three broad categories, more may exist.

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

It is common ground that the first category of charities is disqualified for exemption. If a business is run for production and/or supply of goods and services with an eye on profit, it is plainly an industry. The fact that the whole or substantial part of the profits so earned is diverted for purely charitable purposes does not effect the nature of the economic activity which involves the co-operation of employer and employees and results in the production of goods and services. In short, they are industries.

The Supreme Court observed in relation to second category of enterprises that people call them charity because the kind-hearted, high minded, service minded organisors of such enterprises hire employees and in co-operation with them produce and supply goods or services without charging any price or receiving a negligible return. But so far as the workmen are concerned, it boots little whether he makes available the products or services free to the poor. They contribute labour for wages and conditions of service. For them the charitable employer is exactly like a commercial employer. Both exact hard work, both pay similar wages, both treat them as human machine cogs and nothing more. They may be different from the view point of recipients of goods and services. The Supreme Court ruled that industrial law does not take note of such extraneous factors but regulates industrial relations between employers and employees, employers and workmen, and workmen and workmen. From the point of view of the workmen there is no charity. For him charity must begin at home. From these stands of thought flows the conclusion that the second group may

legitimately and legally be described as industry. The fallacy in the contrary contention lies in shifting the focus from the worker and the industrial activity to the disposal of the end product. The Court made reference of Shri Gandhi Ashram for the cases alongwith Bangalore Water Supply were related to such ashrams. The cases *M/s. Kshetriya Sri Gandhi Ashram Meerut etc.* v. *The Workmen* and *Shri Gandhi Ashram* v. *Their Workmen*, which were to be decided. The Court laid down general principles and left the matter to be decided on merit individually. In view of the triple tests court ruled that such Ashrams are within the scope of industry.

In respect of third category of enterprises the Supreme Court ruled that to qualify for exemption from the definition of industry in a case where there are employees and employers, systematically organised activities for production of goods and services, a totally different orientation is needed. In such cases special emphasis must be placed on the central fact of employer-employee relations. If a philanthropic devotion is the basis for the charitable foundation or establishment, the institution is headed by one who whole heartedly dedicates himself for the mission and pursues it with passion, attracts others into the institution, not for wages but for sharing in the cause and its fulfilment, then the undertaking is not 'industrial' because there is absence of motive of work for wages or money. They simply co-operate for charitable purposes for spiritual satisfaction. If they have such a concept there will not be any conflict of interests as it happens in an industrial dispute. The Supreme Court concluded that such people are not workmen and such institutions are not industries notwithstanding some menials and some professionals in a vast complex being hired. We must look at the predominant character of the institution and the nature of the relation resulting in the goods and services.

In *Bangalore Water Supply Case*,[72] the Supreme Court made brief survey of judicial precedent on the point and discussed the leading case of *Bombay, Pinjrapola*[73] and held that such institutions from the view point of workers are industries as they share business like orientation and operation, on the basis of triple tests laid down in this case.

Tirumala Tirupati Devasthanam[74] has been held to be an industry. Similarly in *Suresh Kumar* v. *Union of India*,[75] it has been observed by the High Court of Delhi that applying the test the Supreme Court laid down in *Bangalore Water Supply* case, the Central Institute of Yoga would be regarded as an industry, especially when most of its employees are persons who are working for wages.

It may concludingly be remarked that any institution whether charitable or religious if it fulfils triple tests it may be in the area of industry. Only such institutions which are for the purposes of spiritual satisfaction may qualify for exemption. If in a pious or altruistic mission may employ themselves, free or for small honoraria or like return, mainly drawn by sharing in the purpose or cause, such as lawyers volunteering to run a free legal service etc. or ashramites working at the bidding of the holiness, divinity and the services are supplied free or at nominal cost and those who serve are not engaged for remuneration or on the basis of master and servant relationship, then the institution is not an industry even if stray servants manual or technical, are hired.[76]

72. AIR 1978 SC 548.
73. *Bombay Pinjrapole* v. *Workmen*, (1972) 1 SCR 202 : (1971) II LLJ 393 SC.
74. *T.T. Devasthanam* v. *Commissioner of Labour*, (1979) I LLJ 448.
75. (1989) 2 LLJ 110.
76. *Bangalore Water Supply Case*, AIR 1978 SC 548.

In *Bihar Relief Committee* v. *State of Bihar and others*,[77] applying the principles laid down in *Bangalore Water Supply* case the Bihar Relief Committee, a charitable, non-profit making social service organisation founded for rendering relief work has been held to be an industry by the Patna High Court on the ground that Committee has undertaken minor irrigation schemes in the State for which it opened various centres for constructing open bore wells, tanks and tube wells after obtaining the advice of the technical experts.

In *Shri Cutchi Visa Oswal Derawasi Jain Mahajan* v. *B.D. Borude*,[78] the High Court of Bombay held the petitioner Religious Trust owning extensive properties and doing service to the community with the co-operation of engaged employees, to be an industry. It was observed : 'Whatever may be the aims and objects of the Trust, there is hardly any doubt that the Trust is carrying out commercial activities by letting out godowns, halls, shops etc. It is futile to suggest that the Trust merely provides spiritual benefits and not material benefits. Pujari is engaged on a monthly salary and the Trust accepts donations and offerings before the deity. It is not in dispute that the workmen are engaged to clean the property and to provide facilities to the residents, like service of food etc. These activities are clearly commercial in nature. Therefore, in consonance with the principles laid down in *Bangalore Water Supply* case the Trust falls within the scope of industry as defined in section 2(j) of the Act."

It has been held by the Supreme Court in *All India Radio* v. *Santosh Kumar and another*,[79] that the functions which are carried on by All India Radio and Door Darshan cannot be said to be confined to sovereign functions as they carry on commercial activity for profit by getting commercial advertisements telecast or broadcast through their various Kendras and stations by charging fees. Therefore, it has to be held that the appellant All India Radio as well as Door Darshan are industries within the meaning of Section 2 (j) of the Act.

In *Bharat Bhawan Trust* v. *Bharat Bhawan Artists. Association*,[80] the questions before the Surpeme Court were to decide whether the appellant which is an institution for the promotion of art and culture is an industry and whether the respondents, who are artists are workmen. The Supreme Court considered the tests laid down in *Bangalore Water Supply*,[81] case which are (i). that the institution is engaged in a systematic activity; (ii) organised by cooperation between employer and employees, (iii) for the production of goods and services. This decision included a wide variety of situations within the ambit of Section 2(j). There have been innumerable decisions following the said decision, which have taken a broad view of the definition. This Court in *Suresh Kumar* v. *Union of India*,[82] held that an institution of Yoga was an industry. This Court in *Bangalore Water Supply and Sewerage Board* v. *A Rajappa*, however qualified the dictum by explaining that where a complex of activities, some which qualify for exemption, other not, involve employees in the total undertaking, some of whom are not workmen, or some departments are not productive of goods and services, then the integrated nature of the department will be the true test. The

77. (1979) LLJ 53; *H.K.* v. *State of Gujarat and others*, (1995) I LLJ 801, where relief undertakings carried out to sovereign functions hence out of scope of industry.
78. (1987) I LLJ 81, *per* Pendse, J.
79. 1998 SCC (L & S) 833; *Bangalore Water Supply and Sewerage Board* v. *A. Rajappa*, AIR 1978 SC 548 Followed.
80. 2001 SCC (L&S) 1225.
81. AIR 1978 SC 548 followed.
82. (1989) 2 LLJ 110.

whole undertaking will be industry although those who are not workmen by definition may not benefit.

Thus, to hold that the appellant in the instant is an industry, it must satisfy the requirements of the section and the tests laid down in *Bangalore Water Supply* case. The Bharat Bhawan Trust is engaged only in promotion of art and preservation of artistic talent. Such activities are not one of those in which there can be a large scale of production to involve the cooperation of efforts of the employer and the employee nor can it be said that the production of the plays will be a systematic activity to result in some kind of service. Therefore, it is doubtful, in spite of the wide connotation given to industry in Bangalore Water Supply case if the appellant can be classed as an industry. However the matter was not finally decided.

It was further observed that even assuming that the appellant is an industry the more important question would be to examine whether the artists employed by it are workmen. It was held that an artist engaged in the production of a drama or in theatre management or to participate in a play can by no stretch of imagination be termed as workman, because he does not indulge in any manual, unskilled or technical, operational or clerical work, though he may be skilled, it is not such a work which can be read *ejusdem generis* along with other kinds of work mentioned in the definition. A Constitution Bench of this Court in *H R Adyanthaya* v. *Sandoz (India) Ltd.*[83] after review of the entire case law held: "As regards the word "skilled", we are of the view that connotation of the said word in the context in which it is used, will not include the work of a sales promotion employee such as the medical representative in the present case. That word has a to be courtrued ejusdem generis and thus construed, would mean skilled work whether manual or non-manual which is of a genre of the other types of work mentioned in the definition."

In effect, the work of the respondents is creative art which only a person with an artistic talent and requisite technique can manage. To call such a person, a skilled or a manual worker is altogether inappropriate. An artist must be distinguished from a skilled, manual worker by the inherent qualities which are necessary in an artist, allied to training and technique. Thus the respondents are not workmen.

In *Shri Gajanan Maharaj Sansthan* v. *Shri Gajanan Karmchari Sangh*,[84] where the question for determination was whether a public trust registered under the Bombay Public Trusts carrying on charitable and religious activities is an industry within the meaning of Industrial Disputes Act. The Supreme Court observed that the Tribunal did not analyse either the pleadings or the evidence adduced except to narrate various contentions raised by the parties in passing the award. The High Court lost sight of the observations made by this Court in *Bangalore Water Supply Case and Sewerage Board* v. *Rajappa*,[85] to the following effect:

"If a philanthropic devotion is the basis for charitable foundation or establishment, the institution is headed by one who wholeheartedly dedicates himself for the mission and pursues it with passion, attracts others into the institution, not for wages but for sharing in the cause and its fulfilment, then the undertaking is not "industrial". Not that the presence of Charitable impulse extricates the institution from the definition of industry in Section 2 (j) but that there is economic relationship such as is found in trade or business

83. 1994 SCC (L&S) 1283.
84. 2003 SCC (L&S) 794.
85. 1978 SCC (L&S) 215 followed.

between the head who employs and the others who emotively flock to render service. In one sense, there are no employers and employees but crusaders all. In another sense, there is no wage basis for the employment but voluntary participation in the production, inspired by lofty ideals and unmindful of remuneration, service conditions and the like. Supposing there is an ashram or order with a guru or other head, let us further assume that there is a band of disciples, devotees or priestly subordinates in the order, gathered together for prayers, ascetic practices, bhajans, meditation and worship. Supposing further, that outsiders are also invited daily or occasionally, to share in the spiritual proceedings. And, let us assume that all the inmates of the ashram and members of the order, invitees, guests, and other outside participants are fed, accommodated and looked after by the institutions. In such a case, as often happens, the cooking and the cleaning, the bed making and service, may often be done, at least substantially by the ashramites themselves. They may affectionately look after the guests, and, all this they may do, not for wages but for chance to propitiate the Master, work selflessly and acquire spiritual grace. It may well be that they may have surrendered their lucrative employment to come into the holy institution. It may also be that they take some small pocket money from the donations or takings of the institution. Nay more; there may be a few scavengers and servants, a part-time auditor or accountant employed on wages. If the substantial number of participants in making available goods and services, if the substantive nature of work, as distinguished from trivial items, is rendered by voluntary wageless sishyas, it is impossible to designate the institution as an industry, notwithstanding a marginal few who are employed on a regular basis for hire. Perhaps, when Mahatma Gandhi lived in Sabarmati, Aurobindo had his hallowed silence in Pondicherry, the inmates belonged to this chastened brand. Even now, in many foundations, centres, monasteries, holy orders and ashrams in the East and in the West, spiritual fascination pulls men and women into the precincts and they work tireiessly for the maharishi or yogi or swami ji and are not wage earners in any sense of the term. Such people are not workmen and such institutions are not industries despite some menials and some professionals in a vast complex being hired. We must look at the predominant character of the institution and the nature of the relations resulting in the production of goods and services. Stray wage-earning employees do not shape the soul of an institution into an industry".

The Supreme Court after making reference of the above observations concluded that the appropriate tests to be adopted are indicated in the aforesaid passage. The High Court has not adverted to this aspect of the matter at all. In the circumstances the Supreme Court set aside the order of the High Court and quashed the award and remitted the matter to the Industrial Tribunal for fresh consideration in accordance with law.

In fact, in *Bangalore Water Supply Case* the definition of industry was stretched to a breaking point only in the anxiety to give the benefits of the Industrial Disputes Act, 1947 to as many kinds of employees as possible in the name of judicial activism.[86]

Substituted Definition of Industry

The Supreme Court of India in *Bangalore Water Supply* case[87] has extended the flexible canvas of industry to the maximum extent and realising the necessity of limitations observed that the Government might take suitable legislative measures to this end. Under these circumstances, the Parliament redefined the expression "industry' giving due weight

86. *V.S. Deshpande*, A new concept of industry. The Journal of the Indian Law Institute, Vol. 26 (1984), pp 214-15.
87. AIR 1978 SC 548.

to the judicial precedents and more particularly the principles of law laid down in the *Bangalore Water Supply* case adding inclusion, and exclusion clauses thereto. The effect of definition has been indicated in the discussion in relation to individual institutions. The substituted definition has not been brought into force on 21st August, 1984 alongwith other provisions of Industrial Disputes (Amendment) Act, 1982. A date is to be notified in this respect by the Central Government as yet.

Under the inclusion clauses any activity of Dock Labour Board and any activity relating to the promotion of sales or business or both carried on by an establishment have been included within the scope of industry. The definition has added as many as nine exclusion clauses to curtail the ambit of industry explained by judicial precedents. This has expressly excluded from its scope any agricultural operation, hospitals and dispensaries, educational, scientific, research or training institutions, institutions engaged in charitable, social and philanthropic services, Khadi or village industries, sovereign functions of the Government including activities carried on by the department of the Central Government dealing with defence research, atomic energy and space. It also excludes domestic service. Any activity, being a profession practiced by an individual, or body of individuals, if the number of persons employed by the individual or body of individuals in relation to such profession is less than ten, is excluded from the scope of industry. Similarly, any activity carried on by a co-operative society or a club or any other like body of individuals, if number of persons employed therein in relation to such activity is less than ten, is also out of the scope of industry. However, if the persons employed therein are ten or more, such activity where they are engaged, is within the purview of the definition of industry.

It would be correct to say that if the definition of "industry" as amended in 1982 is given effect to, it would make a lot of difference between the law in force on the basis of *Bangalore Water Supply and Sewerage Board* v. *A. Rajappa*,[88] and the law contained under Section 2(j) of the Industrial Disputes Act, 1947, after its amendment in 1982. The institutions which are covered within the scope of 'industry' at present would be out of ambit of the definition of industry thereafter if they qualify for exemption contained therein.

Recent Judicial Trends

Although the judicial interpretation given to the expression 'industry' by the Supreme Court in *Bangalore Water Supply and Sewerage Board* v. *A. Rajappa*,[89] was intended to finally settle the tests to determine its scope with a view to cope with the modern socio-economic currents and to keep pace with the industrial developments by extending its application to more organisations and employees but it has been experienced in due course of time that uncertainty still prevails in this area. In the light of the experience of the last two decades in applying the test laid down in the above case its decision requires to be re-examined. The recent judicial trends point out that instead of leading to industrial peace and welfare of the community, the application of the Industrial Disputes Act to organisations which were, quite possibly, not intended to be so covered, might have done more damage than good, not merely to the organisations but also to employees by the curtailment of employment opportunities. *Coir Board, Ernakulam, Cochin and another* v. *Indira Devai P.S. and others*,[90] reflects recent judicial trends. Let us see how and why. In

88. AIR 1978 SC 548.
89. AIR 1978 SC 548.
90. 1998 SCC (L&S) 806, *per* Sujata V. Manohar, J.

this case the question for decision before the Supreme Court was whether the appellant Coir Board is an industry as defined in the Industrial Disputes Act.

The appellant Coir Board, Ernakulam, Cochin, has been set under the Coir Industry Act, 1953 for the development of the Coir Industry and for that purpose to levy customs duty on coir fibre, coir yarn and coir products exported from India and for matters connected therewith. For purpose of improving the marketing of coir products and for promoting exports the Coir Board maintains showrooms and sales depots. The products are sold through the showrooms for which the Coir Board charges the commission.

The Coir Board had employed certain temporary clerks and typists who were discharged. They claimed that their services could only be terminated in accordance with the provisions of the Industrial Disputes Act, 1947.

A Full Bench of the Kerala High Court considered the question of application of the Industrial Disputes Act to the appellant Coir Board alongwith a similar question raised in respect of a large number of government departments, government companies, other statutory corporations and local bodies, in the impugned judgment. After extensively dealing with the various decisions of this Court on what is an "industry" and who is a "workman" under the Industrial Disputes Act, the High Court has come to the conclusion, *inter alia*, that Coir Board is an "industry" as defined in the Industrial Disputes Act. Hence Chapter V-A of the Industrial Disputes Act would be applicable in respect of termination of the service of its temporary clerks and typists.

The appeals were preferred from this judgment.

The Supreme Court considered the definitions of 'industry' 'employer' and 'workman' and observed that while employer is defined in the context of an industry and the workman is also defined as a person employed in any industry, the term "industry" itself has been defined to mean business, trade, manufacture, undertaking or calling. While the terms "business, trade, manufacture or calling" are fairly clear, the term "undertaking" which accompanies these four words has given scope for judicial expansion of the meaning of the word "industry".

The Supreme Court considered all the cases decided before and after its decision in *Bangalore Water Supply and Sewerage Board* with a view to re-examine the tests laid down in *Bangalore Water Supply* case, clearly pointing out that if the tests laid down in the *Bangalore Water Supply* are applied Coir Board has to be held an industry within the meaning of this Act although it has not been set up to run any industry itself and looking to the predominant purpose we would not call it an industry. The Court therefore for reasons recorded directed that the matter be placed before the Hon'ble Chief Justice of India to consider whether a larger Bench should be constituted to reconsider the decision of this court in *Bangalore Water Supply and Sewerage Board*.[91]

It would be relevant to discuss observations of the Supreme Court in the case of *Coir Board* to visualise recent judicial trends which indicate unhappy results of the ruling in the *Bangalore Water Supply* case.

In one of the early cases before this Court, *D.N. Banerji* v. *P.R. Mukherjee*,[92] a Bench of five Judges observed (para 13) that the words "industrial dispute" convey the idea of a

91. *Coir Board* v. *Indira Devi P.S. and others*, 1998 SCC (L & S) 806.
92. AIR 1953 SC 58.

dispute that would affect large groups of workmen and employers ranged on opposite sides, on some general questions on which each group is bound together by a community of interests (such as wages, bonus, allowances, working hours and so on). In branches of work of a municipality analogous to carrying on of a trade or business, the dispute can be considered as an industrial dispute. A similar view was taken in the case of *Corpn. of the City of Nagpur* v. *Employees*[93] In *State of Bombay* v. *Hospital Mazdoor Sabha*,[94] word "undertaking" in the definition of an industry was held to connote an activity systematically and habitually undertaken for production or distribution of goods or for rendering material services to the community at large or a part of such community with the help of employees. Profit motive was considered as not relevant.

Thus, by eliminating the purpose of an industrial activity as earning of profits or income or returns, the Court brought into the sweep of an industry, activities such as charities, government hospitals giving free medicines and medical care or other philanthropic activities. In fact, by considering the term "undertaking" in this fashion, all kinds of organised activities which would ordinarily not have been considered as industries at all and which would not have been otherwise considered as industries even under the Industrial Disputes Act were now "industries" under the Industrial Disputes Act. Because if we look at the language of the definition of "industry" and interpret the word "undertaking" appearing alongwith the words "trade, business and manufacture or calling" by applying the principle or *noscitur a sociis*, "undertaking" would cover activities similar to trade, business, manufacture of goods or calling, and not other kinds of activitiey.

However, the same non-conventional interpretation was reiterated in the case of *Workmen* v. *Indian Standards Institution*,[95] by saying that the widest possible connotation should be given to the word "industry" since Industrial Disputes Act was a welfare legislation for the welfare of workers. Therefore, Indian Standards Institution was held to be an industry.

At the same time, there has been another set of cases of this Court and a number of High Courts where a slightly more restricted and conventional meaning has been given to the term "industry". For example, in *National Union of Commercial Employees* v. *M.R. Meher, Industrial Tribunal*,[96] the case of *State of Bombay* v. *Hospital Mazdoor Sabha*,[97] was distinguished and it was held that a liberal profession such as that of an attorney was not an industry because the attorney does not carry on his profession with the active cooperation of his employees. He brings to bear his intellectual equipment on the work he does. Similarly, in the case of *University of Delhi* v. *Ram Nath*,[98] this Court has held that an educational institution was not an industry.

In the case of *Secy. Madras Gymkhana Club Employees'* Union v. *Gymkhana Club*,[99] this Court held that every activity which involves the relationship of an employer and employee is not necessarily an industry. A club was not an industry since its services were to the members themselves for their own pleasure and amusement and material goods were

93. AIR 1960 SC 675.
94. AIR 1960 SC 610.
95. AIR 1976 SC 145 : 1976 SCC (L & S) 16.
96. AIR 1962 SC 1080.
97. AIR 1960 SC 610.
98. AIR 1963 SC 1873.
99. AIR 1968 SC 554.

for their own consumption. It was a self-serving organisation and was not an industry. Following the same judgment, in the *Cricket Club of India* v. *Bombay Labour Union*,[1] the Cricket Club of India was held not to be an industry.

In the next year, in the case of *Safdarjung Hospital* v. *Kuldip Singh Sethi*,[2] a Bench of six Judges of this Court unanimously followed the ratio of the *Madras Gymkhana Club* case and held that the Safdarjung Hospital was not an industry. In the case of *Safdarjung Hospital* a Bench of six Judges unanimously held that an industry as defined in Section 2 (j) exists only when there is a relationship of employers and employees, the former engaged in business, trade, undertaking, manufacture or calling of employers and the latter engaged in any calling, service, employment, handicraft or industrial occupation or avocation. But every case of employment is not necessarily productive of an industry. Domestic employment, administrative services of public officials, service in aid of occupations of professional men also disclose relationship of employers and employees but they cannot be regarded as in the course of industry. Hospitals run by Government and even by private associations not on commercial lines but on charitable lines, or as part of the functions of Government Department of Health cannot be included in the definition of industry.

The same position had been earlier reiterated by a three-Judges Bench of this Court in the case of *Madras Gymkhana Club*,[3] where also this Court had interpreted the definition of industry as being in two parts. In its first part, it means any business, trade, undertaking, manufacture or calling of employers. This part of the definition determines an industry by reference to occupation of employers in respect of certain activities. These activities are specified by five words and they determine what an industry is and what the cognate expression "industrial" is intended to convey. The second part views the matter from the angle of employees and is designed to include something more in what the term primarily denotes. By the second part of the definition, any calling, service, employment, handicraft or industrial occupation or avocation of workmen is included in the concept of an industry. This part gives the extended connotation. This Court did not accept as correct the extension of the definition as laid down in *Corpn. of the City of Nagpur* v. *Employees*.

However, this view which was reaffirmed in *Safdarjung Hospital* case by a decision of six Judges of this Court, as well as the University of Delhi case were overruled in 1978 by a decision of a Bench of seven Judges of this Court in the case of *Bangalore Water Supply & Sewerage Board* v. *A Rajappa*[4] by a majority of five with two dissenting.

The definition of industry under the Industrial Disputes Act was held to cover all professions, clubs, educational institutions, cooperatives, research institutions, charitable projects and anything else which could be looked upon as organised activity where there was a relationship of employer and employee and goods were produced or service was rendered.

The majority laid down the "dominant nature" test for deciding whether the establishment is an industry or not (*see* para 143, Krishna Iyer, J.) : (SCC pp. 283-84).

Two Judges dissented from this view. They said that bearing in mind the collocation of terms in which a definition is couched and applying the doctrine of *noscitur a sociis* as pointed out in the *Hospital Mazdoor Sabha* case when two or more words are coupled

1. AIR 1969 SC 276.
2. AIR 1970 SC 1407.
3. AIR 1968 SC 554.
4. AIR 1978 SC 548.

together they have to be understood as being used in their cognate sense taking their colour from each other. Therefore, despite the width of the definition of "industry" in Section 2 (j) it could not have been the intention of the legislature that hospitals run on charitable basis or as a part of the functions of the Government or local bodies like municipalities, and education and research institutions whether run by private entities or by Government, and liberal and learned professions like doctors, lawyers etc. the pursuit of which is dependent upon the individual's own education, intellectual attainments, and special expertise, should fall within the pale of the definition.

The subsequent decisions of this Court have left some uncertainty on the question of activities and organisations that can be labelled as industries under the Industrial Disputes Act. To take only a few recent cases, in the case of *Physical Research Laboratory* v. *K.G. Sharma*,[5] this Court, after discussing the definition of 'industry' as propounded in the *Bangalore Water Supply* case and other cases ultimately came to the conclusion that a Physical Research Laboratory was not an industry.

In an earlier judgment in the case of *Sub-Divisional Inspector of Post* v. *Theyyan Joseph*,[6] the establishment of the Sub-Divisional Inspector of Post was held not to be an industry but as an exercise of a sovereign function. In the case of *Bombay Telephone Canteen Employees' Assn.* v. *Union of India*,[7] this Court, after examining the case law, held that workmen employed in the departmental canteen of Telephone Nigam Limited and admittedly holding civil posts were not workmen within the meaning of the Industrial Disputes Act. However, a Bench of three Judges of this Court in *G.M. Telecom* v. *S. Srinivasa Rao*,[8] held that the cases of *Sub-Divisional Inspector of Post and Bombay Telephone Canteen Employees' Assn.* were not correctly decided in view of the ratio laid down by a Bench of seven Judges of this Court in the case of *Bangalore Water Supply and Sewerage Board*.

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

In a number of cases where the organisation is run by voluntary social workers, they are unable to cope with the requirements of Industrial Disputes Act. This has led to a cessation of many welfare activities previously undertaken by such organisation which has deprived the general community of considerable benefit and the employees of their livelihood. A large number of such voluntary welfare schemes have had to be abandoned because of the wide interpretation given to term 'industry'.

The definition needs re-examination so that, while the workers in an industry have the benefit of industrial legislation, the community as such is not deprived of philanthropic and

5. 1997 SCC (L & S) 1057.
6. 1996 SCC (L & S) 1012 followed in *Union of India* v. *Kamlesh Kumar Bharti*, 1998 SCC (L & S) 1535.
7. 1998 SCC (L & S) 386.
8. 1998 SCC (L & S) 6.

other vital services which contribute so much to its well-being. Educational services and the work done by teachers in educational institutions, research organisations, professional activities, or recreational activities, amateur sports, promotion of arts (fine arts and performing arts), promoting crafts and special skills, all these and many other similar activities also require to be considered in this context.

In fact, in 1982, the legislature itself decided to amend the definition "industry" under the Industrial Disputes Act, 1947 by enacting the Amending Act 46 of 1982. In the Statement of Objects and Reasons for the Amending Act 46 of 1982, clause (2) expressly refers to the decision of this Court in *Bangalore Water Supply and Sewerage Board* and the wide interpretation given to the definition of the term industry in the Industrial Disputes Act. The Statement of Object and Reasons states, *inter alia*, as follows :

"The Supreme Court in its decision in the *Bangalore Water Supply and Sewerage Board* v. *Rajappa*, observed that the 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. 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 grievance as well as collective disputes in respect of the workmen of these institutions."

Unfortunately, despite the legislative mandate the definition has not been notified by the executive as having come into force.

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

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

The discussion on the recent judicial trends reflected in *Coir Board* v. *Indira Devai P.S. and others*,[9] clearly reveals that the current judicial reasoning is not in favour of the wider interpretation of the expression 'industry' as given by the Supreme Court in 1978 in *Bangalore Water Supply* case. It has been emphasised that the Supreme Court itself in the *Bangalore Water Supply* case intentionally observed that the Government might take

9. 1998 SCC (L & S) 806.

suitable legislative measures to redraft the definition of 'industry' with a view to put limitations on the extended scope of the term. In view of the observation of the Supreme Court the Parliament re-drafted the definition of 'industry' in 1982 but for the reasons better known to the Government it has not yet been enforced. Since the difficulty has arisen on account of wider judicial interpretation it stands to reason that the matter should be re-examined keeping in view the current socio-economic and judicial environment.

In my opinion the ratio of the *Bangalore Water Supply* case reflecting a well considered opinion of the Apex Court based on sound reasoning is not a bad law. It aims at to provide socio-economic justice to working community. It would not create any difficulty as highlighted if due care and proper precautions are taken while deciding cases with reference to this decision.

In Coir Board, Ernakulam v. *Indira Devai*,[10] it has been observed by the Supreme Court that the judgment in *Bangalore Water Supply and Sewerage* v. *A Rajappa*,[11] was delivered almost two decades ago and the law has been amended pursuant to that judgment though the date of enforcement has not been notified. It was delivered by seven learned Judges of this Court, does not in our opinion require any reconsideration on a reference being made by a two-Judge Bench of this Court, which is bound by the judgment of the larger Bench. The appeal shall, therefore, be listed before the appropriate Bench for further proceedings.

So far the Bench has not been constituted for further proceedings. The delay in the enforcement of the amendment made in 1982 which intended to restrict the ambit of the industry as defined under the Act, has caused another litigation. In *Union of India* v. *Shree Gajanan Maharaj Sansthan*,[12] where the respondent, registered as a charitable trust under the Bombay Public Trusts Act, filed a writ petition before the Bombay High Court contending that under the Industrial Disputes (Amendment) Act, 1982 by clause (c) thereof the definition of the term industry has been amended and "charitable organisations" have been excluded. Although most of the provisions of the amending Act, have been brought into effect by a notification dated 21-8-1984, clause (c) which has amended the definition of the term "industry" has not been brought into force; that thus the definition of "industry" as stood prior to amendment is still applicable to the employees working in the respondent's institution; that the Central Government has arbitrarily withheld the enforcement of the said provision for a sufficiently long time and therefore, writ of *mandamus* needs to be issued to the Central Government to notify the date for bringing the provisions into force.

The Supreme Court observed that when enforcement of a provision is left to the discretion of the Government without laying down any objective standards, no writ of *mandamus* could be issued directing the Government to consider the question whether the provision should be brought into force and when it can do so.

Again in 2005 the principles laid down in *Bangalore Water Supply and Sewerage Board* v. *A. Rajappa*, [13] have been critically examined in *State of U.P.* v. *Jai Bir Singh*,[14] and where the Supreme Court highlighted various compelling reasons for making a reference to a larger Bench on the interpretation of the definition of "industry" in Section 2 (j) of the Act.

10. 2000 SCC (L&S) 120 (Three-Judge Bench : Dr. A S Anand C. J. and S P Bharucha, M K Mukherjee JJ).
11. 1978 SCC (L&S) 215.
12. 2000 SCC (L&S) 627.
13. AIR 1978 SC 548 : 1978 SCC (L&S) 215.
14. 2005 SCC (L&S) 642.

In the aforementioned case the appeal alongwith other connected cases had been listed before the Constitution Bench of five Judges on a reference made by a Bench of three Judges finding an apparent conflict between the decisions of two Benches of the Supreme Court in the cases of *Chief Conservator of Forests* v. *Jagannath Maruti Kondhare*,[15] and *The State of Gujarat* v. *Pratamsingh Narsinh Parmar*.[16] The Supreme Court has considered historical background and made very significant observations. It observed that "on the question of whether "Social Forestry Department" of State, which is a welfare scheme undertaken for improvement of the environment, would be covered by the definition of "industry" under Section 2 (j) of the Industrial Disputes Act, 1947, the aforesaid Benches (supra) of this Court culled out differently the ratio of the seven-Judge Bench decision of this Court in the case of *Bangalore Water Supply & Sewerage Board* v. *A. Rajappa* (shortly hereinafter referred to as *Bangalore Water* case). The Bench of three Judges in the case of *Chief Conservator of Forests* v. *Jagannath Maruti Kondhare* based on the decision of *Bangalore Water* case—came to the conclusion that "Social Forestry Department" is covered by the definition of "industry" whereas the two-Judge Bench decision in *State of Gujarat* v. *Pratamsingh Narsinh Parmar* took a different view.

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

On behalf of the employers, it is also pointed out that there is no unanimity in the opinions expressed by the Judges in *Bangalore Water* case on the ambit of the definition of "industry". Pursuant to the observations made by the Judges the legislature responded and amended the Act by the Industrial Disputes (Amendment) Act, 1982. The Act stands amended but the amended provision redefining the word "industry" has not been brought into force. The amended definition thus remains on the statute Book unenforced for a period now of more than 23 years.

All other provisions of the Amendment Act of 1982, have been brought into force by issuance of a notification, but the Amendment Act to the extent of its substituted definition of "industry" with specified categories of industries taken out of its purview, has not been brought into force. Such a piecemeal implementation of the Amendment Act is not contemplated by sub-section (2) of Section 1 of the Amendment Act. If in response to the opinions expressed by the seven Judges in *Bangalore Water* case the legislature intervened

15. 1996 SCC (L&S) 500.
16. 2002 SCC (L&S) 269.

and provided a new definition of the word "industry" with exclusion of certain public utility services and welfare activities, the unamended definition should be construed and understood with the aid of the amended definition, which although not brought into force is nonetheless part of the statute.

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

It is pointed out that earlier an attempt was made to seek enforcement of the amended Act through this Court. (See *Aeltemesh Rein* v. *Union of India*[17]) The Union came forward with an explanation that for employees of the categories of industries excluded under the amended definition, no alternative machinery for redressal of their service disputes has been provided by law and therefore, the amended definition was not brought into force.

The Supreme Court heard the learned Counsels of both the parties at great length and observed that it has surveyed critically all the decisions rendered by this Court on the interpretation of the definition of "industry" and began with a close examination of the decision in the case of *Bangalore Water Supply* for considering whether a reference to a larger Bench for reconsideration of that decision is required.

The Court observed that Justice Krishna Iyer who delivered the main opinion on his own behalf and on behalf of Bhagwati and Desai, JJ. in his inimitable style has construed the various expressions used in the definition of "industry". After critically examining the previous decisions he has recorded his conclusions in paras 139-144.

After referring to principles laid down in *Bangalore Water Supply Case*, the Court pointed out that five judges who constituted the majority, three had given a common opinion but two others had given separate opinions projecting a view partly different from the views expressed in the opinion of three Judges. The Bench has taken note of opinions expressed by Beg, C.J., Chandrachude, J., Jaswant Singh, J., for himself and for Tulzapurkar, J. It also took note of other rulings on the point.

They have themselves recorded that the definition clause in the Act is so wide and vague that it is not susceptible to a very definite and precise meaning. In the opinions of all of them it is suggested that to avoid reference of the vexed question of interpretation to larger Benches of the Supreme Court it would be better that the legislature intervenes and clarifies the legal position by simply amending the definition of "industry". The legislature did respond by amending the definition of "industry" but unfortunately 23 years were not enough for the legislature to provide Alternative Disputes Resolution Forums to the employees of specified categories of industries excluded from the amended definition. The legal position thus continues to be unclear and to a large extent uncovered by the decision of *Bangalore Water* case as well.

It was further pointed out that Krishna Iyer, J., himself, expressed that attempt made by the Court to impart definite meaning to the words in the wide definition of "industry" is only a workable solution until a more precise definition is provided by the legislature.

17. 1988 SCC (Cri.) 900.

It was an exercise done with the hope of a suitable legislative change which all the Judges felt was most imminent and highly desirable as expressed in concluding remarks in para 145 that :

> "although judicial thesis and antithesis, disclosed in the two-decades-long decisions, should have produced a legislative synthesis becoming of a welfare State and socialistic society, in a world setting where ILO norms are advancing and India needs updating."

The separate opinion of Beg, C.J., has also observed that the question can be solved only by more satisfactory legislation.

After careful consideration of the principles laid down in *Bangalore Water Supply* case and later developments thereafter the Court came to the conclusion that the only question before the Court was as to whether the amended definition, which is now undoubtedly a part of the statute, although not enforced, is a relevant piece of subsequent legislation which can be taken aid of to amplify or restrict the ambit of the definition of "industry" in Section 2 (j) of the Act as it stands in its original form.

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

After hearing learned Counsel for the contesting parties the Supreme Court observed that there are compelling reasons more for making a reference to a larger Bench and for reconsideration by it, if necessary.

Ms. Indira Jaising fervently appealed that in interpreting industrial law in India which is obliged by the Constitution to uphold democratic values, as has been said in some other judgment by Krishna Iyer, J., "the Court should be guided not by 'Maxwell' but 'Gandhi' who advocated protection of the interest of the weaker sections of the society as the prime concern in democratic society. In the legal field, the Court has always derived guidance from the immortal saying of the great Judge Oliver W. Holmes that 'the life of law has never been logic, it has been experience'."

In the case of *Coir Board*,[18] Sujata V. Manohar, J., speaking for the Bench while passing an order of reference to the larger Bench for reconsideration of the judgment of *Bangalore Water Supply & Sewerage Board Case* has observed thus : (SCC p. 269, para 19)

> "19. Looking to the uncertainty prevailing in this area and in the light of the experience of the last two decades in applying the test laid down in the case of *Bangalore Water Supply & Sewerage Board* it is necessary that the decision in *Bangalore Water Supply & Sewerage Board* case is re-examined,

"The abovequoted observations were criticised on behalf of the employees. Exploitation of workers and the employers has to be equally checked. Law

18. 1998 SCC (L&S) 806.

and particularly industrial law needs to be so interpreted as to ensure that neither the employers nor the employees are in a position to dominate the other. Both should be able to cooperate for their mutual benefit in the growth of industry and thereby serve public good.

If we adopt an ideological or philosophical approach, we would be treading on the wrong path against which learned Justice Krishna Iyer himself recorded a caution in his inimitable style thus : (*Bangalore Water* case, SCC pp. 231-232, para 18)

> "Here we have to be cautious not to fail into the trap of definitional expansionism bordering on *reduction ad absurdum* nor to truncate the obvious amplitude of the provision to fit it into our mental mould of beliefs and prejudices or social philosophy conditioned by class interests.

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

For the past 23 years, the amended definition has remained unenforced on the statute-book. The Government has been experiencing difficulty in bringing into effect the new definition. Issuance of notification as required has been withheld so far. It is, therefore, high time for the Court to re-examine the judicial interpretation given by it to the definition of "industry". The legislature should be allowed greater freedom to come forward with a more comprehensive legislation to meet the demands of employers and employees in the public and private sectors.

The decision in the case of *Safdarjung Hospital*[19], was a unanimous decision of all the six Judges and we are inclined to agree with the following observations in the interpretation of the definition clause :

> "But in the collocation of the terms and their definitions these terms have a definite economic content of a particular type and the authorities of this Court have been uniformly accepted as excluding professions and are only concerned with the production, distribution and consumption of wealth and the production and availability of material services. Industry has thus been accepted to mean only trade and business, manufacture, or *undertaking analogous to trade or business for the production of material goods or wealth and material services.*"

The six Judges unanimously upheld the observations in *Gymkhana Club* case.[20]

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

The Supreme Court expressed its view that the Court is respectfully inclined to agree with the observations of Justice P.B. Gajendragadkar in the case of *Harinagar Cane Farm* v. *State of Bihar*.[21]

> 'As we have repeatedly emphasised, in dealing with industrial matters, industrial adjudication should refrain from enunciating any general principles or adopting any

19. *Safdarjung Hospital* v. *Kuldip Singh Sethi*, (1970) 1 SCC 735.
20. *Secretary, Madras Gymkhana Club Employees' Union* v. *Gymkhana Club*, AIR 1968 SC 554.
21. AIR 1964 SC 903.

doctrinaire considerations. It is desirable that industrial adjudication should deal with problems as and when they arise and confine its decisions to the points which strictly arise on the pleadings between the parties.'

The Supreme Court concluded agreeing with the conclusion of the Hon'ble Judge in the case of *Hospital Mazdoor Sabha* :

"Though Section 2 (j) used words of very wide denotation, a line would have to be drawn in a fair and just manner so as to exclude some callings, services or undertakings."

This Court must, therefore, reconsider where the line should be drawn and what limitations can and should be reasonably implied in interpreting the wide words used in Section 2 (j).

After careful and critical examination of the principles of law laid down in *Bangalore Water Supply and Sewerage Board* in the aforementioned case namely *State of U.P.* v. *Jai Bir Singh*,[22] the Supreme Court expressed its view :

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

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

In *State of Rajasthan* v. *Ganeshi Lal*,[23] it has been held by the Supreme Court that for bringing in application of Section 2 (s) of the Act, the workman must be employed in an industry. The Law Department can, by no stretch of imagination, be considered as an industry.

It was observed that the Labour Court and the High Court have not indicated as to how the Law Department is an industry, merely stating that in some cases Irrigation Department, Public Works Department have been held to be covered by the expression "industry" in some decisions. Reliance on the decision without looking into the factual background of the case before it, is clearly impermissible. According to the well settled theory of precedents, every decision contains three basic postulates : (i) finding of material facts, (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides.

The Supreme Court observed that as noted above the accepted concept of industry cannot be applied to the Law Department of the Government and thus allowed the appeal.

Character of Institutions carrying on complex Activities

In *Bangalore Water Supply* case, the Supreme Court in relation to such institutions wherein different types of activities are carried on, some of which may be clearly covered within the scope of industry while others may qualify for exemption observed that the

22. 2005 SCC (L&S) 642.
23. (2008) 1 SCC (L&S) 465.

predominant nature test as explained in the *Corporation of Nagpur* case will be the true test. In order to give statutory sanction and to clarify the position Section 2 (ka) has been inserted by Amending Act 46 of 1982 which reads as follows :

"Section 2 (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 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".

In view of the newly added and enforced with effect from 21.8.1984 Section 2 (ka) of the Act if there arises a question whether an establishment or undertaking or institution carrying on complex activities some of which are clearly industry while others are not, the true test would be severability of activities. If some department or unit carrying on activity or activities which are clearly industry or industries within the meaning of Section 2(j) and can be separated from other departments or units thereof then such department or unit carrying on activity, being industry, shall be deemed to be a separate industrial establishment or undertaking. On the other hand, if such departments or units are not severable then the character of predominant activity carried on in such establishment or undertaking would be taken into consideration. If the predominant activity is an industry, the entire establishment or undertaking shall be deemed to be an industrial establishment or undertaking and the provisions of the Industrial Disputes Act, 1947, will be applicable to such organisations.

(K) Industrial disputes.—Section 2 (k) of the Industrial Disputes Act, 1947 defines industrial dispute to mean 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.

The term 'Industrial dispute' was the subject matter of the consideration in *Workmen of Dimakuchi Tea Estate* v. *The Management of Dimakuchi Tea Estate*,[24] where—

"One Dr. K.P. Banerjee, was appointed assistant medical officer of the *Dimakuchi Tea Estate*, with effect from November 1, 1950 subject to a satisfactory medical report and on probation for three months. If during the period of probation you are considered unsuitable for employment you will receive seven days' notice in writing terminating your appointment. If you are guilty of misconduct, you are liable to instant dismissal. At the end of the period of probation, if you are considered suitable, you will be confirmed in the garden's services."

24. (1958) SCR 1156.

In February 1951, Dr. Banerjee was given an increment of Rupees 5 per mensem, but on April 21, Dr. Banerjee received a letter from one Mr. Booth, Manager of the Tea Estate, stating 'it has been found necessary to terminate your services with effect from the 22 instant. You will of course receive one month's salary in lieu of notice.'

The cause of Dr. Banerjee was then espoused by the union. The union enquired about the reasons for discharge, and it was informed that he was discharged on the ground of incompetence. After conciliation proceedings the matter was referred to the Tripartite Appellate Board. The Board recommended reinstatement of Dr. Banerjee. In the meantime Dr. Banerjee received a sum of Rs. 30,610 on May 22, 1951 and left the Tea garden in question. Later on dispute was referred for adjudication by the Govt. of Assam on December 23, 1953 to Tribunal. Ultimately it came before the Supreme Court for decision.

The Supreme Court analysed the definition of industrial dispute and observed that it falls easily and naturally into three parts :

(1) there must be a dispute or difference;

(2) the dispute or difference must be between employers and employers, or between employers and workmen, or between workmen and workmen;

(3) the dispute or difference must be connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person.

The first part obviously refers to the factum of a real or substantial dispute; the second part to the parties to the dispute; and the third part to the subject-matter of the dispute. That subject-matter may relate to any of the two matters—(1) employment or non-employment, and (2) terms of employment or conditions of labour, of any person.

It was held that the expression 'any person' occurring in the third part of the definition clause cannot mean anybody and every body in this wide world, because a person in respect of whom the employer-employee relation never existed or can never possibly exist cannot be the subject-matter of a dispute between employers and workmen.

Having regard to the scheme and objects of the Act, and its other provisions the expression 'any person' in Section 2 (k) of the Act must be read subject to such limitations and qualifications as arise from the context; the two crucial limitations are—

(1) the dispute must be a real dispute between the parties to the dispute as indicated in the first two parts of the definitions clause, so as to be capable of settlement or adjudication by one party to the dispute giving necessary relief to the other, and

(2) the person regarding whom the dispute is raised must be one in whose employment, non-employment, terms of employment, or conditions of labour (as the case may be) the parties to the dispute have a direct or substantial interest.

The Supreme Court held that in the instant case Dr. K.P. Banerjee was not a 'workman'. He belonged to the medical or technical staff—a different category altogether from the 'workmen'. The appellants had no direct, nor substantial interest in his employment or non-employment, and even assuming that he was a member of the same Trade Union it cannot be said, on the tests laid down by this court that the dispute regarding termination of service was an industrial dispute within the meaning of Section 2 (k) of the Act. With the result the appeal was dismissed. In order to make it clear we may take a more obvious example. Let us assume that for some reason or other the workmen of a particular

industry raise a dispute with their employer about the employment or terms of employment of the District Magistrate or District Judge of the district in which the industry is situate. It seems clear that though the District Magistrate or District Judge undoubtedly come within the expression, 'any person' occurring in the definition clause, a dispute about his employment or terms of employment is not an industrial dispute : firstly, because such a dispute does not come within the scope of the Act, having regard to the definition of the words 'employer', 'industry' and 'workman' also to other provisions of the Act; secondly, there is no possible community of interest between the District Magistrate or District Judge on the one hand and the disputants, employer and workmen, on the other. The absurd result will follow from such an interpretation, have been forcefully expressed by Chagla, C.J. in his decision in *Narendra Kumar Sen* v. *All India Industrial Disputes (Labour Appellate) Tribunal*,[25] if 'any person' were to be read as an expression without any limitation and qualification whatsoever, then we must not put even any territorial restrictions on that expression. In other words, it would be open to workmen not only to raise a dispute with regard to the terms of employment of persons employed in the same industry as themselves, not only to raise a dispute with regard to the terms of employment in corresponding or similar industries not only disputes with regard to the terms of employment of people employed in our country but the terms of employment of any workman or any labourer anywhere in the world. The proposition has only to be stated in order to make one realise how entirely untenable it is."

The dispute contemplated by Section 2 (k) is a controversy in which the workman is directly and substantially interested. It must also be a grievance felt by the workman which the employer is in a position to remedy. Both the conditions must be present; it must be a grievance of the workman himself; it must be a grievance with the employer as an employer is in a position to remedy or set right.

The grievance of the workmen and the demand for its redressal must be communicated to the management. The means and mechanism of communication adopted are not a matter of much significance, so long as the demand is that of the workmen and it reaches the management. A written demand on the management is not in all cases a *'sine qua non'*. But in case of public utility service the written demand is necessary because Section 22 forbids going on strike without giving a strike notice.[26]

The Supreme Court in *S.N. Goyal* v. *Bank of Baroda*,[27] observed that Section 2 (k) of the Act defines industrial dispute which requires that there should be a dispute connected with the employment or non-employment or terms of employment, *inter alia*, between the employers and workmen. The Act nowhere contemplates that the dispute would come into existence in any particular specific or prescribed manner. For coming into existence of an industrial dispute a written demand is not *sine qua non*. When a workman is dismissed, a dispute or difference between the management and workmen automatically arises. According to the plain meaning of the definition of the industrial dispute the difference or dispute arises between the management and the workmen by dismissing the workmen from service and under Section 12 of the Industrial Disputes Act 1947 it can be referred to conciliation on behalf of the workmen by the union.[28] Similarly, a demand by the workmen

25. (1953) 55 Bom. LR 125.
26. *M/s Ramakrishna Mills Ltd. etc.* v. *Govt. of Tamil Nadu etc.*, (1984) II LLJ 259.
27. AIR 1978 SC 1088.
28. *The Management of Needle Industries* v. *The Presiding Officer, Labour Court*, (1986) I LLJ 405 (High Court of Madras.).

for payment of 20% bonus has been held to be an industrial dispute within the meaning of Section 2 (k).[29]

When the parties are at variance and the dispute or difference is connected with the employment or non- employment or terms of employment or with the conditions of labour there comes into existence an industrial dispute.[30]

In *Sadhu Ram* v. *Delhi Transport Corpn.*,[31] where the services of a probationer Bus Conductor were terminated. On receipt of failure report from the Conciliation Officer the Delhi Administration referred the dispute for adjudication. The management pleaded that no demand was raised by the workman and hence there was no industrial dispute. The Supreme Court held that the High Court was in error in thinking that failure of the conciliation proceedings and the report of the Conciliation Officer to the Govt. were not sufficient to sustain a finding that there was an industrial dispute.

In *Workmen of Indian Standards Institution* v. *The Management of Indian Standards Institution*,[32] the Supreme Court has observed that the definition of industrial dispute, of course, does not, in so many terms refer to 'industry', but, on the grammar of the expression itself, an industrial dispute must necessarily be a dispute in an industry and moreover the expression 'employer and workman' used in the definition of 'industrial dispute' carry the requirement of 'industry' in that definition by virtue of their own definitions in Sections 2 (g) and 2 (s). It is, therefore necessary to keep in mind the concept of an industry within the meaning of the Act while deciding the nature of dispute.

It may be submitted that the decision of the Supreme Court in *Bangalore Water Supply and Sewerage Board* v. *A. Rajappa*,[33] is relevant on the point in which the concept of industry has been exhaustively considered and clear principles have been laid down in this regard. It may be observed that the persons engaged in the establishments which are covered in the definition of industry as defined in Section 2 (j) of the Act become workmen if they satisfy the requirements of the definition of workmen as contained in Section 2 (s) and the disputes on various matters among them or the disputes between employers and employees or disputes between employers and workmen or between workmen and workmen are all disputes within the meaning of the Act provided they are connected with the employment or non-employment or the terms of employment or with the conditions of labour.

In *Workmen of Hindustan Lever Ltd.* v. *Hindustan Lever Ltd.*,[34] it was held that since the introduction of the Industrial Employment (Standing Order) Act, 1946, it has been obligatory for the employer in an industrial establishment to prepare a draft of standing orders and get them certified under the Act. Section 4 of this Act requires the employer to make provision in the standing orders for every matter set out in the Schedule which is applicable to the industrial establishment. The schedule provides amongst others for making provision in the standing orders for classification of workmen for example,

29. *General Secretary, Hindustan Teleprinters General Employees Union* v. *State of Tamil Nadu*, (1988) I LLJ 159 (Madras).
30. *Shambhu Nath Goyal* v. *Bank of Baroda*, (1978) I LLJ. 484, followed in *C. Manual* v. *Management. N. Indus. (India) Ltd.*, (1981) II LLJ 102.
31. (1983) II LLJ 383 (SC).
32. AIR 1976 SC 145.
33. AIR 1978 SC 548.
34. (1984) II LLJ 391, per D.A Desai ,J. (SC); see also *Sudhir Chandra Sarker* v. *Tata Iron & Steel Co. Ltd.*, (1984) II LLJ 223.

whether permanent, temporary, apprentices, probationers or *badlis*. This classification of workmen by the employer is thus made obligatory and has to be provided for in the standing orders. It is also well settled that certified standing orders which have a statutory flavour prescribe the conditions of service and they shall be deemed to be incorporated in the contract of employment of each workman with his employer. It would, therefore, as a corollary that the employer will have to classify the workmen and failure to classify would be violative of the Industrial Employment (Standing Orders) Act, 1946. Now if there is a statutory obligation to classify workmen under the above said Act, the classification would be permanent, temporary, apprentices, probationers and all other known categories such as acting, officiating etc. In respect of the classification a dispute can conceivably arise between the employer and the workmen because failure of the employer to carry out the statutory obligation would enable the workman to question his action which will bring into existence a dispute. Therefore, without anything more where the demand of the workmen was to confirm employees employed in an acting capacity in a grade, it would unquestionably be an industrial dispute.

In *Tata Iron and Steel Co. Ltd.* v. *State of Jharkhand and others*,[35] the Supreme Court while considering the definition of industrial dispute observed that the High Court is right in holding that industrial dispute has arisen between the parties as the appellant is denying the respondents to be its workmen. On the other hand the respondents are asserting that they continue to be the employees of the appellant company. This itself would be a dispute which has to be determined by means of adjudication. Once these respective contentions were raised before the Labour Department, it was not within the powers of the Labour Department to decide this dispute and assume the adjudicatory role as its role is confined to discharge administrative function of referring the matter to the Labour Court/Industrial Tribunal.

When an individual dispute becomes an industrial dispute ?—As indicated above Section 2(k) defines 'industrial dispute'. This definition may include within its ambit a dispute between a single workman and his employer, because the plural in the context, will include the singular. However, having regard to the broad policy which underlies the Act and in order to safeguard the working class in this country, the Supreme Court and indeed majority of Industrial Tribunals are inclined to take the view that a dispute raised by a dismissed employee provided it is supported either by his Union or, in the absence of a Union, by a number of workmen, can become an industrial dispute.

In order that the individual dispute may be held to be an industrial dispute it is necessary that it must fulfil two conditions : (1) that the workmen as a body or a considerable section of them must be found to have made common cause with the individual workman, and (2) that the dispute was taken up or sponsored by the workmen as a body or a considerable section of them at a time before the date of reference.[36]

In *Bombay Union of Journalists* v. *The 'Hindu' Bombay*,[37] where the services of one person who claimed that he was full time employee of the 'Hindu', a daily newspaper published in Madras, were terminated. The Bombay Union of Journalists raised the dispute in respect of termination of services of that person. It was found that out of ten employees in the office of the 'Hindu' seven were working on the administrative side and three on the

35. (2014) 1 SCC (L&S) 183.
36. *State Transport Controller, Orissa* v. *Presiding Officer, Industrial, Tribunal Orissa*, ILR (1965) Cut 339.
37. AIR 1963 SC 318.

journalism side, and out of these three, two were members of the Union. It was in the light of these facts that the Supreme Court held that the Bombay Union of Journalists was not competent to raise the dispute, and, even if it had raised, the dispute could not have become an industrial dispute.

There is another case on the point. In *Workmen of Indian Express Newspapers Private Ltd.* v. *The Management of Indian Express Newspapers Private Ltd.*,[38] where workmen-appellants were appointed in the Respondent company as copy holders. They were entrusted with the duties of proof-readers and therefore they claimed that they should be treated as such. In July, 1959, the management issued an order in which the two workmen were described as copy holders. In spite of this order, the management continued to give the workmen the work of proof reading. The dispute arose in July, 1959 when the management refused to treat them as proof-readers.

The Union authorities initiated the conciliation proceeding. The dispute was espoused by the Delhi Union of Journalists. 25% of the working journalists in the respondent company were the members of the union. It was found, however, that at the relevant time there was no union of working journalists employed by the respondent company.

It was held by the Supreme Court that the Delhi Union of Journalists can be said to have a representative character *qua* the working journalists employed in the respondent company. Thus the dispute was transformed into an industrial dispute as it was sponsored by a union which possessed a representative character *vis-a-vis* the working journalists in the employment of the respondent company.

In *State of Punjab* v. *The Gondhara Transport Company (P.) Ltd. and others*,[39] the respondent company dismissed certain workmen. The Distt. Motor Transport Workers' Union raised a dispute with the management on the 17th November 1960 and demanded reinstatement of the dismissed workmen as well as the payment of retrenchment compensation regarding the workmen who were retrenched. The demand not having been met with by the management and conciliation having failed, the State Government was approached for making a reference of the dispute for adjudication. The State Government declined to make a reference on the ground that out of 60 workmen employed in the concern only 18 workmen had supported the demand and these 18 included 13 dismissed workers of the company. However the dispute was referred by the Government for adjudication on the request of the workers made for the third time.

The High Court accepted the plea of the management that the dispute in question had not been sponsored by a substantial body of the workmen of the company and held that the order of the reference was incompetent. The State of Punjab preferred an appeal to the Supreme Court.

In was held by the Supreme Court that the sponsoring by the 13 dismissed employees will have to be left out of consideration. If so we are left with the position that the espousal of the dispute, in this case, was only by 5 out of sixty employees of the respondent company. It cannot, in the circumstances, be held that there has been an espousal of the dispute in this case by an appreciable body of the workmen of the company so as to make it an industrial dispute. As there was no industrial dispute, the reference made by the State Government has been rightly held by the High Court to be incompetent. The appeal failed.

38. AIR 1970 SC 737.
39. AIR 1975 SC 531.

Thus it may be remarked that in order that an individual dispute may become the industrial dispute it must be supported by the substantial number of employees. What is a substantial number will depend on the facts of each case.

It may be pointed out that Section 2-A has been inserted by Act 35 of 1965 which provides that where any employer discharges, dismisses, retrenches or otherwise terminates the services of any 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.

Thus an individual dispute in connection with discharge, dismissal, retrenchment or termination of services of any individual workman is an industrial dispute within the meaning of this Act by virtue of the deeming clause, *i.e.*, Section 2-A of the Industrial Disputes Act even if no other workman or union of workmen is a party to this dispute. So in such cases there is no need that a considerable number of workmen must espouse that dispute or that it must be espoused by the Trade Union. Perhaps this clause has been inserted with the object that the dismissed, discharged, retrenched or terminated workman may not be left on the mercy of other workers who are in service or the trade union leaders for obtaining justice in the matter.

It has been observed by the Supreme Court in *Chemicals and Fibres of India Ltd.* v. *D.B. Bhoir*,[40] that in enacting Section 2-A of the Industrial Disputes Act, the intention of the legislature was that an individual workman who was discharged, dismissed or retrenched or whose services were otherwise terminated should be given relief without its being necessary for the relationship between the employer and the whole body of employees being attracted to that dispute and the dispute becoming a generalised one between labour, on the one hand, and the employer, on the other.

Section 2-A was introduced in order to make the machinery under the Act available to cases in which individual workmen were discharged, dismissed, or retrenched or whose services were otherwise terminated. While introducing the section, the legislature thought it fit to 'bring in a fiction as referred to above. By virtue of the said fiction, the question of formation of opinion by the Government under Section 10 (1) of the Act that an industrial dispute exists or is apprehended, cannot arise in cases falling under Section 2-A of the Act. However, the language of Section 10 (1) of the Act continues to be unaltered even after the introduction of Section 2-A of the Act. Nor the provisions of Section 12 (5) of the Act have been interfered with. A reading of Section 10 (1) and Section 12 (5) of the Act makes it clear that the appropriate Government has the discretion to decide whether a reference should be made or not even in cases where an industrial dispute exists or is apprehended.[41]

In *A.P. Steel Wool Industries Co-operative Society Ltd.* v. *Labour Court and another*,[42] it was held by the High Court of Andhra Pradesh that disputes in contemplation under the Industrial Disputes Act are collective dispute as distinct from disputes arising from the individual grievance of the employees unsupported by other employees. Section 2-A has enlarged the definition of industrial dispute as defined in section 2 (k) of Industrial Disputes Act bringing within its fold matters relating to the discharge, dismissal,

40. AIR 1975 SC 1660.
41. *M/s. Shaw Wallace and Co. Ltd.* v. *State of Tamil Nadu through Commissioner/Secretary, Labour Deptt.*, (1988) I LLJ 177, per Srinivasan J., *National Engineering Industries Ltd.* v. *Shri Kishan Bhageria*, (1988) I LLJ 363.
42. (1987) II LLJ 66, per K. Bhaskaran, C.J.

retrenchment or termination of the services of an individual workman with the result that the Government could refer such industrial disputes for adjudication under Section 10 (1) of the said Act even though his cause is not supported by union or other workmen.

It has been held in *Jagdish Narain Sharma* v. *Rajasthan Patrika Ltd.*,[43] that an adjudication of grievance relating to order of transfer will become an industrial dispute only if it is espoused by a union of workmen or by a substantial number of workmen employed in an industry. Without such espousal the dispute in relation to transfer cannot be treated as an industrial dispute and it cannot be referred to Labour Court nor can a Labour Court make an adjudication in regard to such dispute. Because it is an individual dispute only and the Civil Court has jurisdiction to make an adjudication on the legality of the action of the employer in relation to transfer of his employee.

In *Rajasthan State Road Transport Corpn.* v. *Krishna Kant*,[44] it has been observed by the Supreme Court that it is well settled by several decisions of this court that a dispute between the employer and an individual workman does not constitute an industrial dispute unless the cause of the workman is espoused by a body of workmen. Of course, where the dispute concerns the body of the workers as a whole or to a section thereof, it is an industrial dispute. It is precisely for this reason that Section 2-A was inserted in 1965. By virtue of this provision, the scope of the concept of industrial dispute has been widened, which now embraces not only Section 2 (k) but also Section 2-A. Section 2-A however, covers only cases of discharge, dismissal, retrenchment or termination otherwise of services of an individual workman and not other matters, which mean that to give an example—if a workman is reduced in rank pursuant to a domestic enquiry, the dispute raised by him does not become an industrial dispute within the meaning of Section 2-A. However, if the union or body of workmen espouses his cause, it does become an industrial dispute.

The Supreme Court of India suggested that the Government should take the appropriate steps to make a provision in the Act, enabling a workman to approach the Labour Court or the Industrial Tribunal directly without the requirement of a reference by the Government in case of industrial dispute covered by Section 2-A of the Act, because such a course will remove many of the misgivings with reference to effectiveness of the remedies provided under the Act, and moreover, it would reduce the workload on the part of the Conciliation Officer. It would facilitate easy disposal.[45]

The Supreme Court in *Bharat Heavy Electricals Ltd.* v. *Anil and others*,[46] held that there is difference between an individual dispute which is deemed to be an industrial dispute under Section 2-A of the Act on one hand and an industrial dispute espoused by union in terms of Section 2(1) of U.P. I.D. Act. An individual dispute which is deemed to be an industrial dispute under Section 2-A concerns discharge, dismissal, retrenchment or termination whereas an industrial dispute under Section 2 (1) covers a wider field. It includes even the question of status. This aspect is very relevant for the purpose of deciding this case. In *Radhey Shyam* v. *State of Haryana*,[47] it has been held after considering various judgments of the Supreme Court that Section 2-A contemplates nothing more than to declare

43. (1994) III LLJ 600.
44. 1995 SCC (L. & S) 1207 followed in *Chandra Kant Tukaram Nikam* v. *Municipal Corporation of Ahmedabad*, 2002 SS (L&S) 317.
45. *Hospital Employees Union and others* v. *Union of India*, 2003 SCC (L&S) 141 and *Rajasthan SRTC* v. *Krishna Kant*, 1995 SCC (L&S) 1207.
46. (2007) 1 SCC (L&S) 432.
47. (1998) 2 LLJ 1217 (P&H) approved.

an individual dispute to be an industrial dispute. It does not amend the definition of industrial dispute set out in Section 2 (k) of Industrial Disputes Act, 1947 which is similar to Section 2 (1) of the U.P. I.D. Act, 1947.

Section 2-A does not cover every type of dispute between an individual workman and his employer. Section 2-A enables the individual workman to raise an industrial dispute, notwithstanding, that no other workman or union is a party to the dispute. Section 2-A applies only to disputes relating to discharge, dismissal, retrenchment or termination of service of an individual workman. It does not cover any other kinds of disputes such as bonus, wages, leave facilities etc. In the instant case, the award of Labour Court has also held that respondents 1 to 14 have proceeded with their case on the footing that they were engaged by the contractors, but the work they performed was for BHEL that is why the operative part of the award says that they shall be given work by BHEL as direct workmen or through its contractor.

The Supreme Court disposed of the appeal setting aside the judgment of the High Court directing BHEL to re-employ respondents 1 to 14 directly or through its contractor. It was made clear that this order would, however not preclude the workman from raising an industrial dispute claiming status of direct workmen of the company after joining the recognised trade union/union concerned in the said reference.

It may be noted that Section 2-A has been inserted by Act 35 of 1965 with effect from 1.12.1965 which so far did not provide direct access to the Labour Court or Industrial Tribunal for adjudication of deemed industrial disputes which caused delay and untold suffering to the workman. The need for direct access was felt not only by the Labour Law experts but also by the highest judiciary of the country.

In view of the above, Section 2-A has been amended by Act 24 of 2010 to empower the Labour Court or Tribunal to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government. The amended Section 2-A is as under :

> [48][2-A. *Dismissal, etc. of an individual workman to be deemed to be an industrial dispute.*—[49][(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.]
>
> [50][(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.

48. *Ins.* by Act 35 of 1965, Section 3 (w.e.f 1.12.1965).
49. *Renumbered* as sub-section (1) by Act 24 of 2010, Section 3 (w.e.f. 15.9.2010).
50. *Ins.* by Act 24 of 2010, Section 3 (w.e.f. 15.9.2010).

(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).]

It may be observed that sub-section (1) of Section 2-A has not been modified. However, sub-section (2) is entirely new and it provides for direct access to the Labour Court or the Tribunal. Any workman who has been discharged, dismissed, retrenched or otherwise terminated by the employer may now make an application to the Labour Court or Tribunal for adjudication after the expiry of 45 days from the date he has made the application to the Conciliation Officer. On receipt of the application of such workman the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the said dispute and now there is no requirement of reference by the appropriate Government.

Sub-section (3) of Section 2-A prescribes the time limit within which such an application must be moved. The period of limitation so fixed is three years from the date of discharge, dismissal, retrenchment or otherwise termination of service.

There may be many disputes which would not fall within Section 2(k) or Section 2-A. It is obvious that in all such cases, the remedy is only in a Civil Court or by way of arbitration according to law, if the parties so choose. The machinery provided by the I.D. Act for resolution of disputes does not apply to such a dispute.

But the disputes which are not covered within scope of Section 2-A shall remain to be governed by the judicial precedents existing prior to this amendment.

Another important question is whether the disputes relating to workmen employed by the contractors are industrial disputes within the meaning of the Act. The leading case on the point is *Standard Vacuum Refining Company of India Ltd.* v. *Their Workmen and another*.[51] In this case a dispute was raised by the workmen of the appellant company with respect to contract labour employed by the company for cleaning and maintenance of the refinery plant and premises belonging to the company. The workers of the contractors were not entitled to other benefits and amenities such as, P.F., gratuity, bonus, privilege leave, medical facilities, subsidised food, and housing to which regular workmen of the company were entitled.

The Government made the reference on the demands of the workmen that the contract system for cleaning the premises and plant should be abolished.

Ultimately the question came before the Supreme Court for decision.

The Supreme Court followed its own decision in *Dimakuchi Tea Estate Case* decided in 1958 and observed that there is undoubtedly, a real and substantial dispute between the company and the respondents on the question of the employment of contract labour for the work of the company.

The dispute in this case is that the company should employ workmen directly and not through the contractors to carry on its work, and this dispute is, undoubtedly real and substantial even though the regular workmen who have raised it, are not employed on contract labour. Thus out of three requirements first and second are satisfied.

It was held to be an industrial dispute because the respondents had a community of interests with the workmen of the contractor; and they had also substantial interest in the

51. AIR 1960 SC 948.

subject-matter of the dispute in the sense that the class to which they belong, namely, workmen, was substantially affected thereby and the company could give relief in the matter.

In *Bongaigaon Refinery and Petro-chemicals Ltd.* v. *Samujuddin Ahmed*,[52] the Supreme Court held that the Industrial Tribunal cannot go beyond the order of reference. It would have tried, on terms of reference, the issue of removal from service. The respondent by seeking an appointment in the employment of the appellant by making material concealment of facts was attempting to deprive some one else of his legitimate claim for appointment against limited number of vacancies available and the Court should not have extended its helping hand to a non-deserving claimant. The reference was wholly unwarranted and uncalled for.

The learned counsel for the respondent relied on *Workmen* v. *Dimakuchi Tea Estate*,[53] to submit that in view of Section 2(k) of the Act, a dispute raised by any person even if not a "workman" *strictu sensu* is competent. But the Court was not impressed and observed that in the above noted case "any person was an employee appointed on probation and it was doubtful whether he was a workman or not. The case did not relate to a person never employed and yet claiming to be a workman. The present case does not satisfy the tests laid down *vide* para 21 of the decision cited so as to warrant the validity of reference being upheld. The Supreme Court restoring the judgment of the single Judge and setting aside the judgment of the Division Bench allowed the appeal."

The expressions "the terms of employment" and "conditions of labour" in Section 2 (k) indicate the kind of conflict between those engaged in industry on opposite co-operating sides. These words take in dispute as to the share in which the receipts in a commercial venture shall be divided and generally cover—

(i) hours of work and rest;

(ii) recognition of representative bodies of workmen;

(iii) payment for piece work;

(iv) wages (ordinary and overtime);

(v) benefits;

(vi) holidays, etc.

It was also held that definition takes in disputes—

(a) between employees and employees, such as demarcation disputes; and

(b) between employers and employers such as wage warfare in an area where labour is scarce and disputes of a like character.

The above discussion indicates that all sorts of differences or disputes or conflicts are not within the ambit of industrial disputes. First of all it must be kept in mind whether the dispute in question relates to the persons engaged in industry as defined in Section 2 (j). If the answer is affirmative then and then only it should be considered whether it is between employers and employers, or between employers and workmen, or between workmen and workmen, if this question is also answered in affirmative then another step should be to consider whether it is connected with the employment or non-employment, or the terms of

52. 2002 SCC (L&S) 247.
53. AIR 1958 SC 353, distinguished.

employment or with the conditions of labour of any person. It must be kept in mind that the term any person used in the definition should be interpreted as it was interpreted by the Supreme Court in the *Workmen of Dimakuchi Tea Estate* v. *The Management of Dimakuchi Tea Estate*.[54] If all the questions are answered in the affirmative then the dispute would be an industrial dispute.

However, it is settled law that at the fag end of career, a party cannot be allowed to raise a dispute regarding his date of birth.[55] A claim petition filed under Section 33-C(2) of the Act, is an industrial dispute.[56]

Mohanakumaren Nair v. *Hindustan Latex Ltd.*,[57] case is very significant. The question for decision was whether in a dispute between two sets of workmen, the settlement arrived at between the employer and one faction of the workmen is a settlement binding on all workmen. It was observed by the High Court of Kerala that the definition of industrial dispute in Section 2 (k) of the Act shows that it need not necessarily be a dispute between employer and workmen. It may be that very often the industrial dispute is between the employer and his workmen. But it happens, though, rarely that the dispute is between two sets of employees in the same establishment. If the dispute is as between the employer and the workmen a settlement reached in conciliation proceedings between only some of the workmen and their employer is a settlement under the Act having extended application to the other workmen also. But, when the dispute is between some of the workmen on the one hand and some other workmen on the other part, can there be a settlement of that dispute without the concurrence of those workmen? It could be illogical to call it a settlement when the disputing workmen do not agree to the terms acceptable to the other set of workmen. Any such settlement unilaterally made between the employer and one faction of the workmen cannot have the legal incidences invisaged in the Act, if the dispute is actually between two factions of workmen in the same establishment. In essence, the settlement itself postulates concurrence of the disputing parties.

It has been observed by the Supreme Court in a very prominent case namely *Bangalore Water Supply and Sewerage Board*,[58] that whether an industrial dispute could arise between either employers and their workmen or between workmen and workmen, it should be considered an area within the sphere of industry but not otherwise. In other words, the nature of the activity will be determined by the conditions which give rise to the likelihood of occurrence of such disputes and their actual occurrence in the sphere. This may be a pragmatic test. For example a lawyer or a solicitor could not raise a dispute with his litigants in general on the footing that they were his employers. Nor could doctors raise disputes with their patients on such a footing. The same type of activity may have both industrial and non-industrial aspects or sectors.

The plain reading of items enumerated in Schedule II and Schedule III appended to Industrial Disputes Act would suggest that industrial disputes may arise on those subjects which may be referred for adjudication by the appropriate government. These matters, thus are the subject matter of industrial disputes clearly within the framework of Industrial Disputes Act, 1947.

54. (1958) SCR 1156.
55. *Hindustan Lever Ltd.* v. *SM Jadhav and another*, 2001 SCC (L&S) 639.
56. *English Electric Co. of India* v. *Manohara*, 2002 SCC (L&S) 268.
57. (1987) II LLJ 318, per Thomas, J.
58. AIR 1978 SC 548, M.H. Beg, C.J. at p. 556.

The Supreme Court very recently in *P. Virudhachalam and others* v. *Management of Lotus Mills and another*,[59] has observed that it has to be kept in view that the Act is based on the principle of collective bargaining for resolving industrial disputes and for maintaining industrial peace. This principle of industrial democracy is the bedrock of the Act. The employer or the class of employers on the one hand and the accredited representatives of the workmen on the other are expected to resolve the industrial dispute amicably as far as possible by entering into the settlement outside the conciliation proceedings or if no settlement is reached and the dispute reaches the conciliator even during conciliation proceedings. In all these negotiations based on collective bargaining the individual workman necessarily recedes to the background. The reins of bargaining on his behalf are handed over to the union representing such workman. The unions espouse the common cause on behalf of all their members. Consequently, settlement arrived at by them with management would bind at least their members and if such settlement is arrived at during conciliation proceedings, it would bind even non-members. Thus settlements are the live wires under the Act for ensuring industrial peace and prosperity.

The Supreme Court in *P. Virudhachalam's* case further observed that this view has been reaffirmed by the Court in several later decisions recognises the great importance in modern industrial life of collective bargaining between the workmen and the employers. It is well known how before the days of collective bargaining labour was at a great disadvantage in obtaining reasonable terms for contract of service from his employer. As trade unions developed in the country and collective bargaining became the rule the employers found it necessary and convenient to deal with the representatives of workmen, instead of individual workmen not only for the making or modification of contracts but in the matter of taking disciplinary action against one or more workmen and as regards all other disputes.

It is not unreasonable to think that Section 36 of the Industrial Disputes Act recognises this position, by providing that the workman who is a party to a dispute shall be entitled to be represented by an officer of a registered trade union of which he is a member.

Consequently, the provisions contained in the first proviso to Section 25-C of the Act would also necessarily require an agreement to be entered into on behalf of the affected class of workmen by their accredited representatives being office-bearers of their union. The individual workman can raise his grievance under Section 25-C only if his statutory right of lay-off under Section 25-C is not hedged in by any binding effect of an agreement entered into by its own union with the management, whether in or outside conciliation proceedings or even by other unions that may arrive at such settlement during the course of conciliation proceedings. Then only individual workman can have full play under Section 25-C for vindicating his right of lay-off compensation.

(kk) Insurance Company[60] means an insurance company as defined in Section 2 of the Insurance Act, 1938 having branches or other establishments in more than one State.

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

(kkb) Labour Court[62] means a labour court constituted under Section 7 of the Act.

59. 1998 SCC (L & S) 342.
60. Industrial Disputes Act, 1947, Section 2 (kk).
61. New clause (kka) inst. by Act No. 46 of 1982, vide Section 2 (e), w.e.f. 21-8-1984.
62. Original clause (kka) re-lettered as clause (kkb) by Act 46 of 1982.

(l-a) Major port has been defined in Section 2 (la) to mean a major port as defined in clause (8) of Section 3 of the Indian Ports Act, 1908.

(l-b) Mine[63] means a mine as defined in clause (j) of Section 2 (1) of the Mines Act, 1952.

(ll) National Tribunal means a National Industrial Tribunal constituted under Section 7-B of the Act.

(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 the Industrial Disputes Act.

(n) Public Utility Service means—

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

(i-a) 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 utility service for the purposes of this Act, for such period as may be specified in the notification.

Provided 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.

The industries enumerated in the First Schedule are 31, some of which are as under : —

(1) Transport other than railway for the carriage of passengers or goods, by land or water; (2) Banking; (3) Cement; (4) Coal; (5) Cotton textiles; (6) Foodstuffs; (7) Iron and steel; (8) Defence Establishments; (9) Service in hospital 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 oil-field; (18) Service in the Uranium Industry; (19) Pyrites mining industry; (20) Security Paper Mills, Hoshangabad; (21) Services in Bank Note Press, Dewas; (22) Phosporite Mining; and (23) Magnesite Mining. Etc.

It may be observed that the Government is authorised to issue declaration only in respect of the industries enumerated in the First Schedule and there must be proved necessity for doing so. It must be in the interest of public or there must be public emergency to do so.

In the case of *M/s. Saxby and Farmer (India) (P) Ltd.* v. *Their Workmen*,[64] appellant company was a unit of Engineering Industry in West Bengal having three factories in

63. Industrial Disputes Act,1947, Section 2 (lb).
64. AIR 1975 SC 534.

Calcutta. It was engaged in the production of brakes and signalling equipment for the railways. In order to ensure smooth production and uninterrupted flow of supply, the State Government declared it to be a public utility service in exercise of the power conferred by Section 2 (n) (vi) of the Act and also as 'essential service' under the Defence of India Rules. As a unit of Engineering industry the company was a party to certain awards made in 1949, 1950 and 1958. The company has granted leave and holidays as per those awards and in accordance with the provisions of the Factories Act, the Shops and Establishments Act and the Employees' State Insurance Act.

It was held by the Supreme Court that there was no reason or justification for unpaid holidays not being curtailed. All the conditions which were necessary had been satisfied and the appellant was carrying on the kind of work which required efficiency and increased production. There should be more concentration on increase of production and efficiency than on enjoying the holidays if the country is to march on the road to prosperity.

It has been observed by the Supreme Court in *The Management of Safdar Jung Hospital, New Delhi* v. *Kuldeep Singh Sethi*,[65] that the intention behind the provision of Section 2 (n) of the Industrial Disputes Act is to classify certain services as public utility services with special protection for the continuance of the services. These are brought into existence in a commercial way and are analogous to business in which material goods are produced and distributed for consumption. When Parliament added the clause (vi) in the definition under which other services, can be brought within the protection afforded by the Act to public utility services, it did not intend that the entire concept of industry in the Act could be ignored and anything brought in. It is hardly to be thought that notifications can be issued in respect of enterprises which are not industries to start with. It is only industries which may be declared to be public utility services. All items in the First Schedule must first be demonstrated to be industries and then the notification will apply to them.

In *The Oil and Natural Gas Commission* v. *The Association of Natural Gas Consuming Industries of Gujarat and others*,[66] it has been observed by the Supreme Court that a public utility is a business of service which is engaged in regularly supplying the public with some commodity or service of public consequence, such as electricity, gas, water, transportation, or telephone or telegraph service. It was held that ONGC does not satisfy the primary conditions enunciated above for being a public utility undertaking as it has not so far held itself out or undertaken or been obliged by any law to provide gas supply to the public in general or to any particular cross-section of the public. Perhaps, a stage in the developmental activities of the ONGC will soon come when such an obligation can be inferred but at present, ONGC supplies gas only to certain selected contractees. It does not supply gas to the public.

(o) Railway company means a railway company as defined in Section 3 of the Indian Railways Act, 1890.

(p) Settlement[67] means a settlement arrived at in the course of conciliation proceedings and includes a written agreement between the employer and workmen ar- 'ved 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

65. AIR 1950 SC 1407.
66. AIR 1990 SC 1851.
67. Industrial Disputes Act, 1947, Section 2 (p).

been sent to an officer authorised in this behalf by the appropriate Government and the Conciliation Officer.

It indicates that settlement means an adjustment arrived at in the course of conciliation proceedings before a Conciliation Officer or before Board of Conciliation. It also includes a written agreement between the employer and the workmen otherwise than in the conciliation proceedings. In such a case the agreement must be signed by the parties in the prescribed manner and a copy of which must be sent to an officer authorised in this behalf by the appropriate Government and the Conciliation Officer. Thus the settlement indicates the agreement arrived at either in the conciliation proceedings or otherwise between employer and the workmen.[68]

In *Brook Bond India Ltd* v. *The Workmen*,[69] a settlement was arrived at not in the course of conciliation proceedings. There was no provision in the constitution of the Union to enter into a settlement with the management. The resolution passed by the executive committee of the union did not support the claim that negotiation committee was empowered to enter into a settlement without seeking ratification from the executive committee. The office bearers who signed the agreement were not competent to enter into a settlement with the company.

It has been held by the Supreme Court that unless the office bearers who signed the agreement were authorised by the executive committee of the Union to enter into the settlement or the constitution of the union contained a provision that one or more of its members would be capable to settle a dispute with the management, no agreement between any office bearer of the union and the management be called a settlement as defined in Section 2 (p) of the Act.

In *Bombay Port Trust Employees Union* v. *Union of India*,[70] a settlement was arrived at between the Union of India on and the All India Port and Dock Workers' Federation, the Indian National Port and Dock Workers' Federation, Port Dock and Water Transport Workers' Federation and the Water Transport Workers' Federation of India covering wage revision and liberalisation of terms and conditions of employment of Port and Dock Workers at major ports. The settlement provided that during its currency no demand relating to issues covered by the terms could be raised. Bombay Port Trust Employees Union served a notice of strike on the Trustees of Port of Bombay and the notice contained twelve demands made by them. The conciliation proceedings ended in a failure because the Trustees of the Port of Bombay refused to reopen issues which were concluded under the settlement arrived at on 4th January, 1981 as the said settlement has been accepted by the majority of workmen. The Central Government declined to refer the dispute on the ground that the six demands of the Bombay Port Trust Employees Union are covered by the settlement arrived at in 1981. The Union challenged the decision of the Government.

It was held by the High Court of Bombay that the fact that workmen had given a signed undertaking agreeing to abide by the terms of settlement dated 4th January and 26th February, 1981 does not mean that they consciously accepted the terms of the settlement. The workmen probably signed undertaking only to obtain the benefits conferred by the said settlement. Mere acquiescence in a settlement or acceptance would not make the

68. *P. Virudhachalam and others* v. *Management of Lotus Mills and Another*, 1998 SCC (L & S) 342.
69. AIR 1981 SC 1660.
70. (1988) II LLJ 39; *Tata Engineering and Locomotive Co. Ltd.* v.*Workmen*, (1981) II LLJ 429 S.C. followed.

workers a party to the settlement. It was further observed that the settlement was signed by the Union of India which is the appropriate Government to make the reference. The reference cannot be refused when once notice of strike has been given unless such notice is frivolous or vexatious which is not the case or it is considered in expedient to make a reference. No case of in expediency has been made out. Thus the court directed the Government to reconsider the matter and record reasons if it decides not to make reference.

If the terms of settlement are not clear party aggrieved may seek clarification. In *Bharat Petroleum Corpn Ltd. Ex-Employees Association* v. *Bharat Petroleum Corpn. Ltd.*,[71] where pursuant to the settlement, a lump sum of Rs. 50,000/- became payable to each of the appellants in lieu and final settlement of certain disputes which culminated in an award respecting their claims for HRA, Gratuity, Duty Allowances and Interest etc. In respect of these payments the Corporation made certain deductions of income-tax at source on the ground that the payments constituted salary. But the corporation declined to indicate break up of this lump sum on the ground that the sum so paid was and intended to be, a lump sum payment and no break was either intended or was possible. Without knowing break up permissible refunds from the income-tax cannot be claimed.

The Supreme Court observed that the lump sum of Rs. 50,000/- was not in its entirety referable to salary. Quite obviously some part of it was Gratuity, some part HRA and some part Duty Allowances etc. Corporation explained its difficulty. But the intendment of the settlement makes it clear that the assessing authorities must, on the basis of appropriate criteria relevant to the matter, decide what part of the lump sum of Rs. 50,000/- was referable to Gratuity as best as they can and give the benefit to the appellant so that their hardship is mitigated and corporation should extend its cooperation otherwise to the appellants in working out a just arrangement in regard to the matter.

(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. The separate Chapter on strike has been inserted in the book for details.

(qq) trade union[72] means a trade union registered under the Trade Unions Act, 1926.

(r) Tribunal[73] 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[74] means any of the practices specified in Fifth Schedule. The definition of this expression has been inserted for the first time by the amendment made in 1982 which has come into force with effect from 21-8-1984. The Fifth Schedule has also been inserted by the same amendment. It contains several practices. In category I, it contains 16 practices which are said to be unfair practices on the part of employers or their trade unions. For example 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 purpose of collective bargaining or other mutual aid or protection, to establish

71. AIR 1991 SC 1971.
72. Industrial Disputes Act, 1947, Section 2 (qq).
73. Industrial Disputes Act, 1947, Section 2 (r).
74. Industrial Disputes Act, 1947, Section 2 (ra).

employer sponsored trade unions of workmen, to discharge or dismiss workmen by way of victimisation, to recruit workmen during a strike which is not an illegal strike etc.

On the other hand, category II of the Fifth Schedule contains eight practices which are said to be unfair labour practices on the part of workmen or their trade unions such as to advice or actually support or instigate any strike deemed to be under the Act, to stage demonstration at the residence of the employers or the managerial staff members, to incite or indulge in wilful damage to employer's property connected with the industry, to indulge in acts of force or violence or to hold out threats of intimidation against any workmen with a view to prevent from attending work etc.

In *Siemens Ltd.* v. *Siemens Employees Union*,[75] the Supreme Court observed that Unfair Labour practice, for the first time was defined and codified in the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. But insofar as the Industrial Disputes Act, Central law, is concerned, unfair labour practice was codified and brought into force by amending Act 46 of 1982 with effect from 21-8-1984.

The Supreme Court examined the concept of unfair labour practice and the way it has been dealt with under Maharashtra Act and also under the ID Act. Any unfair labour practice within its very concept must have some elements of arbitrariness and unreasonableness and if unfair labour practice is established the same would bring about a violation of guarantee under Article 14 of the Constitution. Therefore, it is axiomatic that anyone who alleges unfair labour practice must plead it specifically and such allegations must be established properly before any forum can pronounce on the same. It is also to be kept in mind that in the changed economic scenario, the concept of unfair labour practice is also required to be understood in the charged context. Today every State, which has to don the mantle of a welfare State, must keep in mind that twin objectives of industrial peace and economic justice and the Courts and statutory bodies while deciding what unfair labour practice is must also be cognizant of the aforesaid twin objects.

Clause (ra) of Section 2 of the Industrial Disputes Act defines unfair labour practice to mean the practices specified in the Fifth Schedule and the Fifth Schedule was also inserted by the said amending Act. The Fifth Schedule has two parts. The first part refers to unfair labour practices on the part of the employers and trade unions of employers and the second part refers to unfair labour practices on the part of the workmen and trade union of workmen. However, there is some difference between the revisions relating to unfair labour practices in the Maharashtra Act and those in the Central Act *i.e.* the Industrial Disputes Act. The Industrial Disputes Act prohibits an employer or workman or a trade union from committing any unfair labour practice while the Maharashtra Act prohibits an employer or union or an employee from engaging in any unfair labour practice. The prohibition unfair labour practice while the Maharashtra Act mandates that the parties concerned cannot be engaged in any unfair labour practice. The word "engage" is more comprehensive in nature as compared to the word "commit" (SCC at P, 345, Para 37 of the Report)[76].

Prohibition and penalty.—It would be pertinent to mention that these unfair labour practices have been prohibited. It has been clearly provided under Section 25-T that no employer or workman or a trade union, whether registered under the Trade Unions Act,

75. (2011) 2 SCC (L&S) 593.
76. *Hindustan Lever Ltd.* v. *Ashok Vishnu Kate*, 1995 SCC (L&S) 1385.

1926, or not shall commit any unfair labour practice. The Act now contains a penal provision also. It provides under its Section 25-U that 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. The penal provision is intended to maintain industrial peace as it would be serving as check and balance upon both the parties engaged in the industries.

In *Pfizer Ltd.* v. *Mazdoor Congress and others*,[77] where the complaint under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, was filed alleging that there was an undue haste on the part of employer while discharging or dismissing employees. It was observed by the Supreme Court that if it was their case that there was an unfair labour practice on the part of the appellant then it was incumbent upon the said respondents to state the facts on the basis of which the Labour Court could come to the conclusion that there was an undue haste as contemplated by item 1 (f). The complaints filed by the said respondents do not contain any particulars of undue haste and nor was there any evidence led on the part of the said respondents. The High Court clearly erred in making out a new case and in setting aside the concurrent findings of the Labour Court and the Industrial Court. It would depend upon the facts of each case whether an employer has acted with undue haste while discharging or dismissing an employee. The respondents were involved in the conspiracy of theft of the company's medicines and were arrested. They were supposed to protect the property of the company as they were working as watchman and havaldar. The order of terminating their services was passed nearly 5/6 days after their arrest and during which period they were absent without leave. It cannot be said that there was any undue haste on the part of the appellant company which could possibly lead to the conclusion that it was guilty of unfair labour practice. Thus the appeals were allowed and orders of the High Court were set aside while orders of Labour Court and Industrial Tribunal were restored.

However, in *Executive Engineer Mechanical Div. and others* v. *Madhav Narhari Walakey and another*,[78] the High Court of Bombay observed that transfer is a normal incidence of transferable service, particularly service under the Government as in the instant case. The Court should be slow to interfere with such an administrative decision, at any rate under the provisions of the Act, unless a clear cut case of *mala fides* is established. In the present case no such case is established and the Industrial Court, therefore, had no jurisdiction to entertain the complaint, much less, give any relief.

In *Colour Chem. Ltd.* v. *Al Alaspurkar and others*,[79] where some workmen were dismissed by the Management after holding domestic enquiry on the ground that the delinquent workmen in the late hours of the night shift by about 3.30 a.m. had gone to sleep keeping the machine in the working condition. The respondents 3 and 4 filed complaints before the Authority under the provisions of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, contending that they were victimized and the appellant Management had committed diverse unfair practices as contemplated under clauses (a), (b), (c), (d), (f) and (g) of Item 1 of Schedule IV of the Act. The Labour Court passed an order of reinstatement with appropriate back wages as the punishment of dismissal was grossly disproportionate. The Industrial Court/Revisional Court dismissed

77. 1996 SCC (L & S) 1286.
78. (1997) II LLJ 1068.
79. (1998) SCC (L & S) 771.

the revisions and confirmed the order of the Labour Court. The appellant carried the matter in writ petition before the High Court which was dismissed. Thus, the appeal was preferred before the Supreme Court.

The Supreme Court considered the relevant decisions on the point. Dismissing the management's appeal it was observed that on a harmonious construction of clause (g) of Item 1 of Schedule IV with all its sub-parts it must be held that the legislature had contemplated punishment of discharge or dismissal for misconduct of minor or technical character which, when seen in the light of the nature of the particular minor or technical misconduct or the past record of the employee, would amount to inflicting of a shockingly disproportionate punishment. In this connection we may mention that the same Judge B. N. Srikrishna, J., in a later decision in the case of *Pandurang Kashinath Wani* v. *Div. Controller, Maharashtra SRTC*,[80] has taken the view that the clause (g) of Item 1 of Schedule IV of the Act refers to minor or technical misconduct only. The same view was also taken in case of *Maharashtra SRTC* v. *Niranjan Sridhar Gande*,[81] and *Hindustan Lever Ltd.* v. *Ashok Vishnu Kate*,[82] it is true that this being a welfare legislation liberal construction would be placed. The one and the only subject matter of clause (g) is the misconduct of minor or technical character. The remaining parts of the clause do not indicate any separate subject matter like the major misconduct.

It was further held that the term 'victimisation' is neither defined in MRTU and Prevention of Unfair Labour Practices Act, 1971, nor in the Bombay Industrial Relations Act, nor in the Industrial Disputes Act. Therefore, it has to be given dictionary meaning. Thus, if a person is made to suffer by some exceptional treatment it would amount to victimisation. It is of comprehensive import. It may be victimisation in fact or in law. Consequently, it must be held that when looking to the nature of the charge of even major misconduct which is found proved if the punishment of dismissal or discharge as imposed is found grossly disproportionate in the light of the nature of misconduct or the past record of the employees concerned involved in the misconduct or is such which no reasonable employer would ever impose in like circumstances, inflicting of such punishment itself could be treated as legal victimisation. The factual finding of the Labour Court and as confirmed by the Industrial Court would obviously attract the conclusion that by imposing such punishment the appellant-management had victimised the respondent-delinquents. This was a peculiar case in which the plant-in-charge found during his surprise visit at 3.30 a.m. in the early hours of the dawn the entire work force of 10 mazdoors and two operators like respondents and the supervisor all asleep. It is also pertinent to note that so far as the 10 mazdoors were concerned they were let off for this very misconduct by a mere warning while the respondents were dismissed from service. By imposing such grossly disproportionate punishment on the respondents the appellant-management had tried to kill a fly with a sledge-hammer. Consequently it must be held that the appellant was guilty of unfair labour practice. Such an act was squarely covered by clause (a) of Item 1 of Schedule IV of the Act being legal victimisation, if not factual victimisation.

In *Hindustan Lever Mazdoor Sabha* v. *Hindustan Lever Ltd.*,[83] where the appellant filed a complaint in the year 1984 against the respondent Management complaining unfair

80. (1995) 1 CLR 1052 (Bom.).
81. (1985) 50 FLR 1 (Bom.).
82. 1995 SCC (L & S) 1385; *Hind Construction and Engineering Co. Ltd.* v. *Workmen*, (1965) I LLJ 462 and *Bharat Iron Works* v. *Bhagubhai Balubhai Patel*, 1976 SCC (L & S) 92, applied in *Colour Chem. Ltd.* v. *A.L. Alaspurkar*, 1998 SCC (L & S) 771.
83. 1998 SCC (L & S) 1684.

labour practice under Item 9 of Schedule IV to the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971. The main thrust of the complainant was that the unilateral change in the conditions of service by the 1975 Order was against the 1971 Settlement which was based on 1957 Agreement.

The most important issue was whether the respondent has committed unfair labour practice by committing failure to implement settlement dated 27-1-1971 and whether the case is barred by limitation. Issue 1 was decided against the management and it was held by the Industrial Tribunal that the field staff was entitled to the benefits accrued to them under 1971 settlement. The Tribunal came to the conclusion that the complaint was within the limitation. It was further observed by the Tribunal that management had refused the same in favour of employees of the field force Bombay branch on one or the other ground. By refusing to give benefit under the settlement to the employees concerned, the management went on committing errors every day. It was a continuous cause of action on the part of the employees to claim the benefit thereunder. Hence, the complaint cannot be said to be barred by limitation.

The management challenged the order of the Industrial Tribunal by way of the writ-petition. The Bombay High Court upheld the finding of the Industrial Tribunal on Issue No. (1) but despite that allowed the writ petition on short ground that the complaint was barred by limitation as there was a delay of more than 12 years.

In the present appeal the Supreme Court took the view that the High Court was not justified in reversing the finding of the Tribunal on the issue of limitation. The High Court failed to appreciate the effect of this Court's judgment delivered in the year 1984. The said dismissal (*sic* decision) gave a fresh cause of action to the complainant to agitate the matter which was unilaterally blocked by the management by its order of June, 1975. Expressing agreement with the reasoning of the Industrial Tribunal the Supreme Court held that the High Court was not justified in reversing the well-reasoned order of the Tribunal on the issue of limitation and setting aside the order of the High Court allowed the appeal and restored the order of the Industrial Tribunal.

It is the settled law that the complaints of unfair labour practices can be filed only by the workmen/employees and not by any other person. Thus where the workmen have not been accepted by the company to be its employees, then no complaint would lie under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. It has been held by the Supreme Court in *Vividh Kamgar Sabha* v. *Kalyani Steels Ltd*,[84] that the provisions of the MRTU and PULP Act, 1971 can only be enforced by persons who admittedly are workmen. If there is dispute as to whether the employees are the employees of the company, then the dispute must first be got resolved by raising a dispute before the appropriate forum. It is only after the status as a workman is established in an appropriate forum that a complaint could be made under the provisions of the said Act. In the present case the Industrial Court has given a finding, on facts, that the members of the appellant Union were not employees of the respondent Company. This is a disputed fact and thus till the appellant or their members, get the question decided in a proper forum, the complaint is not maintainable. The complaint was that the respondents were not treating them on a par with the other employees and have notionally engaged contractors to run the canteen and

84. 2001 SCC (L&S) 436; *General Labour Union (Red Flag) Bombay* v. *Ahmedabad Mfg. and Calico Printing Co. Ltd.*, 1995 SCC (L&S) 372 followed. Both cases followed and relied on in *CIPLA Ltd.* v. *Maharashtra General Kamgar Union and others*, 2001 SCC (L&S) 520.

thus they had engaged in unfair labour practices. The Supreme Court for the above reasons dismissed the appeal holding that the said complaint was not maintainable.

In *Trambak Rubber Industries Ltd.* v. *Nasik Workers Union and others*,[85] where three complaints were filed before the Industrial Court under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, out of which two of them by the workers unions and the other by the management of the industry—both alleging unfair labour practices under various clauses of the Schedules to the Act, which have led these appeals.

The core question before the Industrial Court as well as the High Court was whether the persons whose engagement was terminated were the employees within the meaning of Section 2(5) of the Act, read with Section 2(s) of the Industrial Disputes Act. The Industrial Court upheld the pleas of management that they were trainees. However, the High Court held that the action taken by the management was an unfair labour practice within the meaning of the Act, and directed reinstatement without back wages.

The Supreme Court held that there was total non-application of mind on the part of the Tribunal to the crucial evidence. The management's witness categorically stated that the workers concerned were engaged in production of goods and that no other workmen were employed for production of goods. It is pertinent to note that the statement of the management's witness that in June-July, 1989, the company did not have any permanent workmen and all the persons employed were trainees. It would be impossible to believe that the entire production activity was being carried on with none other than the so-called, trainees. On the facts and evidence brought on record, the conclusion was inescapable that the appellant employer resorted to unfair labour practice. The Supreme Court, therefore, upheld the decision of the High Court and dismissed that appeal.

In *Siemen's Ltd.* v. *Siemens Employees Union*,[86] the Supreme Court observed that for an unfair labour practice there must be an allegation of victimisation.

In the instant case no allegation of victimisation has been made by the respondent Union in its complaint. In the absence of any allegation of victimisation it is rather difficult to find out a case of unfair labour practice against the management in the context of the allegations in the complaint. It is nobody's case that the management is punishing any workman in any manner. It may be also mentioned here that no workman of the appellant company has made any complaint either to the management or to the Union that the management is indulging in any act of unfair labour practice. Even than the Labour Court has come to certain findings of unfair labour practice.

The admitted facts are that there are 89 vacancies in the category of officers and 154 workers. Therefore, every-body who has applied cannot be promoted, only a certain percentage of the workers can be promoted. Both the Labour Court and the High Court failed to take into consideration that the workers voluntarily applied for the promotion scheme. But no union can insist that all the workmen must remain perpetually otherwise it would be an unfair labour practice. The workmen have right to get promotion and improve their lot if the management offers with a *bona fide* chance to do so. For these reasons the order of the High Court and the Labour Court were set aside. However, it was made clear

85. 2003 SCC (L&S)) 890.
86. (2011) 2 SCC (L&S) 593. *Purry & Co. Ltd.* v. *P.C. Pal*, AIR 1970 SC 1334 : *Hindustan Lever* Ltd. v. *Ram Mohan Roy*, 1973 SCC (L& S) 309 applied and *Hindustan Lever Ltd.* v. *Ashok Vishnu Kate*, 1995 SCC (L&S) 1385, relied on.

by the Supreme Court that in implementing the scheme the management must not bring about any retrenchment of the workmen, nor should workmen be rendered surplus in any way.

In *Bhuvnesh Kumar Dwivedi* v. *Hindalco Industries Ltd.*,[87] it has been observed by the Supreme Court that "the periods of service of the appellant extends to close to 6 years save the artificial breaks made by the employer with an oblique motive so as to retain the appellant as a temporary worker and deprive the appellant of his statutory right of permanent status. The aforesaid conduct of the respondent perpetuates "unfair labour practice" as defined under Section 2 (ra) of the I. D. Act, which is not permissible in view of Sections 25-T and 25U of the ID Act read with entry at serial No. 10 in the Vth Schedule to the I. D. Act. Entry No. 10 which says "To employ workmen as badlis, casuals or temporaries and to continue them as such for years, with object of depriving them of the status and privileges of the permanent workmen".

The Supreme Court held that in absence of any material evidence produced before the Labour Court to show that the appellant was employed for any particular project(s) on the completion of which his service has been terminated through non-renewal of his contract of employment. Therefore, we deem it fit to construe that the appellant has rendered continuous service for six continuous years (save artificially imposed break) as provided under Section 25-B of the I. D. Act and can therefore be subjected to retrenchment only through the procedure mentioned in the I. D. Act or the State Act in the *pari materia*. The Supreme Court answered in the favour of the appellant holding that the Labour Court was correct in holding that action of the respondent is clear case of retrenchment, which requires to comply with the mandatory requirement of the provisions of Section 6-N of the U.P. I.D. Act. Undisputedly, the same has not been complied with and therefore, the order of the retrenchment has been rendered void *ab initio* in law.

(rb) Village Industries[88] has the meaning assigned to it in clause (h) of Section 2 of the Khadi and Village Industries Commission Act, 1956. This expression has also been inserted by the amendment made in 1982.

(rr) Wages[89] 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;

87. (2014) 2 SCC (L&S) 437.
88. Industrial Disputes Act, 1947, Section 2 (rb).
89. Industrial Disputes Act, 1947, Section 2 (rr).

(c) any Gratuity payable on the termination of his service.

The term 'wages' as contained in the Act means all remuneration which can be expressed in terms of money which is paid to a workman in respect of his employment or of work done by him according to terms and conditions of his employment. It includes all allowances including D.A. to which a workman is entitled to get, value of any house accommodation or supply of amenities such as water, light, medical attendance or concessional supply of food grains, or any other articles of the kind or supply of any service. It also includes any travelling concession paid to the workman, or any commission on the promotion of sales or business or both.

But the Act expressly excludes any bonus, any contribution paid or payable by the employer to any pension fund or P.F. or for the benefit of the workman under any law in force for the time being. The gratuity payable on the termination of service is also excluded from the ambit of "wages".

It may be observed that the wages are fixed on certain principles and in accordance with the provisions of Minimum Wages Act. There are many decided cases wherein it has been laid down that the wages are to be fixed on various considerations.

In *M/s. Hindustan Hosiery Industries* v. *F.H. Lala and another*,[90] where the appeal came before the Supreme Court against an award of the Industrial Court, Maharashtra on 29th January, 1970. There was a reference by the Mill Mazdoor Sabha, Bombay under Section 13-A of the Bombay Industrial Relations Act 1946, in pursuance of a notice of change dated 22nd August, 1968. The Sabha demanded revised basic wages for the time-rated workmen of several categories and also a rise of 50% in the wage of the piece-rated workers in the consumer's Prices Index bracket 621-630 (old series) and dearness allowance of 10 paise per day for every rise of 10 points or part thereof above the said slab.

It was observed by the Supreme Court that from an examination of the decisions of this Court, it is clear that floor level is the bare minimum wage or subsistence wage. In fixing this wage, Industrial Tribunal will have to consider the position from the point of view of the worker; the capacity of the employer to pay such a wage being irrelevant. The fair wage also must, take note of the economic reality of the situation and the minimum needs of the worker having a fair-sized family with an eye to the preservation of his efficiency as a worker.

Wage fixation is an important subject in any social welfare programe. Wage cannot be fixed in a vacuum and has necessarily to take note of so many factors from real life a worker lives, or is reasonably expected to live or to look forward with hope and fervency in the entire social context. It is obvious that some principles have to be evolved from the conditions and circumstances of actual life.

Price-rate is what is paid by results or out-turn of work which is often described as a "task". There is greater consideration to quantity in fixing piece-rates in some particular types of work in some industries with a guaranteed minimum. The same standard may not be appropriate in all types of piece work. It will vary from industry to industry and from one process to another. No hard and fast rule can be laid down nor is it possible or helpful. The Tribunal, in an industrial adjudication, will have to see that piece rates do not drive workers to fatigue to the limit of exhaustion and hence will keep an eye on the time factor in work. Then again a guaranteed minimum may also have to be provided so that for no

90. AIR 1974 SC 526.

fault of a diligent worker he does not stand to lose on any account. How the various competing claims have to be balanced in a given case should mainly be the function of an impartial adjudicator in an industrial proceeding unless the legislature chooses to adopt other appropriate means and methods. "Industrial Disputes Act is intended to be a self contained one and it seeks to achieve social justice on the basis of collective bargaining, conciliation and arbitration. Awards are given on circumstances peculiar to each dispute and the tribunals are, to a large extent, free from restrictions of technical considerations imposed on Courts. A free and liberal exercise of the power under Article 136 may materially affect the fundamental basis of such decisions, namely, quick solution to such disputes to achieve industrial peace. Though Article 136 is couched in widest terms; it is necessary for this Court to exercise its discretionary jurisdiction only in cases where awards are made in violation of the principle of natural justice, causing substantial and grave injustice to parties or raise an important principle of industrial law requiring elucidation and final decision by this Court or disclose such other exceptional or special circumstances which merit the consideration of this Court."

It was observed by the Supreme Court in *M/s. Unichem Laboratories Ltd.* v. *The Workmen*,[91] that, "In the fixation of wages and dearness allowances the legal position is well established that it has to be done on an industry-cum-region basis having due regard to the financial capacity of the unit under consideration.....Industrial adjudication should always take into account, when revising the wage structure and granting dearness allowance, the problem of the additional burden to be imposed on the employer and ascertain whether the employer can reasonably be called upon to bear such burden..."

As pointed out in *Greaves Cotton and Co.* v. *Their Workmen*,[92] "one of the principles to be adopted in fixing wages and dearness allowance is that the Tribunal should take into account the wage scale and dearness allowance prevailing in comparable concerns carrying on the same industry in the region.

The concept of minimum wages takes for granted that minimum wage must provide not merely for the bare sustenance of life but for the preservation of the efficiency of the workers, *i.e.*, education, medical requirements and amenities. The definition of wages in Section 2(rr) includes dearness allowance. Dearness allowance is intended to neutralise the cost of living and for this purpose reference may properly be made to the rate of rise in the cost of living wages as found in the awards of tribunals. The ability of a concern to pay has no relevance to the payment of bare minimum wages or subsistence wages.[93]

It would be relevant to point out that any commission on the promotion of sales or business or both has been brought within the purview of wages by inserting clause (iv) by the Amendment Act 46 of 1982. It would function as an incentive to the workmen for working hard with a view to promote sales or business of the employer.

There is a relevant decision on the point. In *Indian Banks Association* v. *Workmen of Syndicate Bank and others*,[94] where the scope of the expression "wages" has been discussed by the Supreme Court. It has been held that commission received by Deposit Collectors is nothing else but wages, which is dependent on the productivity. Accepting the contention of the respondents it was held that sub-clause (iv) of the definition includes commission payable on promotion of sales or business or both.

91. AIR 1972 SC 2332.
92. AIR 1964 SC 689.
93. *Union Drugs Co. Ltd.* v. *Fifth Industrial Tribunal*, 1962 (5) FLR 304.
94. 2001 SSC (L&S) 504.

In *Hamdard (Wakf) Laboratories* v. *Dy. Labour Commissioner*,[95] the Supreme Court held that the Labour Commissioner in view of decision of the Supreme Court in *Muir Mills Co. Ltd.* v. *Sut Mills Mazdoor Union*,[96] has evidently committed a manifest error in opining that bonus is deferred wages. Once it is excluded from the purview of the term 'wages' under the Act, such a view was impermissible in law, particularly, when the appellant denied and disputed the right of the workmen to claims. Both the learned Single Judge and the Division Bench of the High Court also fell to the same error. The Supreme Court held that the impugned judgment cannot be sustained and thus allowed the appeal setting aside the judgment of the High Court.

In *Ghaziabad Zila Sahakari Bank Ltd.* v. *Addl. Labour Commissioner*,[97] the Additional Labour Commissioner allowed the payment, as an *ex gratia* payment to the employees of the Cooperative Bank from the public fund.

The Supreme Court expressed the view that the Assistant Labour Commissioner's jurisdiction was wrongly invoked and his order under Section 6-H, U.P. Industrial Disputes Act, 1947 is without jurisdiction and hence null and void. Since payment of *ex gratia* amount to the employees of the Bank is a policy matter, the State Government of U.P. has filed special leave petition questioning the correctness of the orders passed by the High Court. The impugned judgment of the High Court suffers from the error of complete non-application of the mind on merits of the case inasmuch as whole pleadings either before the Commissioner or before the High Court was that the payment of *ex gratia* to the employees are against the objects of the society and it is in contravention of the provisions of the U.P. Act, 1947, Rules and Regulations. The Supreme Court for these reasons allowed the appeals filed by the Bank as well as the State of U.P. setting aside the judgment of the High Court. It was further made clear that payments already made need not be recovered from the employees. However, the employees are entitled to *ex gratia* payment from now onwards.

(s) Workman.—The term "workman" has been defined in Section 2 (s) of the Industrial Disputes Act. It 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 the 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, or the Army Act, 1950 or the Navy Act, 1957; or

(ii) who is employed in the police service or as an officer or 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 [98][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, function mainly of a managerial nature.

It has been observed by the Supreme Court in *Devinder Singh* v. *Municipal Council, Sanaur*,[99] that Section 2 (s) contains an exhaustive definition of the term "workman". The

95. (2007) 2 SCC (L&S) 166.
96. AIR 1955 SC 170.
97. (2008) 1 SCC (L&S) 90 ; *U.P.S.E.B.* v. *Shiv Mohan Singh*, 2004 SCC (L&S) 1141 followed.
98. Subs. for "one thousand six hundred rupees" (w.e.f. 15.9.2010).
99. (2011) 2 SCC (L&S) 153.

definition takes within its ambit 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 and it is immaterial that the terms of employment are not reduced into writing. The definition also includes a person, who has been dismissed, discharged or retrenched in connection with an industrial dispute or as a consequence of such dispute or whose dismissal, discharge or retrenchment has led to that dispute. The last segment of the definition specifies certain exclusions. A person to whom the Air Force Act, 1950, or the Army Act, 1950, or the Navy Act, 1957, is applicable or who is employed in the police service as an officer or other employee of a prison or who is employed mainly in managerial or administrative capacity or who is employed in a supervisory capacity and is drawing specified wages per mensem or exercises mainly managerial functions does not fall within the definition of the term "workman".

The source of employment, the method of recruitment, the terms and conditions of employment/contract of service, the quantum of wages/pay and the mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2 (s) of the Act. It is apposite to observe that the definition of workman also does not make any distinction between full-time and part-time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2 (s) from which it can be inferred that only a person employed on a regular basis or a person employed for doing whole-time job is a workman and the one employed on temporary, part-time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.

In *R.G. Makwana* v. *Gujarat State Road Transport Corporation*,[1] the High Court of Gujarat has held that any person who has been dismissed, discharged or retrenched in connection with or as a consequence of a dispute is also included within the definition of the workman under Section 2 (s).

In *Arkal Govind Raj Rao* v. *Ciba Geigy of India Ltd.*,[2] Desai, J. observed that where an employee has multifarious duties and a question is raised whether he is a workman or some one other than a workman the Court must find out what are the primary and basic duties of the person concerned and if he is incidentally asked to do some other work, which may not be necessarily in tune with the basic duties, these additional duties cannot change the character and status of the person concerned. In other words, the dominant purpose of the employment must be first taken into consideration and gloss of some additional duties must be rejected while determining the status and the character of a person.

Thus for instance where an employee who is originally employed as typist clerk is subsequently designated as an officer-in-charge but his principal job on change of designation is not shown as of an officer nor was there any change in the remuneration, the change of designation will not take him out of the category of a workman[3] because these high sounding nomenclatures are adopted not only to inflate the ego of the employer but primarily for avoiding the application of the Act. They apart from being misleading are not in tune with free India's constitutional culture.[4] Similarly a person was held to be outside

1. (1987) II LLJ 172; see also *Workmen G.C. and Co.* v. *G.C. & Co.*, AIR 1972 SC 319.
2. (1985) II LLJ 401 (403) (SC), *Burmah Shell Oil Storage & Distribution Co. of India* v. *Burmah Shell Management Staff Association and others*, (1970) II LLJ 590 (SC).
3. *Enamelnager Development Corpn. Ltd.* v. *II Industrial Tribunal*, (1986) Lab. I.C. 1971.
4. *Arkal Govind Raj Rao* case, (1985) II LLJ (405).

the scope of Section 2 (s) on the ground that his main duties were of canvassing for the sale of books. Thus the sale canvasser is not workman.[5]

It may be pointed out that it is the nature of work which is important factor while one is to determine whether a particular person engaged in the industry is a workman or not. If a person does any skilled, or unskilled, manual, supervisory, technical, operational or clerical work for hire or reward he is workman within the meaning of the definition but if he is employed in a supervisory capacity, the amount of wages becomes relevant. In that case if he receives or draws wages exceeding (now Ten Thousand) rupees per mensem, he is not covered within the definition of workman. Similarly, if he 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, he is not within the definition.

The essential condition for a person being a workman within the terms of the definition as contained in the Industrial Disputes Act is that there should be the relationship between the employer and him as between master and servant. It may be that when such a relationship had existed at one time and there was a termination subsequently of that relationship, the person who was once in employment would come within the definition of workman.

In *Shri Chintaman Rao and another* v. *The State of M.P.*,[6] where the appellant was the manager of a bidi factory which had contracts with certain independent contractors, for the supply of *bidis*. The *Sattedars* undertook to supply the *bidis* by manufacturing them in their own factories or by entrusting the work to third parties, at a price to be paid by the management after delivery and approval. The Inspector of factories found working in the appellant's factory certain *sattedars* and their coolies who had come to deliver *bidis* manufactured by them. The appellant was prosecuted and convicted under Section 92, of the Factories Act for violation of the provisions of Sections 62 and 63 for failure to maintain the register of adult workers and for allowing the workers to work in the factory without making beforehand the entries of their attendance in the register.

The Supreme Court gave the restricted meaning to the words 'directly or through any agency' in Section 2 (1) and held that a worker was a person employed by the management and that there must be a contract of service and a relationship of master and servant between them. On the facts of the case the Supreme Court held that certain *sattedars* were independent contractors and that they and the coolies engaged by them for rolling *bidis* were not workers. It was held that to determine whether a person employed is a worker the test is whether or not the employer had control and supervision over the manner in which the work was to be done. The *sattedars* were not under the control of the factory management and could manufacture the *bidis* in whatever manner they pleased. The coolies were neither employed by the management directly nor were they employed by the management through the *sattedars*.

In *Short* v. *J.W. Henderson, Ltd.*,[7] Lord Thankerton recapitulated four indicia of a contract of service as stated in Halsbury's Laws of England, 3rd Edition, Vol. 25, p. 448, Article 872. The following have been stated to be the indicia of a contract of service, namely,—

5. *Shri Jugul Kishore Mittal* v. *The Management of Sasta Sahitya Mandal and others*, (1987) I LLJ 231 (Delhi).
6. (1958) SCR 1340.
7. AIR 1948 SC 24.

(i) the master's power of selection of servants;

(ii) the payment of wages or other remuneration;

(iii) the master's right to control the method of doing the work; and

(iv) the master's right of suspension or dismissal.

But modern industrial conditions have so affected the freedom of the master that it may be necessary at some future time to restate the indicia.

There is a leading case on the point in which the test for determination of status of the person engaged in any industrial process has been laid down by the Supreme Court. The leading case is : *Dharangadhra Chemical Work Ltd.* v. *State of Saurashtra and others*,[8] where the appellants were lessees of the Salt Works from the erstwhile State of Dharangadhra and also held a licence for the manufacture of salt on the land. The appellants required salts for the manufacture of certain chemicals and part of the salt manufactured at the Salt Works was utilised by the appellants in the manufacturing process in the chemical works at Dharangadhra and remaining salt was sold to outsiders. The appellants employed a salt superintendent who was in charge of the Salt Works and generally supervised the work and the manufacturing of salt carried on there. The appellants maintained a railway line and sidings and also had arrangements for storage of drinking water. They maintained a grocery shop near the salt works where labourers known as *agarias* could purchase their requirement on credit.

The salt was manufactured not from sea water but from rain water which soaking down the surface used to become integrated with saline matter. The operations were seasonal in character and commenced some time in October at the close of the monsoon. When the operations were commenced the entire area was parcelled out into plots called pattas. Each *agaria* was allotted a patta and the same patta was allotted to the same *agaria* year after year.

The *agarias* used to work themselves with their families on the pattas allotted to them. They were free to engage extra labour but they themselves made the payments to these labourers and the appellants had nothing to do with them.

The appellants did not prescribe any hours of work for these *agarias*, no muster roll was maintained nor did they control how many hours in a day and for how many days in a month the *agarias* should work. There were no rules regarding leave or holidays.

In about 1950 disputes arose between the *agarias* and appellants as to the conditions under which the *agarias* should be engaged by the appellants in the manufacture of salt. The Government of Saurashtra referred the disputes for adjudication to the Industrial Tribunal on November 5, 1951.

The Tribunal held that the *agarias* were workmen within the meaning of the Act and the reference was *intra vires* and adjourned the matter for hearing on the merits.

The appellants preferred an appeal against this order before the Labour Appellate Tribunal of India and having failed to obtain stay of further proceedings before the Industrial Tribunal pending the appeal they moved the High Court of Saurashtra under Articles 226 and 227 of the Constitution of India for an appropriate writ to quash the reference dated November 5, 1951 on the ground that it was without jurisdiction.

8. AIR 1957 SC 264.

The High Court agreed with the decision of the Industrial Tribunal that the *agarias* were the workmen within Section 2 (s) of the Industrial Disputes Act and accordingly dismissed the application for writ.

However, they granted a certificate of fitness under Article 133 (1) (c) of the Constitution and the appeal came before the Supreme Court.

The Supreme Court held :

The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry, that there should be, in other words, an employment of his by the employer and that there should be the relationship between the employer and him as between the employer and employee or master and servant.

The *prima facie* test for the determination of the relationship between master and servant is the existence of the right in the master to supervise and control the work done by the servant not only in the matter of directing what work the servant is to do but also the manner in which he shall do his work or to borrow the words of *Lord Uthwatt*,[9] "the proper test is whether or not the hirer had authority to control the manner of execution of the act in question.".

The nature or extent of control which is requisite to establish the relationship of employer and employee must necessarily vary from business to business and is by its very nature incapable of precise definition. The correct method of approach, therefore, would be to consider whether having regard to the nature of the work there was due control and supervision by the employer. A person can be a workman even though he is paid not per day but by the job.

The broad distinction between a workman and independent contractor lies in this that while the former agrees himself to work and the latter agrees to get other persons to work.

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

The Supreme Court held that the decision of the Industrial Tribunal to the effect that *agarias* were workmen within the definition of the term contained in Section 2(s) of the Act was justified and accordingly the appeal was dismissed with costs.

In order to give status of workman to any person engaged in the industrial process it must be established that there is a relationship of master and servant or employer and employee and establishment where both the parties are engaged must be an industry within the meaning of Section 2(j) of the Industrial Disputes Act, 1947.

What is the meaning of the words "employed in any industry". The very words "persons employed" came up for consideration before the Supreme Court under the provisions of the Andhra Pradesh (Telengana area) Shops and Establishments Act, in *Silver Jubilee Tailoring House and others* v. *Chief Inspector, Shops and Establishments and another*.[10] The Supreme Court held that the right to control the manner of work is not

9. *Mersey Docks and Harbour Board* v. *Coggins and Griffith (Liverpool) Ltd.*, (1947) 1 AC 1 at p. 23.
10. AIR 1974 SC 37.

exclusive test for determining the relationship of employer and employee. It is also to be considered as to who provides the equipment. But so far as tailoring is concerned, the fact that sewing machines on which the workers do the work generally belong to the employer is an important consideration for deciding that the relationship is that of master and servant. The fact that the employees take up the work from other tailoring establishments and do that work in the shop in which they generally attend for work and that they are not obliged to work for the whole day do not militate against their being employees of the proprietor of the shop where they attend for work.

The employees in *Reference to Punjab National Bank* v. *Ghulam Destagir*,[11] where the industrial dispute was between an individual driver (the respondent) and the management (the Punjab National Bank, Calcutta) and the reference was as to the justifiability of the termination of the services of Sri Ghulam Dastagir, driver of the said bank with effect from the 27th May, 1975. The Industrial Tribunal examined the matter at some length and came to the conclusion that the driver was employed by the Bank. Consequently, a direction for reinstatement together with back wages was made."

The Management preferred an appeal by special leave under Article 136. Sri Khera referred the leading case on the point in *Shivanandan Sharma* v. *The Punjab National Bank Ltd.*,[12] and the subsequent decisions, which we may broadly describe as the *beedi* cases.[13] There is no doubt that the proposition laid down in *Shivanandan Sharma* is unexceptional law and the crucial test in most cases is as to who exercises control and supervision over the workman. Lord Porter in the course of his speech in the judgment in *Mersey Docks and Harbour Board* v. *Cogins and Griffith (Liverpool) Ltd.*,[14] expressed himself in words which were relied upon by Sri Justice Sinha in *Shivanandan Sharma*.[15]

The evidence adduced before the Tribunal, oral and documentary, leads only to one conclusion that the Bank made available a certain allowance to facilitate the Area Manager, Sri Sharma, privately to engage a driver. Of course, the jeep which he was to drive, its petrol and oil requirements and maintenance, all fell within the financial responsibility of the Bank. So far as the driver was concerned, his salary was paid by Sri Sharma as his employer who drew the same granted to him by way of the allowance from the Bank. There is nothing on record to indicate that the control and direction of the driver vested in the Bank. After all, the evidence is clearly to the contrary. The Court reversing the award held the driver not to be workman.

In the *Workmen of the Food Corporation of India* v. *M/s. Food Corporation of India*,[16] where the F.C.I. engaged a contractor for handling foodgrains at Siliguri Depot and the F.C.I. had nothing to do with manner of handling work done by the contractor the labour force employed by him, payments made by him etc. the Supreme Court observed that the essential condition of a person for being workman within the terms of the definition is that he should be employed to do the work in that industry and there should be relationship between the employer and him as between employer and employee or master and servant. Unless a person is thus employed there can be no question of his being a workman within the definition of the term as contained in the Act. Where a contractor employed a workman

11. AIR 1978 SC 481-483 and 484.
12. AIR 1955 SC 404.
13. AIR 1966 SC 370.
14. 1947 AC 1.
15. AIR 1955 SC 404 at p. 411.
16. (1985) II LLJ 4 (SC).

to do the work which he contracted with a third person to accomplish on the definition as it stands, the workman of the contractor would not without something more become the workman of third person. Therefore, when the contract system was in vogue, the workmen employed by the contractor were certainly not the workmen of the F.C.I. and no claim to that effect has been made by the Union.

The definition excludes from its ambit any person who is subject to the Army Act, or the Air Force Act or the Navy (Discipline) Act or who is employed in the police service or as an officer or other employee of a prison. All the persons who are employed mainly in a managerial or administrative capacity are not workmen as they have been excluded from the ambit of the definition of workman as contained in Section 2 (s) of the Act.

It has been observed that the definition of workman in Section 2(s), there are only two circumstances in which a person on the supervisory staff ceases to be workman. One is, when he draws wages exceeding 500 (now 1600/-) rupees per month and the other is when he performs managerial functions by reason of a power vested in him or by the nature of duties attached to his office. The word 'supervise' and its derivatives are not of precise import. The word must often be construed in the light of the context, for unless controlled, they cover an easily simple oversight and direction as manual work coupled with a power of inspection and superintendence of the manual work of others.

The question whether a particular workman is a supervisor within or without the definition of workman is ultimately one fact, at best one of mixed fact and law. The work in a bank involves checking. Where however, there is a power of assigning duties and distribution of work there is supervision. Mere checking of the work of others is not enough because this checking is a part of accounting and not of supervision. The work done in the audit department of bank in not a supervision.

In a case in exercise of its power under Section 10 (1-A) of Industrial Disputes Act, the Central Government referred to the National Industrial Tribunal an industrial dispute between the Reserve bank, Bombay and its workmen in Class II, Class III and Class IV. The dispute embraced several items bearing upon the conditions of service of three classes. The National Tribunal made no award in respect of supervisory staff in Class II. On the date of coming into force of the award, *viz.*, 1-1-1962 the Reserve Bank revised the scales of pay of Class II employees so that each of the employees of that class would get total wages above rupees 500. On appeal by special leave to the Supreme Court it was held that the reference under Section 10 (1-A) to the National Tribunal was a valid reference and employees in Class II except the personal assistants, were rightly classed by the National Tribunal as employed on supervisory and not clerical or checking duties. In view of the fact that all of them received even at the start wages in excess of rupees 500 per month, there was really no issue left concerning them once it was held that they are working in a supervisory capacity.[17]

In order to consider a workman to be appointed in supervisory capacity the test is his nature of main or substantial work. If it is supervisory work it would be held that the person was employed to do supervisory work even though he may be also doing some technical, clerical, or manual work. If he is doing supervisory work the amount of wages becomes relevant for holding that he is workman. If he draws wages exceeding prescribed limit he would be hit by the exemption under Section 2 (s) (iv) and cannot be said to be workman.[18]

17. *All India Reserve Bank Employees, Association* v. *Reserve Bank of India*, AIR 1966 SC 305.
18. *Ivor Fernandez* v. *Management of Stanes Motors Ltd.*, (1982) ILJ 155 (Mad.).

In *Ved Prakash Gupta* v. *M/s. Delton Cable India (P) Ltd.*[19] where the appellant was dismissed from service on the ground that he used abusive language and that entailed in the employer losing confidence in him. The question was whether he was workman. The Supreme Court held that the substantial duty of the appellant was only that of security inspector at the gate of the factory, it was neither managerial nor supervisory in nature in the sense in which these terms are understood in industrial law. The appellant clearly falls within the definition of workman in Section 2 (s) of the Act and the reference under Section 10 (i) (c) of the Act is valid.

In *S.K. Verma* v. *Mahesh Chandra*,[20] the appellant a Development Officer in Jullundhar Branch of LIC was dismissed by the Management of LIC of India, New Delhi. The Central Government referred the dispute for adjudication to the Industrial Tribunal. On preliminary objection that Development Officer was not a workman, the Supreme Court observed that there appears to be three preliminary objections which have become quite the fashion to be raised by all employers, particularly public sector corporations, whenever industrial dispute is referred to a tribunal for adjudication. One objection is that there is no industry, a second that there is no industrial dispute and the third that the workman is no workman. It is a pity that when the Central Government in all solemnity, refers an industrial dispute for adjudication, a public sector corporation which is an instrumentality of State, instead of welcoming a decision by the tribunal on merits so as to absolve itself of any charge of being the bad employer or of victimisation etc. should attempt to evade decision on merits by raising such objections and never thereby satisfied, carry the matter often times to the High Court and to the Supreme Court wasting public time and money. It is expected that public sector corporations to be model employer and model litigants. They are not expected to attempt to avoid adjudication or to indulge in luxurious litigation and drag workmen from Court to Court merely to vindicate not justice but some rigid technical stands taken by them.

It was further observed that the words "any skilled or unskilled, manual, supervisory, technical or clerical work" are not intended to limit or narrow the amplitude of the definition of workman. On the other hand they indicate and emphasise the broad sweep of the definition which is designed to cover all manner of persons employed in an industry, irrespective of whether they are engaged in skilled work or unskilled work, manual work, supervisory work, technical work or clerical work. Quite obviously the broad intention is to take in the entire labour force and exclude the 'managerial force'. That of course, is as it should be. Taking into consideration terms and conditions of appointment of development officers in LIC it was held that he is to be the "friend, philosopher and guide" of the agents working within his jurisdiction and no more. The development officer cannot by any stretch of imagination be said to tbe engaged in any administrative or managerial work. He is a workman within he meaning of section 2 (s) of the Act.

In *Punjab Co-operative Bank* v. *R.S. Bhatia*,[21] in his capacity as accountant the respondent used to sign the salary bills of the staff including himself. The Accountant is supposed to sign the salary bills of the staff even while performing the duties of a clerk. There was no paper produced to show any entrustment of managerial or administrative duty to the respondent while he was working as a mere accountant. The respondent was merely a senior clerk doing mainly clerical duties.

19. (1984) I LLJ 546 (SC).
20. (1983) II LLJ 429 SC.
21. AIR 1975 SC 1898.

In *South India Bank Ltd.* v. *A.R. Chacko,*[22] it had been pointed out that accountants who perform the duties of a senior clerk are workmen within the meaning of the Act.

In *Indian Banks Association* v. *Workmen of Syndicate Bank and others,*[23] after due consideration of the rival submissions the Court held that the Deposit Collectors are workmen within the meaning of Section 2(s) of the Act. Further, as seen from Section 2(rr) the commission received by Deposit Collectors is nothing else but wage which is dependent on the productivity.

The Supreme Court observed that the submission that the banks have no control over the Deposit Collectors cannot be accepted. Undoubtedly, there is control inasmuch as the Deposit Collectors have to bring the collections and deposit the same in the banks by the next very day. They have then to fill in various forms, accounts, registers and pass books. They have to do such other clerical work as the Bank may direct. They are, therefore, accountable to the Bank and under the control of the Bank. There is clearly a relationship of master and servant between the Deposit Collectors and the Bank concerned.

The question of absorption would fully covered by an authority of the Supreme Court in the case of *Union of India* v. *KV Baby,*[24] where it has been held that persons who are engaged on the basis of individual contracts to work on commission basis cannot be equated with regular employees doing similar work. The mode of selection and qualifications are not comparable with those of the employees, even though the employees may be doing similar works. In the present case, the work which Deposit Collectors do is completely different from the work which the regular employees do. There was thus no question of absorption and there was also no question of the Deposit Collectors being paid the same pay scale, allowances and other service conditions of the regular employees of the Banks, as demanded by the Deposit Collectors.

It has been held in *Bharat Bhawan Trust* v. *Bharat Bhawan Artists' Association,*[25] that the artists are not workmen. It has been observed that an artist engaged in the production of drama or in theatre management or to participate in a play can by no stretch of imagination be termed as "workman" because he does not indulge in any manual, unskilled or technical operational or clerical work, though he may be skilled, it is not such a work which can be read *ejusdem generis* along with other kinds of work mentioned in the definition.

Supervision implies some authority to control the persons employed in an industry either by reward or punishment. If a person has such authority to take action against an employee or recommend for the same effectively he can be said to have been in supervisory capacity and if it is established then the amount of his wages becomes relevant to cover him within the meaning of workman. It he draws wages more than specified as indicated in clause (iv) he is expressly excluded.

The definition shows that a person employed in a supervisory capacity is also a workman, but the fourth exception says that, a person employed in a supervisory capacity and drawing wages exceeding Rs. one thousand six hundred ceases to be a workman. The

22. AIR 1964 SC 1522, *S. Rajendran* v. *Asstt. General Manager, State Bank of Travancore,* (1995)I LLJ 650 (Kerala).
23. 2001 SCC (L&S) 504.
24. 1998 SCC (L&S) 539, followed.
25. 2001 SCC (L&S) 1225, *TP Srivastava* v. *National Tobacco Co. of India Ltd,* 1992 SCC (L&S) 263 relied on and *Hussainibhai* v. *Alah Factory Thezhilali Union,* 1978 SCC (L&S) 506 followed.

expression 'employed in a supervisory capacity' or the expression 'supervisory capacity' have not been defined in the Act.

In *Lloyds Bank, New Delhi v. Panna Lal Gupta,*[26] the Supreme Court held that the question whether an employee is a workman or not is mixed question of fact and law and observed that even if the question raised is one of mixed fact and law, we should not readily interfere with the conclusion of the tribunal unless we are satisfied that the said conclusion is manifestly or obviously erroneous. On the facts of this case it was held that, merely because the clerks were doing the work of checking the accounts in audit department, they cannot be held to be supervisors. It was also observed that the name or designation given to the post is not conclusive on the issue.

In *B.S.O.S. and D. Co.* v. *Management Staff Association,*[27] it was held that the main part of his duties as a foreman, he was responsible for the blending of the chemicals, the work of packing, capping and filling was done by the labourers under his supervision. These duties were of supervisory nature and that he was drawing a salary of more than Rs. 500 (the then prescribed limit) per mensem, therefore he was not a workman.

In *Mcleod and Co.* v. *Sixth Industrial Tribunal,*[28] the learned judge observed that the words such as supervisory, managerial and administrative are advisedly loose expressions with no rigid frontiers and too much subtlety should not be used in trying to precisely define where supervision ends and management begins or administration starts. For that would be theoretical and not practical. It has to be broadly interpreted from a common sense point of view where tests will be simple both in theory and their application. The learned judge further observed that a supervisor need not be a manager or an administrator and a supervisor can be a workman so long as he did not exceed the monetary limitation indicated in the section and a supervisor irrespective of his salary is not a workman who has to discharge functions mainly of managerial nature by reasons of the duties attached to his office or of the powers vested in him. It was further observed that distribution of work may easily be the work of a manager or an administrator but checking the work so distributed or keeping an eye over it is certainly supervision. It is reiterated that a manager or administrator's work may easily include supervision but that does not mean that supervision is the only function of a manager or an administrator.

In *National Engineering Industries Ltd.* v. *Shri Kishan Bhageria,*[29] where duties of an internal auditor were mainly reporting and checking up on behalf of the management and the person doing such work having no independent right or authority to take decision, it was held that internal Auditor was a workman and not a supervisor.

To come to the conclusion that a person is working in a supervisory capacity, it is necessary to prove that there were at least some persons working under him whose work he was to supervise. The mere fact that a person is in-charge of a section would not make him a supervisor if there was no body else in the section whose work was to be supervised. A clerk who has been given the assistance of a peon cannot be said to be working in a supervisory capacity. Therefore, giving training by chief analytical chemist to an apprentice as part of his work by itself could not become supervisory work.[30]

26. (1961) I LLJ 18.
27. AIR 1971 SC 922.
28. AIR 1958 Cal 273.
29. (1988) I LLJ 363 (SC).
30. *S.B. Kulkarni* v. *Indian Red Cross Society,* (1988) I LLJ 411. *J. Philips* v. *Labour Court,* (1994) II LLJ 750.

In *Shri T.P. Srivastava* v. *M/s. National Tabacco Co. of India Ltd.*,[31] where the appellant was appointed as a section salesman in this company in order to canvass and promote the sales of the company. He was to suggest ways and means to improve sales of company's product.

The Supreme Court held that duties assigned to the appellant do require the imaginative and creative mind which could not be termed as either manual, skilled, unskilled or clerical in nature. The supervising work of the other local salesmen was part of his work as only incidental to his main work of canvassing and promotion in the area of his operation. Such a person cannot be termed as a workman within the meaning of this Act, and therefore the Industrial Disputes Act is not applicable to him. But the Court directed the company to pay an amount equivalent to three years salary to him to meet the ends of justice in view of the fact that a long period of 16 years passed it would be unjust to leave appellant without any remedy at this stage.

In *Shri S.K. Maini* v. *M/s. Carona Sahu Company Ltd.*,[32] the Supreme Court held that in order to determine as to whether an employee is a workman under Section 2 (s) of the Act, the principal nature of duties and functions of the employee should be examined and that such questions are required to be determined with reference to the facts and circumstances of the case and materials on record and that it is not possible to lay down any straight jacket which can decide the dispute as to the real nature of duties and functions being performed by an employee in all cases. It was held that when an employee occupies a position of command or decision and is authorised to act in certain matters within the limits of the authority without the sanction of his superior, then he functions as a Manager or Administrator. Power to sign statutory Forms as an employee is also one of the functions performed in the discharge of managerial duties. If a person is mainly employed in managerial capacity, he is not a workman. Salary is of no consequence.

In *Sharad Kumar* v. *Government of National Capital Territory of Delhi*,[33] (Government of NCT of Delhi) the appellant was holding the post of Area Sales Executive when his services were terminated in 1995. No show-cause notice was served nor was any enquiry held before his termination. However, one month's salary was paid to him. The appellant challenged the order of termination. The Government declined to refer the dispute to Labour Court or the Industrial Tribunal on receipt of the failure report of the Conciliation Officer. He filed then a writ petition which was dismissed by the Delhi High Court and finally he preferred an appeal before the Supreme Court.

The Supreme Court considered the definition of workman as contained in Section 2(s) of the Act, and observed that on a fair reading of the provisions in Section 2(s) it is clear that workman means any person employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward including any such person who has been dismissed, discharged or retrenched. The latter part of the section excludes 4 classes of employees including a person employed mainly in a managerial

31. AIR 1991 SC 2294; *Burmah Shell Oil Storage and Distribution Co.* v. *Burmah Shell Management and Staff Association*, AIR 1971 SC 922; *DS Nagaraj* v. *Labour Officer*, (1972) 42 FJR 440 (Andh Pra.), *JJ Dechane Distributor* v. *State of Kerala*, 1974 Lab. IC 379 (Kerala) followed.
32. (1994) II LLJ 1153, folowed in *C. Narayana Reddy* v. *Management of Ajantha Theatre*, (1995) I LLJ 264 (Karn.); *Saroj Ramesh Shah* v. *Balakrishna Pen (P) Ltd.*, (1995) I LLJ 176 (Bom.); Personal Assistant to M.D. signing affidavits and letters as principal officer of the company getting Rs. 2500/- as salary and Rs. 1000/- as conveyance allowance held not a workman.
33. 2002 SCC (L&S) 533.

or administrative capacity or a person employed in a supervisory capacity drawing wages exceeding Rs. 1600 per month or exercises functions mainly of a managerial nature. It has to be taken as an accepted principle that in order to come within the meaning of the expression "workman" in Section 2(s) the person has to be discharging any one of the types of works enumerated in the first portion of the section. If the person does not come within the first portion of the section then it is not necessary to consider the further question whether he comes within any of the classes of workmen excluded under the latter part of the section.

The question whether a person concerned comes within the first part of the section depends upon the nature of duties assigned to him and/or discharged by him. The duties of the employee may be spelt out in the service rules or regulations or standing orders or the appointment order or in any other material in which the duties assigned to him may be found. While deciding the question, designation of the employee is not of much importance and certainly not conclusive in the matter as to whether or not he is a workman under Section 2(s) of the Act.

At this juncture the Supreme Court considered several earlier decisions on the point. In *SK Maini* v. *Carona Sahu Co. Ltd.*[34] the Supreme Court observed that it is not possible to lay down any strait jacket formula which can decide the dispute as to the real nature of duties and functions being performed by an employee in all cases. When an employee is employed to do the types of work enumerated in the definition of workman under Section 2(s), there is hardly any difficulty in treating him as a workman under the appropriate classification but in the complexity of industrial or commercial organizations quite a large number of employees are often required to do more than one kind of work. In such cases , it becomes necessary to determine under which classification the employee will fall for the purpose of deciding whether he comes within the definition of workman or goes out of it. In this connection reference was made to the decision of this Court in *Burmah Shell Oil Storage and Distribution Co. of India Ltd.* v. *Burmah Shell Management Staff Association*.[35] In *All India Reserve Bank Employees Assn.* v. *Reserve Bank of India*,[36] it has been held by this Court that the word "supervise" and its derivatives are not words of precise import and must often be construed in the light of context. The determinative factor is the main duties of the employee concerned and not some works incidentally done.

After considering cases decided earlier the Supreme Court in the present case (*Sharad Kumar* case) observed that the High Court was clearly in error in confirming the order of the rejection of reference passed by the State Government merely taking note of the designation of the post held by Sharad Kumar *i.e.* Area Sales Executive. From the appointment order in which are enumerated duties which the appellant may be required to discharge it cannot be held therefrom that he did not come within the first portion of Section 2(s). Such a matter should be decided by Industrial Tribunal or Labour Court on the basis of the materials to be placed before it by the parties. Thus the Supreme Court allowed the appeal directing the Government to refer the dispute to the Industrial Tribunal/Labour Court for adjudication.

In *Hussan Mithu Mhasvadkar* v. *Bombay Irom and Steel Labour Board and another*,[37] where the appellant was engaged as an Inspector in the Iron and Steel Labour Board. On termination of his services he raised a dispute which was referred to Labour Court for adjudication. The Labour Court came to the conclusion that the Board was not an industry and since the appellant was not employed in industry he could not fall within the

34. 1994 SCC (L&S) 776 followed.
35. (1970) 3 SCC 378 followed.
36. AIR 1966 SC 305; *May and Baker (India) Ltd.* v. *Workmen*, AIR 1967 SC 678; *H R Adyanthaya* v. *Sandoz (India) Ltd.*, 1994 SCC (L&S) 1283 followed.
37. 2001 SCC (L&S)) 1190; *HR Adyanthaya* v. *Sandoz (India) Ltd.*, 1994 SCC (L&S) 1283 followed.

definition of workman. The High Court affirmed the decision of the Labour Court. In appeal the Supreme Court held that mere fact that in the course of performing his duties he had also to maintain, incidentally, records to evidence the duties performed by him, cannot result in the conversion of the post of Inspector into any one of those nature noticed above. The powers of an Inspector and duties and obligations cast upon him as such are identical and akin to law enforcing agency or authority and also on a par with a prosecuting agency in the public law field.

In order to determine a question whether an employee is or not a workman the nature of his duties performed by him at the relevant time that is at the time of termination becomes relevant ignoring the nature of duties at the time of his initial appointment. It is question of fact to be decided on the basis of evidence available.[38]

In *Air India Cabin Crew Association* v. *Union of India*,[39] where the appellant trade union submitted that those workmen who had been promoted to the Executive category would continue to be governed by the settlements arrived at when they were workmen and were represented by it.

It was observed by the Supreme Court that the position since the decisions rendered in *Nergesh Meerza*[40] case and in *Yeshaswinee Merchant*[41] case, underwent a change with the adoption of the revised promotion policy agreed to between the parties and which replaced all the earlier agreements. In our view, the management of Air India was always entitled to alter its policies with regard to their workmen, subject to consensus arrived at between the parties in suppression of all previous agreements. In our view, once an employee is placed in executive cadre, he ceases to be a workman and also ceases to be governed by settlements arrived at between the management and the workmen through the trade union concerned. It is not a question of an attempt made by such employees to wriggle out of the settlements which had been arrived at prior to their elevation to the executive cadre, which, by operation of law, cease to have any binding force on the employee so promoted by the management. Thus, all the appeals were dismissed.

Government Servants—Whether workmen?—It has been observed that the term regal from which the term sovereign functions appears to be derived, seems to be misfit in a republic where the citizens share the political sovereignty in which he has even a legal share, however, small in as much as he exercises the right to vote. What is meant by the use of the term "sovereign", in relation to the activities of the State, is more accurately brought out by using the term 'governmental' functions although there are difficulties inasmuch as the Government has entered largely now in fields of industry. Therefore, only those services which are governed by separate rules and constitutional provisions, such as Articles 310 and 311 should, strictly speaking be excluded from the sphere of industry by necessary implication. The public utility service which are carried out by governmental agencies or corporations are treated by this Act itself within the sphere of industry. The special excludes the applicability of the general. It cannot be forgotten that we have to determine the meaning of the term 'industry' in the context of and for the purposes of the matters provided for in the Industrial Disputes Act only.[42]

In *Bombay Telephone Canteen Employee's Association, Prabhadevi Telephone Exchange* v. *Union of India*,[43] where the petitioner-Association, representing five dismissed canteen

38. *Secretary, Indian Tea Association* v. *Ajit Kumar Barat*, 2000 SCC (L&S) 321 ; *State of Madras* v. *CP Sarathy*, AIR 1953 SC 53 & *Sultan Singh* v. *State of Haryana*, 1996 SCC (L&S) 751 relied on.
39. (2012) 1 SCC (L&S) 218.
40. *Air India* v. *Nergesh Meerza*, 1981 SCC (L&S) 599.
41. *Air India Cabin Crew Assn.* v. *Yeshaswanee Merchant*, 2003 SCC (L&S) 840, *Inderpreet Singh Kahlon* v. *State of Punjab*, (2007) SCC (L&S) 444 , relied on.
42. *Bangalore Water Supply Case*, AIR 1978 SC 548.
43. 1998 SCC (L & S) 386.

employees, had sought reference under Section 10 (1) of the Industrial Disputes Act, 1947 to the Tribunal. The dispute arose on account of termination of services of the said employees by the Respondent-Management. The claim of the petitioner is that the dismissed employees had joined service in 1987. They are claiming wages as per direction of this court, *i.e.* as per the Fourth Pay Commission's Recommendations. Since they were insisting upon payment of the wages, it is alleged, the services of five employees were terminated without giving any notice of giving any retrenchment compensation as enjoined by Section 25-F of the Act. Therefore, they sought reinstatement into service with full back wages and with continuity of service. The respondents, on the other hand, contended that the employees working in the canteen are not 'workmen' within the definition of Section 2(s) of the Act nor is the respondent an 'industry' under Section 2(j) they are treated as holding civil posts in the Central Government. The provisions of Chapter V-B of the Act are inapplicable to them.

Relying upon the judgment of the Supreme Court in *Sub-Divisional Inspector of Post* v. *Theyyam Joseph*,[44] the tribunal had held departmental canteen is not an "industry". However on merits it has been held that termination of services of the five employees is bad in law. Calling the decision in question, this special leave petition has been directly filed under Article 136, contending that the ratio in *Theyyam Joseph's* case is contrary to the judgment of the Supreme Court in *Bangalore Water Supply and Sewerage Board* v. *A. Rajappa*.[45] The judgment, in *T. Joseph's* case therefore, is not correct in law. It is therefore contended that the ratio of the Constitution Bench judgment of seven judges in *Bangalore Water Supply's* case applies to the facts herein. The judgment in *T. Joseph's* case was rendered without reference to the former and hence the matter needs fresh examination.

The Supreme Court observed that this court is aware of the decision in *Bangalore Water Supply's* case. Therein, the employees of the appellant Board were fined for misconduct and the fine was recovered from them. They filed an application under Section 33-C (2) of the Act. The question was whether the Tribunal had jurisdiction under Section 33-C (2) of the Act? The High Court held it to be an industry and, therefore, the application was maintainable.

The special excludes the applicability of the general. Certain public utility services which are carried out by governmental agencies or corporations are treated by the Act itself as within the sphere of industry. If express rules under other enactments govern the relationship between the State as an employer and its servants as employees, it may be contended on the strength of such provisions that a particular set of employees are outside the scope of the Industrial Disputes Act.

The Supreme Court not only carefully considered the principles laid down in *Bangalore Water Supply's* case but entire case law[46] on the point concludingly remarked that it is, therefore, clear that there have been two streams of thinking simultaneously in the process of development to give protection to the employees of the Corporation.

44. 1996 SCC (L & S) 1012.
45. (1978) 3 SCR 207 : AIR 1978 SC 548.
46. *Air India Statutory Corpn.* v. *United Labour Union*, (1997) 9 SCC 377; *Physical Research Laboratory* v. *K.G. Sharma*, 1997 SCC (L & S) 1057; *Chief Conservator of Forests* v. *Jagannath Maruti Kondhare*, 1996 SCC (L & S) 500; *Delhi Transport Corpn.* v. *DTC Mazdoor Congress*, 1991 SCC (L & S) 1213; *Central Inland Water Transport Corpn. Ltd.* v. *B.N. Ganguly*, 1986 SCC (L & S) 429; *Ajay Hasia* v. *Khalid Mujib Sehravardi*, 1981 SCC (L & S) 258; *Managing Director UP Warehousing Corpn.* v. *N. Vajpayee*, 1980 SCC (L & S) 453; *R.D. Shetty* v. *International Air Port Authority of India*, (1979) 3 SCC 489; *Kesavananda Bharti Sripadagalvaru* v. *State of Kerala*, (1973) 4 SCC 225; *University of Delhi* v. *Ram Nath*, AIR 1963 SC 1873; *National Union of Commercial Employees* v. *M.R. Meher*, AIR 1962 SC 1080; *Corpn. of City of Nagpur* v. *Employees*, AIR 1960 SC 675; *State of Bombay* v. *Hospital Mazdoor Sabha*, AIR 1960 SC 610; *D.N. Banerji* v. *P.R. Mukherjee*, AIR 1953 SC 58 etc.

The Court would, therefore, strike a balance between the competing rights of the individual and the State/agency or instrumentality and decide the validity of action taken by the management. Necessarily, if the service conditions stand attracted, all the conditions laid therein would become applicable to the employees with a fixity of tenure and guarantee of service, subject to disciplinary action. His removal should be in accordance with the just and fair procedure envisaged under the rules or application of the principles of natural justice, as the case may be, in which event the security of tenure of the employee is assured and the whim and fancy and vagary of the employer would be deterred and if unfair and unjust action is found established it would be declared as an arbitrary, unjust or unfair procedure. On the other hand, if the finding is that there exist no statutory rules or certified standing orders exist or they are not either made or are inapplicable, the remedy of reference under Section 10 of the Act would always be available and availed of as it is an industry and the indicia laid in *Bangalore Water Supply Board* case gets attracted.

On an overall view, we hold that the employees working in the statutory canteen, in view of the admission made in the counter-affidavit that they are holding civil posts and are being paid monthly salary and are employees, the necessary conclusion would be that the Tribunal has no jurisdiction to adjudicate the dispute on a reference under Section 10 (1) of the Act. On the other hand, the remedy to approach the constitutional court under Article 226 is available. Equally, the remedy under Section 19 of the Administrative Tribunals Act is available. But, generally, the practice which has grown is to direct the citizen to avail of, in the first instance, the remedy under Article 226 or under Section 19 of the Administrative Tribunals Act and then avail of the right under Article 136 of the Constitution by special leave to this Court, etc. Thus, in view of the admission made by the respondents in their counter-affidavit that the workmen of the appellant-Association are holding civil posts and are being paid monthly wages and benefits and are considered to be employees, the jurisdiction of the Industrial Tribunal stands excluded. In that view, the finding of the Tribunal in the impugned Judgment is legal and warrants no interference. It is open to the respondents to avail of such remedy as is available to a regular employee including the right to approach the Central Administrative Tribunal or the High Court or this Court thereafter for redressal of legal injury. Thus the special leave petition was accordingly dismissed.

However the Government servants who do not enjoy the safeguards afforded by Articles 310 and 311 of the Constitution of India are workmen. A very recent case on the point is *Samishta Dube* v. *City Board, Etawah and another*,[47] where question for consideration before the Supreme Court was whether the typist/clerk appointed and working in the Administrative office of Nagar Mahapalika is a workman. The Supreme Court following the judgments in *Indian Iron and Steel Co. Ltd.* v. *Workmen*[48] *and Bihar SRTC* v. *State of Bihar*,[49] held that the appellant a typist clerk as such falls within the definition of "workman" in Section 2 (s) of the Act. It was further held that the Nagarpalika is an industry. The question whether a Government servant should also be a workman will have to be examined on the facts of each case.[50]

47. 1999 SCC (L & S) 592.
48. AIR 1958 SC 130.
49. AIR 1970 SC 1217 ; *Banglaore Water Supply* case, AIR 1978 SC 548 & *Corporation of City of Nagpur* v. *Employees*, AIR 1960 SC 675 also followed.
50. *Vikas Adhikari Panchayat Samiti* v. *Hiral Lal*, 2002 SCC (L&S) 92.

Thus the terms used in the Act are to be interpreted in the context and for the purposes of matters provided for in the Act. Thus the term 'workman' as contained in the Act does not include persons engaged by the government who are governed by the constitutional provisions or in other words it does not include civil servants who enjoy protection under Articles 310 and 311 of the Constitution of India.

Teachers—Whether workmen?—In *Venkataraman* v. *Labour Court*,[51] after due consideration of ruling available the High Court of Kerala held that the nature of work that a teacher does is the imparting of education which does not partake of the nature of work mentioned in Section 2 (s) of the Act, therefore the teachers engaged in the educational institutions whether professors, readers or lecturers are not workmen.

In *Miss A Sundarambal* v. *Govt. of Goa, Daman and Dieu and others*,[52] it has been held that educational institution is an industry in view of the decision in *Bangalore Water Supply and Sewerage Board* v. *A. Rajappa*. In order to be a workman a person must be employed in an industry for hire or reward in skilled or unskilled, manual, supervisory, technical or clerical work and such person should not be a person falling under any of the four exemption clauses. It has been further held that teachers employed by the educational institutions whether the said institutions are imparting primary, secondary, graduate or postgraduate education, cannot be called workmen. Imparting of education which is the main function of teachers cannot be considered as skilled or unskilled, manual work or supervisory work or technical work or clerical work. Imparting of education is in the nature of a mission or a noble vocation. A teacher educates children, he moulds their character, builds up their personality and makes them fit to become responsible citizens. We agree with the reasons given by the High Court for taking the view that teachers cannot be treated as workmen as defined under the Act. It is not possible to accept the suggestion that having regard to the object of the Act all employees in an industry except those falling under the four exceptions (i) to (iv) in Section 2 (s) of the Act should be treated as workmen. The Supreme Court held that the High Court was right in holding that the appellant was not a workman though the school was an industry, in view of the definition of workman as it now stands.

Canteen Employees—Whether workmen of the industrial establishment where-under the canteens are run as a welfare measure.

The employees of the canteens are undoubtedly the workmen of the canteens as there exist a master-servant relationship. However, some times the canteen employees pray for their absorptions by the establishment itself as its regular employees.

In *Indian Overseas Bank* v. *IOB Staff Canteen Workers Union and others*,[53] where three appeals before the Supreme Court related to a common grievance of a group of 33 canteen employees of Indian Overseas Bank Staff Canteen came for consideration. It was not disputed that with the closure of the canteen the workers engaged have been thrown out of employment and this resulted in an industrial dispute raised through the workers' Union. Their stand was that the Staff Canteen in question was really managed by the bank though the day-to-day affairs of the management was entrusted to the employees of the bank nominated by the recognised union of the bank, therefore, the canteen employees have to be treated as the employees of the bank and restored to work.

51. (1982) I LLJ 454 (Kerala); *Bangalore Water Supply Case*, AIR 1978 SC 548; *University of Delhi* v. *Ram Nath*, (1963) II LLJ 335.
52. (1989) I LLJ 61 SC.
53. 2000 SCC (L&S) 471.

The conciliation proceedings having failed the Government of India referred the dispute for adjudication by Industrial Tribunal, Chennai. The tribunal held that it was the bank who was running the canteen through managing committee which consisted of the employees of the Bank. Therefore, it was held that 33 employees of the canteen have to be treated as the workmen of the respondent Bank for giving them the same status, same facilities as are available to the Class IV employees of the Bank. It was also held that there had been violation of Section 25-O (6) of the Act, and the closure of the canteen shall be deemed to be illegal. The Division Bench in appeal set aside the order of the single Judge and restored the award of the Tribunal. Three appeals were filed against the order of the Division Bench.

The Supreme Court considered few pronouncements of this Court made in earlier decisions. The first in series is the decision in *MRR Khan* v. *Union of India*,[54] where the Court classified the canteens into three categories: (1) Statutory canteens which are required to be provided compulsorily in view of Section 46 of the Factories Act; (2) non-statutory recognised canteens—such of those which are established with the prior approval and recognition of the Railway Board as per procedure detailed in the Railway Establishment Manual; and (3) non-statutory non-recognised canteens—which are canteens established without prior approval or recognition of the Railway Board. Of the employees in statutory canteens and the non-statutory recognised canteens it was held that they were entitled to the status of railway employees. The third category of employees were held not entitled to claim the status of railway servants.

The Supreme Court then referred the decision in *Parimal Chandra Raha* v. *LIC of India*,[55] and highlighted the four principles. The Court also considered decision in *Employers of Reserve Bank of India* v. *Workmen*,[56] where it was held that in the absence of any statutory or other legal obligation and in the absence of any right in the Bank to supervise and control the work or details thereof in any manner regarding the canteen workers employed in the three types of canteens, it cannot be said that the relationship of master and servant existed between the Bank and the various persons employed in the three types of canteens. The demand for regularisation was held to be unsustainable.

In *Indian Petrochemicals Corpn. Ltd.* v. *Shramik Sena*,[57] the claim of workmen of a statutory canteen managed by a contractor fell for consideration and while explaining LIC case and following the decision in *MRR Khan* case and Reserve Bank case it was held that deemed employment of such workers is only for the purpose of the Factories Act, and not for all purposes, because the Factories Act, as such, does not govern the rights of employees with reference to recruitment, seniority, promotion, retirement benefits etc. which invariably and otherwise are governed by other statutes, rules, contracts or policies. Consequently it was observed, the contention of the workmen that the employees of a statutory canteen *ifso facto* became the employees of the establishment for all the purpose, cannot be accepted.

After considering its earlier decisions the Supreme Court in the present case (Indian Oversea Bank) observed that the standards and nature of tests to be applied for finding out the existence of master and servant relationship cannot be confined to or concretised into

54. 1990 SCC (L&S) 632.
55. 1995 SCC (L&S) 983 may be seen under the Factories Act, while discussing status of canteen workers with reference to section 46 of the said Act in the book.
56. 1996 SCC (L&S) 691.
57. 1999 SCC (L&S) 1138 explained and distinguished.

fixed formula(e) for universal application, in variably in all class and category of cases. That being the position, in order to safeguard the welfare of the workmen, the veil may have to be pierced to get at the realities. Therefore, it would be not only impossible but also not desirable to lay down abstract principles or rules to serve as a ready reckoner for all situations and thereby attempt to compartmentalise and peg them into any pigeonhole formula(e), to be insisted upon as proof of such relationship. It was held that the canteen services have to be necessarily provided throughout for the staff and the Bank can always utilise the services of the workers for the purpose and there is no justification to deny them of the hard-earned benefits of their service. Appeals were dismissed accordingly.

In *State Bank of India* v. *SBI Canteen Employees' Union*,[58] the Supreme Court held that the employees of the canteens which are run at various branches by the local Implementation Committees as per the welfare scheme framed by State Bank of India would not become employees of the Bank as the Bank is not having any statutory or contractual obligation or obligation arising under the award to run such canteens.

Domestic Servants—Whether workmen?

It has been held by the Supreme Court in *Som Vihar Apartment Owners' Housing Maintenance Society Ltd.*[59] that the rationale, which applies all along the line to small professions like that of domestic servants would apply to those who are engaged by a group of flatowners for rendering personal services even if that group is not amorphous but crystallised into an association or society. The employees of the society are therefore not workmen within the meaning of Section 2(s) of the Act.

In fact the definition of word 'workman" without causing the least violence to the language used is susceptible of only one meaning that every person employed in an industry irrespective of his status, temporary, permanent, or probationary would be a workman unless the person concerned comes within the exemptions contained therein.[60]

The Supreme Court has ruled in *Nirmal Singh* v. *State of Punjab and others*,[61] that where the Labour Commissioner declines to make a reference stating that employee is not a workman, he has to record reasons why he comes to the conclusion that the employee is not a workman within the meaning of Section 2(s) of the Act.

In *Anand Regional Coop. Oil Seedgrowers Union Ltd.* v. *Shailesh Kumar Harshadbhai Shah*,[62] the Court considered the ingredients of the definition of 'workman' and observed that supervision contemplates direction and control. A person indisputably carries on supervisory work if he has power of control or supervision in regard to recruitment, promotion, etc. the work involves exercise of tact and independence. Judging by the said standard, the first respondent who was working as Assistant Executive in the Quality

58. 2000 SCC (L&S) 714, *Reserve Bank of India* v. *Workmen*, 1996 SCC (L&S) 691 relied on. *MMR Khan* v. *Union of India*, 1990 SCC (L&S) 632 explained, *Parimal Chandra Raha* v. *LIC of India*, 1995 SCC (L&S) 983 distinguished.
59. 2002 SCC (L&S) 1099, *Bangalore Water Supply and Sewerage Board* v. *A Rajappa*, AIR 1978 SC 548- explained and relied.
60. *Hutchiah* v. *Karnataka State Road Transport Corporation*, (1983) I LLJ 30 (Karn.) .
61. (1984) II LLJ 396 (SC).
62. 2006 SCC (L&S) 1486 ; *Ananda Bazar Patrika (P) Ltd.* v. *Workmen*, (1970) 3 SCC 248 followed.; *North Eastern Karnataka R T. Corpn.* v. *Ashappa*, 2006 SCC (L&S) 942 ; *State of U.P.* v. *Sheo Shankar Lal Srivastava*, 2006 SCC (L&S) 521 ; *A Sudhakar* v. *Post Master General*, 2006 SCC (L&S) 817 ; *Mahindra and Mahindra Ltd.* v. *N.B. Narawade*, 2005 SCC (L&S) 361 ; *M.P. Electricity Board* v. *Jagdish Chandra Sharma*, 2005 SCC (L&S) 417 ; *Hombe Gowda Educational Trust* v. *State of Karnataka*, 2006 SC (L&S) 133 ; *Bharat Petroleum Corpn Ltd.* v. *T.K. Raju*, 2006 SCC (L&S) 480, relied on.

Control Department, did not come within the purview of exclusionary clause of the definition of 'workman'.

In this case there was allegations against the respondent that he has committed a misconduct. In disciplinary enquiry he was found guilty of the alleged misconduct clearly mentioning that he along with his other colleagues forcibly entered into the cabin of Mr. Shreedharni and misbehaved with him. Punishment of dismissal from service was imposed.

The Supreme Court observed that the Labour Court although has jurisdiction to consider the question in regard to the quantum of punishment but it had a limited role to play. It is now well settled that the industrial Courts do not interfere with the quantum of punishment unless there exist sufficient reasons therefor.

It was pointed out that there is however, another aspect of the matter which cannot be lost sight of. Identical allegations were made against seven persons. Management did not take serious note of misconduct committed by six others although they were similarly situated. They were allowed to take benefit of the voluntary retirement scheme. The first respondent might not have opted therefor. Having regard to the peculiar facts and circumstances of this case, he should be treated on a similar footing. The Supreme Court held that having regard to the overall situation, the interest of justice would be subserved if the award of the Labour Court as affirmed by the High Court is substituted by a direction that the first respondent shall also be given the benefit of voluntary retirement scheme from the month in which other workmen were given the benefit thereof and allowed the appeal accordingly.

In *National Small Industries Corpn. Ltd.* v. *V. Lakshminarayan*,[63] the Supreme Court considered the definition of 'workman' as contained in Section 2(s) and observed that workman includes an apprentice. However Section 18 of the Apprentices Act, 1961 defines that apprentices are trainees and not workers. The Court held that from the above, it will be seen that on the one hand while an apprentice is also treated to be workman for the purposes of the I.D. Act, 1947, by virtue of Section 18 of the 1961 Act, it has been categorically provided that apprentices are not workers and the provisions of any law with respect to labour shall not apply to or in relation to such apprentice. The Court clarified that the respondent's case was covered by the provisions of Section 18 of the 1961 Act and both the Labour Court as well as the High Court erred in proceeding on the basis that the respondent was a workman to whom the provisions of I.D. Act would be applicable. Thus the appeals were allowed setting aside the judgment of the High Court.

In *Muir Mills Unit of NTC (UP) Ltd.* v. *Swayam Prakash Srivastava*,[64] The Supreme Court distinguished between occupation and profession with reference to probation. It was observed that an occupation is a principal activity (job, work or calling) that earns money (regular wage or salary) for a person and a profession is an occupation that requires extensive training and the study and mastery of specialised knowledge and usually has a professional association, ethical code and process of certification or licensing. Classically, there were only three professions ; ministry, medicine and the law. These three professions each hold to a specific code of ethics and members are almost universally required to swear to some form of oath to uphold those ethics, therefore, professing to a higher standard of accountability. Each of these professions also provides and requires extensive training in the meaning, value and importance of its oath in the practice of that profession. A member of profession is termed a professional.

63. (2007) 1 SCC (L&S) 145.
64. (2007) 1 SCC (L&S) 312 ; *MPSEB* v. *Jarina Bee*, 2003 SCC (L&S) 833 followed.

In the instant case, the work of respondent-1 was to supervise the Court cases and whenever necessary to prepare draft reply to matters that were pending in the Court. The Court observed that respondent-1 was not a workman under the I.D. Act. It was stated before the Labour Court that the total emoluments drawn by respondent were totally in his supervisory capacity and he was designated as Legal Assistant in the Litigation Department of the mill and, therefore, the reference before the Labour Court is not maintainable.

It was held that the High Court failed to appreciate that the award of the Labour Court was perverse as it directed reinstatement with back wages of a probationer whose services had been discontinued upon completion of the probationary period on account of unsatisfactory work. In the instant case on the perusal of the appointment letter it is clear that no such notice under Section 6-N needs to be given to Respondent-1. The High Court failed to appreciate that the award itself had only granted reinstatement to Respondent-1 as a probationer giving the petitioner the right to take a decision on confirmation. Further the mill itself has been shut down now and given the lapse of 22 years, it was impermissible to reinstate Respondent-1 as a probationer.

In the result the appeal was allowed setting aside the award of the Labour Court and the orders of the High Court. However, it was made clear that salary paid to the respondent will not be recovered from the respondent.

In *C. Gupta* v. *Glaxo-Smithkline Pharmaceutical Ltd.*,[65] where the company appointed to the appellant as Industrial Relations Executive. The letter of appointment mentioned that the appellant would be a member of the Management Staff in Grade II-A. The appellant joined the services of the company. Later the appellant's services were terminated on the ground that the services were no longer required.

Ultimately, the claim of the appellant was allowed by the Labour Court and he was directed to be reinstated in service with continuity of service. The award was challenged by both the parties by filing writ petitions. It was submitted that the petitioner must be said to be employed to do technical work within the meaning of Part I of Section 2 (s) as he was a qualified legal person and his duty was to advise the company which required knowledge of law. The Act was amended in 1984 delinking the words "skilled" and "unskilled" from the word "manual" and by adding the word "operational".

Ultimately the matter was brought before the Supreme Court for decision challenging the order and the judgment of the High Court of Bombay.

The Supreme Court observed that the Amendment would touch upon their substantive rights. Unless there is a clear provision to the effect that it is retrospective or such retrospectivity can be implied by necessary implication, it must be held to be prospective. There is no such provision to that effect. The Court pointed out that entirely new category of persons who are doing operational work was introduced for the first time in the definition and the words 'skilled' and 'unskilled' were made independent categories unlinked to the word 'manual'. The said amendment was brought into force on 21.8.1984.

It was observed that when the workman is dismissed, it is usually contended (as in the instant case) that the relevant conditions precedent for retrenchment under Section 25-N having not been followed and that, therefore, the termination was illegal. Section 25-Q lays

65. (2007) 2 SCC (L&S) 605 ; *Sonepat Coop. Sugar Mills Ltd.* v. *Ajit Singh*, 2005 SCC (L&S) 387 ; *Muir Mills Unit of NTC (UP)* v. *Swayam Prakash Srivastava*, (2007) 1 SCC (L&S) 313, followed.

down that contravention of the provision of Section 25-N shall be punishable with imprisonment for a terms which may extend to one month or with fine which may extend to Rs. 1000 or with both. It is, therefore, clear that on the date of dismissal, the employer must act according to then prevailing provision of law. It is only in respect of a workman who is then within the definition of Section 2 (s) of the Act the employer is required to follow the condition mentioned in Section 25-N, failing which, he will commit an offence. If the employee so dismissed, later, becomes a person who is a workman within the expanded definition of 'workman' brought about by a subsequent amendment held to be retrospective nature, the employer will be rendered punishable for an offence under Section 25-N and Section 25-Q as this amount to the employer being punishable for an offence, which he could not have envisaged on the date of dismissal. This would be violative of Article 20(1) of the Constitution.

The Supreme Court held that in view of aforesaid factual position, the order of the Single Judge and the judgment of the Division Bench do not suffer from any infirmity to warrant interference and dismissed the appeals accordingly.

In *Ganga Kisan Sahkari Chini Mills Ltd.* v. *Jai Veer Singh*,[66] it was observed by the Supreme Court that it was accepted that the workmen belonged to the seasonal category. In the claim petition and pleadings it was urged that they were permanent workmen. The High Court noted that the workmen were not permanent employees. The Labour Court found that the workmen were appointed on seasonal posts but held that the workmen are entitled to be reinstated. Above being the position, the Supreme Court set aside the orders of the Labour Court and the High Court and allowed the appeal.

In *Divisional Manager, New India Assurance Co. Ltd.* v. *A. Sankaralingam*,[67] where respondent writ-petitioner was appointed as a sweeper-cum-water carrier in the office of the appellant on a monthly wage of Rs. 130. He made a request that his services be regularised but he was informed orally that his services were no more required. On reference the Industrial Tribunal held that he was not a workman within the meaning of Section 2 (s) as he had worked only as a part-time employee and that too on an *adhoc* basis. The workman challenged the award and the High Court quashed the award and directed the reinstatement with full back wages on the ground that the procedure for retrenchment under Section 25-F has not been complied with. The judgment of the High Court was challenged before the Supreme Court.

The Supreme Court considered the definition of "workman" as contained in Section 2 (s) and the definition of "continuous service" as contained in Section 25-B of the Industrial Disputes Act and held that bare perusal of the two definitions would reveal that their applicability is not limited to only full-time employees but all that is required is that workman claiming continuous service must fulfil the specific conditions amongst others laid down in the two provisions so as to seek the shelter of Section 25-F. The workman employed on part-time basis but under the control and supervision of an employer is a workman in terms of Section 2 (s) of the Act, and is entitled to claim protection of Section 25-F thereof. The fact that the workman was working under the control and supervision of the appellant is admitted on all sides. The preponderance of judicial opinion is that a workman working even on a part-time basis would be entitled to the benefits of

66. (2007) 2 SCC (L&S) 781 ; *Batala Coop. Sugar Mls Ltd.* v. *Sowaran Singh*, 2006 SCC (L&S) 11 ; *Morinda Coop. Sugar Mills Ltd.* v. *Ram Kishan*, 1995 SCC (L&S) 1279, applied.
67. (2009) 1 SCC (L&S) 55 ; *Silver Jubilee Tailoring House* v. *Chief Inspector of Shops and Establishments*, 1974 SC (L&S) 31 relied on.

Section 25-F. The Supreme Court held that the view of the High Court was correct. The appeal for the aforesaid reasons was dismissed accordingly.

Whether or not a person is a workman is a matter that relates primilarly to facts and circumstances of each case. The same has nothing to do with the application and interpretation of the Standing Orders. What needs to be examined and looked into for deciding the aforesaid issue is the nature of job performed by the person concerned, duties and responsibilities vested in him and other such relevant material.[68]

In view of the above discussion it may be observed that in order to give the status of workman to a person the following requirements must be fulfilled :—

(1) The person must be employed to do work in any industry.

(2) He must be employed to do any skilled or unskilled, manual, supervisory, technical, operational or clerical work.

(3) The person in question must be employed for hire or reward.

(4) If the person does some supervisory work he must not be drawing wages exceeding [69][ten thousand rupees] per month.

(5) There must be relationship of employer and employee or master and servant.

(6) The establishment where he is employed must be an industry within the meaning of Section 2(j) of the Act.

(7) There must be contract of service. However the terms of employment may be expressed or implied.

(8) The term 'workman' as contained in the Act includes an apprentice and for purposes of any proceedings under Industrial Disputes 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.

(9) He must not be expressly excluded by the terms of definition or must not fall in the excluded categories.

If the above conditions are fulfilled a person may be said to be workman within the measning of Section 2 (s).

Effect of delay in raising dispute

There is a significant question as to whether there is any time limit within which an industrial dispute must be raised. It would be pertinent to discuss case law on the point.

In *Mahavir Singh* v. *UP State Electricity Board*,[70] where the services of the appellant chowkidar were terminated on 12-11-1976 and he raised an industrial dispute though belatedly in March 1983. Ultimately the reference was made on 17-4-1984.

The Supreme Court observed that the dispute lingered on for a number of years. That would not mean that the dispute has ceased to exist. It is, of course true that belatedly the dispute was raised but that has been taken care of by the Labour Court by not awarding full back wages but only 50% of the back wages all throughout from the date of termination

68. *Triveni Engineering and Industries Ltd.* v. *Jaswant Singh*, (2010) 2 SCC (L&S) 736.
69. Subs. for "one thousand six hundred rupees" by Act 24 of 2010 (w.e.f. 15.9.2010).
70. 1999 SCC (L&S) 945.

till reinstatement. Such order passed by the Labour Court could not be said to be in any way uncalled for and illegal. Consequently the order of the High Court was set aside and the order of the Labour Court restored and the appeal was allowed. As the appellant was reinstated already in view of the order of the Labour Court the Supreme Court directed payment of back wages accordingly.

An extra-ordinary delay may cause rejection of reference. In *Assistant Executive Engineer* v. *Shialinga*,[71] the services of the respondent were terminated on 25-5-1985 and he approached the labour officer on 17-3-1995 and thereafter reference was made to the Labour Court. The Labour Court noticed that there was a delay of nine years and that it would be impossible to maintain records for such a long period and place them before the Labour Court and on that ground the reference was rejected.

In appeal before the Supreme Court the counsel for the appellant relied strongly on the reasoning of the Labour Court. However, the counsel for the respondent relied upon two decisions of the Supreme Court in *Ajaib Singh* v. *Sirhind Cooperative Marketing cum Processing Service Society Ltd.*[72] and *Sapan Kumar Pandit* v. *UPSEB*,[73] to contend that there is no period of limitation prescribed under the Industrial Disputes Act, to raise the dispute. The Supreme Court observed that the decisions relied upon by the learned counsel have no application to this case. The order of the Labour Court was restored and the order of the High Court was set aside. The appeal was allowed accordingly.

It is settled law that the mere factum of delay in raising a dispute by itself does not bring the dispute to an end. The delay in raising dispute, however, may be taken into account in the matter of grant of relief.[74]

In *Chief Engineer, Ranjit Sagar Dam* v. *Sham La,l*,[75] where the respondent alleged to have joined in November 1980 whereas according to the appellant he joined in August, 1989. Demand for making reference was made on 15.12.1999 after a long period of 9 years.

After noticing the ratio of the cases considered the Supreme Court held that so far as delay in seeking reference is concerned, no formula of universal application can be laid down. In *Nedungadi Bank Ltd.* v. *K.P. Madhavankutty* it was noted that law does not prescribe any time limit for the appropriate Government to exercise its power under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner.

The Supreme Court held that above being the position, the impugned judgment of the High Court was indefensible and was set aside. It was made clear that if the respondent had been reinstated pursuant to the order of the Labour Court or the High Court, salary and other emoluments paid to him would not be recovered and the appeal was thus allowed accordingly.

71. 2003 SCC (L&S) 87.
72. 1999 SCC (L&S) 1054.
73. 2001 SCC (L&S) 946.
74. *G.M. Haryana Roadways* v. *Pawan Kumar*, 2006 SCC (L&S) 702.
75. 2006 SCC (L&S) 1617 ; *ONGC Ltd.* v. *Shyamal Chandra Bhowmik*, 2006 SCC (L&S) 113 ; *Sudamdih Colliery of Bharat Coking Coal Ltd. v. Workmen*, 2006 SCC (L&S) 306 followed; *Nedungadi Bank Ltd.* v. *K.P. Madhavankutty*, 2000 SCC (L&S) 283 considered ; *In Asstt. Engineer, CAD, Kota* v. *Dhankunwar*, 2006 SCC (L&S) 1142, Supreme Court held no formula of universal application can be laid down.

In *State of Karnataka* v. *Ravi Kumar*,[76] where the respondent did not choose to challenge the termination for 14 years. Merely because some other daily wagers had got some relief he belatedly approached the High Court in 1998. The writ petition was dismissed. The Supreme Court held that as the reference was stale, it ought to have been rejected on that ground alone. The Supreme Court has repeatedly held that stale claims should not be referred.

The Supreme Court allowed the appeal setting aside the order of the High Court and restoring the order of dismissal passed by the Labour Court, though on different grounds.

In *Technical Teachers Training Institute* v. *C. Balasubramaniam*,[77] the respondent raised industrial dispute after a period of twelve years from the date of his removal from service and seven years after the Division Bench of the High Court passed the order dismissing his writ appeal. The said order passed by the Division Bench has attained finality, that having not been challenged any further.

The Supreme Court held that it is well settled that the decision inter parties which has become final binds the parties. The respondent cannot be permitted to reopen the case again questioning the very validity of his removal from service or for that matter question the quantum of punishment. Merely because the Tamil Nadu amendment to Section 2-A of the Act came into force on 1.11.1988, it was not open to the respondent to approach the Labour Court for raising an industrial dispute. Thus viewed from any angle, the appeals are entitled to succeed.

It has been observed by the Supreme Court in *U.P. State Road Transport Corporation* v. *Ram Singh and another)*[78] that the Court has in several decisions held that while delay cannot by itself be sufficient reason to reject an industrial dispute, nevertheless the delay cannot be unreasonable. The Court ruled in the present case the delay of 13 years is unreasonable. The last representation was made in 1983 and the industrial dispute was admittedly raised in 1986. The lack of diligence on the part of the respondent is apparent.

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76. (2010) 1 SCC (L&S) 295 ; *Nedungadi Bank Ltd.* v. *K.P. Madhavankutty*, 2000 SCC (L&S) 283 ; *Executive Engineer* v. *Shivallinga*, 2003 SCC (L&S) 87; *Regional P.F. Commissioner* v. *K.T. Rolling Mills (P) Ltd.*, 1995 SCC (L&S) 272, relied upon.
77. (2010) 1 SCC (L&S) 762.
78. (2010) 1 SCC (L&S) 934.