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RECOGNITION OF TRADE UNIONS

THE REGISTRATION OF TRADE UNIONS

THE INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1946

INDUSTRIAL DISPUTES ACT, 1947

CHAPTER-I
PRELIMINARY

CHARACTER OF INSTITUTIONS CARRYING ON COMPLEX ACTIVITIES

CHAPTER II
STRIKE AND LOCKOUT

under this Act. It is further provided that no court shall take cognizance of any offence under this Act, unless complaint thereof has been made by or with the previous sanction of the Registrar, or in the case of an offence under Section 32 of the Act, by the person to whom the copy was given, within six months of the date on which the offence is alleged to have been committed.[44]

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44. Ibid, Section 33.

THE INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1946

Historical background.—The absence of Standing Orders in Industrial establishments was one of the most frequent causes of friction between management and workers in industrial undertakings in India, and discussions on the subject in the Tripartite Labour Conferences in 1943, 1944 and 1945 revealed consensus of opinion in favour of a separate enactment making it obligatory on the part of the employers in large industrial undertakings in the country to frame and enforce with the approval of Government, standing orders defining precisely the conditions of employment under them. The result was the enactment in 1946 of the Industrial Employment (Standing Orders) Act.[1]

In the days of *laissez faire* when industrial relation was governed by the harsh weighted law of hire and fire, the management was the supreme master, the relationship being referable to contract between unequals and the action of the management treated almost sacrosanct. The developing notions of social justice and expanding horizon of socio-economic justice necessitated statutory protection to the unequal partner in the industry, namely, those who invest blood and flesh against those who bring in capital. Moving from the days when whim of the employer was supreme lax, the Act took a modest step to compel by statute the employer to prescribe the minimum conditions of the service subject to which employment is given. The act was enacted, as its long title shows, to require employer in industrial establishments to define with sufficient precision the conditions of employment under them and to make the said conditions known to workmen employed by them. The movement was from status to contract, the contract being not left to be negotiated by two unequal persons but statutorily imposed. If this socially beneficial Act was enacted for ameliorating conditions of the weaker partner, conditions of service prescribed thereunder must receive such interpretation as to advance the intendment underlying the Act and defeat the mischief.

No canon of construction of a statute is more firmly established than this that the purpose of interpretation is to give effect to the intention underlying the statute and therefore unless the grammatical construction leads to an absurdity, it is safe to give words their natural meaning because the framer is presumed to use the language which conveys the intention. If two constructions are possible, it is equally well established that construction which advances the intention of legislature, remedies the mischief to thwart with which it is enacted, be accepted.[2]

It has been observed by the Allahabad High Court that the contention that the purpose of the Act was to provide for the laying down of the conditions of employment with sufficient prescription and not to lay down the conditions themselves cannot be accepted. It was expedient to define the conditions of employment and to make the said conditions known to workmen and that is why this Act was enacted. This expression "with sufficient precision" between the words "define" and "conditions" may lead to supposition that the greater emphasis was laid on precision than on the conditions. But precision of expression

1. G.M. Kothari, Loc. cit. pp. 617-618.
2. *Glaxo Laboratories (I) Ltd.* v. *Labour Court*, (1984) I LLJ 16.

alone could not have been the subject-matter of an enactment. The enactment must be with reference to the conditions of employment. Of course it is always desirable that such conditions be formally laid down and expressed with as great precision as possible. It was to emphasise this aspect that hits expression "with sufficient precision" was used in the preamble.[3]

It makes clear that the Act not only requires the employers to lay down conditions of service but also requires that the conditions of service must be clearly laid down so that there may not be any confusion or uncertainty in the minds of the workmen who are required to work in accordance therewith. It has been observed by the Supreme Court in *Management, Shahdera (Delhi) Saharanpur Light Railway Co. Ltd.* v. *S.S. Railway Workers Union*,[4] that the object of the Act is to require employers to define with certain conditions of service in their establishment and to reduce them to writing and to get them compulsorily certified, in order to avoid unnecessary industrial disputes.

In *Uptron India Ltd.* v. *Shammi Bhan and another*,[5] the Supreme Court very nicely explained the concept of employment in Industrial Law, clarified pointedly the applicability of general principles of law of contract and indicated as to how the process of transformation from contract to status has been functioning through various labour law enactments. The appex court observed that the concept of employment under Industrial law involves, like any other employment, three ingredients :

(i) management/industry/factory/employer, who emploees or to put it differently, engages the services of the workmen;

(ii) employee/workman, that is to say, a person who works for the employer for wages or monetary compensation, and

(iii) contract of employment or the agreement between the employer and the employee where under the employee/workman agrees to render services to the employer, in consideration of wages, subject to the supervisions and control of the employer.

The general principles of the Contract Act, 1872 applicable to an agreement between two persons having capacity to contract, are also applicable to a contract of industrial employment, but the relationship so created is partly contractual, in the sense that the agreement of service may give rise to mutual obligations, for example, the obligation of the employer to pay wages and the corresponding obligation of the workman to render services, and partly non-contractual, as the states have already, by legislation, prescribed positive obligations for the employer towards his workmen, as, for example, terms, conditions and obligations prescribed by the Payment of Wages Act, 1936; Industrial Employment (Standing Orders) Act, 1946; Minimum Wages Act, 1948; Payment of Bonus Act, 1965; Payment of Gratuity, 1972 etc.

Prior to the enactment of these laws, the situation, as it prevailed in many industrial establishments was that even terms and conditions of service were often not reduced to writing nor were they uniform in nature, though applicable to a set of similar employees. This position was wholly incompatible to the notions of social justice, inasmuch as there being no statutory protection available to the workmen, the contract of service was often so unilateral in character that it could be described as mere manifestation of subdued will

3. *Jiwan Mal and Co.* v. *Secretary, Kanpur Loha Mills*, AIR 1955 All 581.
4. AIR 1969 SC 513.
5. 1998 SCC (L&S) 1601; *D.J. Yadav* v. *J.M.A. Industrial Ltd.*, 1993 SCC (L&S) 723 relied on.

of the workmen to sustain their living at any cost. An agreement of this nature was an agreement between two unequals, namely, those who invested their labour and toil, flesh and blood, as against those who brought in capital. The necessary corollary of such an agreement was the generation of conflicts at various levels disturbing industrial peace and resulting necessarily in loss of production and sometimes even closure or lockout of the industrial establishment. In order to overcome this difficulty and achieve industrial harmony and peace, the Industrial Employment (Standing Others) Act, 1946 was enacted requiring the management to define, with sufficient precision and clarity, the conditions of employment under which the workmen were working in their establishments. The underlying object of the Act was to introduce uniformity in conditions of employment of workmen discharging similar functions in the same industrial establishment under the same management and to make those terms and conditions widely known to all the workmen before they could be asked to express their willingness to accept the employment.

The Act also aimed at achieving a transition from mere contract between unequals to the conferment of "status" on workmen through conditions statutorily imposed upon the employer by requiring every industrial establishment to frame "Standing Orders" in respect of matters enumerated in the Schedule appended to the Act. The Standing Orders so made are to be submitted to the Certifying Officer who is required to make an enquiry whether they have been framed in accordance with the Act and on being satisfied that they are in consonance with the provisions of the Act, to certify them. Once the standing orders are so certified, they become binding upon both the parties, namely, the employer and the employees. The Certified Standing Orders are also required to be published in the manner indicated by the Act which also sets out the Model Standing Orders. Originally, the jurisdiction of the certifying officer was limited to examining the Draft Standing Orders and comparing them with the Model Standing Orders. But in 1956, the Act was radically amended and Section 4 gave jurisdiction to the Certifying Officer, as also the appellate authority, to adjudicate and decide the questions, if raised, relating to the fairness or reasonableness of any provision of Standing Orders.

In the present case in pursuance of the above powers, the petitioner framed its own standing orders which had been duly certified. The Clause 17(g) of the certified Standing Orders, which constitutes the bone of contention between the parties is quoted below :

> "The service of a workman are liable to automatic termination if he overstays on leave without permission for more than seven days. In case of sickness, the medical certificate must be submitted within a week".

It was in pursuance of the above provision that the services of the respondent were terminated by the petitioner by observing in its letter dated 12.4.1985, as under:

> "The services of Mrs. Shammi Bhan, Token No. 158, Operator ceased automatically from Uptron Capacitors, Ltd., Lucknow with immediate effect, in accordance with clause 17(g) of the Certified Standing Orders of Uptron Capacitors Limited."

Respondent I, admittedly was a permanent employee. The Supreme Court held that conferment of "permanent" status of an employee guarantees security of tenure. It is not well settled that the services of a permanent employee, whether employed by the Government, or government company or government instrumentality or statutory corporations or any other "authority" within the meaning of Article 12 of the Constitution of India cannot be terminated abruptly and arbitrarily, either by giving him a month's or

three month's notice or pay in lieu thereof or even without notice, notwithstanding that there may be a stipulation to that effect either in the contract of service or in the certified Standing Orders. It will also be significant to note that in the instant case the High Court did not hold that clause (g) was *ultra vires* but it did hold that the action taken against the respondent to whom an opportunity of hearing was not given was bad.

In view of the above the Supreme Court expressing the positive opinion held that any clause in the Certified Standing Orders providing for automatic termination of service of a permanent employee, not directly related to "production" in a factory or industrial establishment, would be bad if it does not purport to provide an opportunity of hearing to the employee whose services are treated to have come to an end automatically. For the reasons stated above the petition was dismissed at the SLP stage.

The Supreme Court in *Bharat Petroleum Corporation Ltd.* v. *Maharashtra General Kamgar Union and others,*[6] expanding the object of the Act observed that the Act was made by Parliament to require employers of all industrial establishments to define formally the conditions of employment on which the workmen would be engaged as pointed out by this Court in *Salem Erode Electricity Distribution Co. (P) Ltd.* v. *Employees' Union,*[7] followed by its other decision in *Glaxo Laboratories (I) Ltd.* v. *Presiding Officer, Labour Court, Meerut.*[8] The object underlying this Act, which is a beneficient piece of legislation, is to introduce uniformity of terms and conditions of employment in respect of workmen belonging to the same category and discharging the same and similar work under the industrial establishment and to make the terms and conditions of industrial employees well settled and known to the employees before they accept the employment.

Beneficial piece of legislation has to be understood and construed in its proper perspective so as to advance the legislative intention underlying its enactment rather than abolish it. Assuming two views are possible, the one, which is in tune with the legislative intention and furthers the same, should be preferred to the one which would frustrate it.[9]

2. Short title, extent and application.—This Act may be called the Industrial Employment (Standing Orders) Act, 1946. It extends to whole of India. The Act has been extended to the State of Jammu and Kashmir.[10] It applies to every industrial establishment wherein one hundred or more workmen are employed, or were employed on any day of the preceding twelve months. However, the appropriate Government has been authorised to apply the provisions of this Act to any industrial establishment employing such number of persons less than one hundred as may be specified in the notification. But in such a case the appropriate Government is required to give notice of its intention so to do by the notification in the Official Gazette not less than two months before its actual date of application.

However nothing in this Act shall apply to—

(i) any industry to which the provisions of Chapter VII of the Bombay Industrial Relations Act, 1946 apply; or

(ii) any industrial establishment to which the provision of the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 apply :

6. 1999 SCC (L&S) 361.
7. AIR 1996 SC 808.
8. 1984 SCC (L&S) 42.
9. *B.D. Shetty and others* v. *CEAT Ltd. and another*, 2002 SCC (L & S) 131.
10. By Act (LI of 1970).

Provided that notwithstanding anything contained in the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961, the provisions of this Act shall apply to all Industrial establishments under the control of the Central Government.

In order to keep pace with the time and suit the modern conditions the Act has been amended from time to time. Several States have amended the Act in its application to their respective areas.

3. Definitions of important terms.—It has been provided under Section 2 that unless there is anything repugnant in the subject or context, in this Act—

(a) "Appellate Authority" means an authority appointed by the appropriate Government by notification in the Official Gazette to exercise in such area as may be specified in the notification the functions of an appellate authority under this Act :

Provided that in relation to an appeal pending before an Industrial Court or other authority immediately before the commencement of the Industrial Employment (Standing Orders) Amendment Act, 1963, that Court or authority shall be deemed to be appellate authority.

(b) "Appropriate Government.—It means in respect of industrial establishments under the control of the Central Government or a Railway Administration or in a major port, mine or oil-field, the Central Government, and in all other cases, the State Government :

[11][Provided that where any question arises as to whether any industrial establishment is under the control of the Central Government, that Government may, either on a reference made to it by employer or the workmen or a trade union or other representative body of the workmen, or in its own motion and after giving the parties an opportunity of being heard, decide the question and such decision shall be final and binding on the Parties].

(c) Certifying Officer.—It means a Labour Commissioner or a Regional Labour Commissioner, and includes any other officer appointed by the appropriate Government, by notification in the Official Gazette to perform all or any of the functions of a Certifying Officer under this Act.

(d) Employer.—Section 2(d) defines employer to mean the owner of an industrial establishment to which this Act for the time being applies, and includes—

(i) in a factory, any person named under clause (f) of sub-section (1) of Section 7 of the Factories Act, 1948, as manager of the factory;

(ii) in any industrial establishment under the control of any department of any Government in India, the authority appointed by such Government in this behalf or where no authority is so appointed the head of the department;

(iii) in any other industrial establishment, any person responsible to the owner for the supervisions and control of the industrial establishment.

(e) Industrial Establishment.—It has been defined under Section 2(e) to mean—

(i) an industrial establishment as defined in clause (ii) of Section 2 of the Payment of Wages Act, 1936 (IV of 1936), or

(ii) a factory as defined in clause (m) of Section 2 of the Factories Act, 1948, or

11. The Proviso to Cl. (b) inserted by Act 18 of 1982, Vide Sec. 2.

(iii) a railways as defined in clause (4) of Section 2 of the Indian Railways Act, 1890 (IX of 1890), or

(iv) the establishment of a person who, for the purpose of fulfilling a contract with the owner of any industrial establishment, employs workmen.

The expression 'Industrial establishment' refers different enactments and indicates that industrial establishment means the premises which are subject to the provisions of enactments referred to therein.

(f) Prescribed.—It means prescribed by rules made by the appropriate Government under this Act.

(g) Standing Orders.— It means rules relating to matters set out in the schedule. The schedule specified following matters to be provided in Standing Orders under this Act—

1. Classification of workmen, *e.g.*, whether permanent, temporary, apprentices, probationers, or *badlis*. 2. Manner of intimating to workmen periods and hours of work, holidays, pay days and wage rates. 3. Shift working. 4. Attendance and late coming. 5. Conditions of procedure in applying for, and the authority which may grant, leave and holidays. 6. Requirement to enter premises by certain gates, and liability to search. 7. Closing and re-opening of sections of the industrial establishment and temporary stoppages of work and the rights and liabilities of the employer and workmen arising therefrom. 8. Termination of employment, and the notice thereof to be given by employer and workmen. 9. Suspension or dismissal for misconduct, and acts or omissions which constitute misconduct. 10. Means of redress for workmen against unfair treatment or wrongful exactions by the employer or his agents or servants. 11. Any other matter which may be prescribed.

In *U.P. State Sugar Corpn.* v. *B.K. Mishra*,[12] it has been held that since under the Act there is no requirement to frame standing orders in respect of transfer, the employer cannot be denied the normal right available to him to transfer an employee from one place to another. The employer cannot also be denied the right to frame rules and regulations relating to transfer of employees. However, this normal right can be curtailed by making a specific provision in the rules, regulations or statute.

(h) Trade Union.—It means a trade union for the time being registered under the Trade Unions Act, 1926.

(i) Workmen.[13]—Section 2(i) defines workmen to mean any person including an Apprentice employed in any industrial establishment to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed or implied, but does not include any such person—

(i) who is subject to the Army Act, 1950 (46 of 1950) or the Air Force Act, 1950 (45 of 1950) or the Navy Act, 1957; or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

12. 1994 I LLJ 1004 (All); See also *Sompal Singh* v. *Artificial Limbs Mfg. Corpn. of India*, 1995 I LLJ 81 (All).

13. Sub for the following original Col. (i) by Act, 18 of 1982, *Vide* Sec. 2 *(b)*.

(iv) who being employed in a supervisory capacity draws wages exceeding[14] (ten thousand rupees) per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

Section 2(v) has been substituted indicating that "wages" and "workmen" have the meaning respectively assigned to them in clauses (rr) and (s) of Section 2 of the Industrial Disputes Act, 1947. It would be, therefore, desirable to see the meaning and scope of these terms from the Industrial Disputes Act, 1947 explained in the book.

(1) Submission of draft Standing Orders.— Section 3 of the Act contains the following rules in regard to submission of draft standing orders :

(1) Within six months from the date on which this Act becomes applicable to an industrial establishment, the employer shall submit to the Certifying Officer five copies of the draft standing orders proposed by him for adoption in his industrial establishment.

(2) Provision shall be made in such draft for every matter set out in the Schedule which may be applicable to the industrial establishment and where model standing orders have been prescribed, shall be, so far as is practicable, in conformity with such model.

(3) The draft standing orders submitted under this section shall be accompanied by a statement giving prescribed particulars of the workmen employed in the industrial establishment including the name of the trade union, if any, to which they belong.

(4) Subject to such conditions as may be prescribed, a group of employers in similar industrial establishments may submit a joint draft of standing orders under this section.

(2) Conditions for certification of Standing Orders.—The standing orders are to be certified by the certifying officer under certain conditions. Section 4 of the Act lays down that Standing Orders shall be certifiable under this Act under the following conditions :—

(a) If provision is made therein for every matter set out in the schedule which is applicable to the Industrial Establishments; and

(b) If the standing orders are otherwise in conformity with the provisions of this Act and it shall be the function of the Certifying Officer or appellate authority to adjudicate upon the fairness or reasonableness of the provisions of any standing orders.

In *Shahadara Saharanpur Light Railway Co. Ltd.* v. *S.S. Railway Workers Union*,[15] where certain modifications were sought to be introduced in a standing order requiring a second show cause notice it was observed by the Supreme Court that as regards the modifications requiring a second show cause notice, neither the ordinary law of the land nor the industrial law require an employer to give such a notice. In none of the decisions given by the Courts or the Tribunals such a second show cause notice in the case of removal has ever been demanded or considered necessary. The only class of cases where such a notice has been held to be necessary are those arising under Article 311 of the Constitution of India. Even that has now been removed by the recent amendment of that article. Thus, it is not possible to consider this modification as justifiable either on the ground of reasonableness or fairness and should, therefore, be set aside.

14. Industrial Disputes (Amendment) Act, 2010 Section 2 (w.e.f. 15-9-2010). As the definition of "workman" has the meaning assigned to it in clause (s) of Section 2 of the Industrial Disputes Act, 1947, the relevant amendment made in this clause shall be applicable to definition of "workman" contained in Section 2 (i) of Industrial Employment (Standing Orders) Act, 1946.

15. (1969) I LLJ 734 SC.

Standing Order 27 (c). This not having been done in the instant case, the order of termination is obviously bad. Petition was allowed accordingly.

In *Air India* v. *Union of India and others*,[22] it was held by the Supreme Court that if subordinate legislation is to survive the repeal of its parent statute, the repealing statute must say so in so many words and by mentioning the title of the subordinate legislation. Section 8 of the 1994 Act does not in express terms save the said regulations, nor does it mention them. Section 8 only protects the remuneration, terms and conditions and rights and privileges of those who were in Air India's employment when the 1994 Act came into force. What is enacted in Section 8 does not cover those employees who jointed Air India's service after 1994 Act came into force. The limited saving enacted in Section 8 does not, extend to said Regulations. The said Regulations have ceased to be effective on 29-1-1994, thus the very foundation of Air India's case no longer exists. Thus the appeal was dismissed.

In *M.P. State Agro Industries Development Corpn. Ltd.* v. *S.C. Pandey*,[23] where the respondent was appointed on daily wages by the Branch Manager. His services were terminated by the Regional Manager on the ground that his services were no more required.

The Supreme Court observed that the question raised in this appeal is now covered by decision of this Court in *M.P. Housing Board* v. *Manoj Srivastava*[24] wherein this Court clearly opined that : (1) when the conditions of service are governed by two statutes; one relating to selection and appointment and other relating to the terms and conditions of service, an endeavour should be made to give effect to both of the statutes ; (2) a daily wager does not hold a post as he is not appointed in terms of the provisions of the Act and Rules framed thereunder and in that view of the matter he does not derive any legal right; (3) only because an employee had been working for more than 240 days that by itself would not confer any legal right upon him to be regularised in service ; (4) if an appointment has been made contrary to the provisions of the statute the same would be void the effect thereof would be that no legal right was derived by the employee by reason thereof.

The said decision applies on all fours to the facts of this case. In *Mahendra L. Jain* v. *Indore Development Authority*,[25] the Supreme Court has categorically held that the Standing Orders governing the terms and conditions of service must be read subject to the constitutional and statutory limitations for the purpose of appointment both as a permanent employee or as a temporary employee.

Such appointments in our opinion, having regard to the decisions in *Mahendra L. Jain* and *Manoj Srivastava* must be made in accordance with extent rules and regulations. It is also a well settled legal position that only because a temporary employee has completed 240 days of work, he would not be entitled to be regularised in service.

If an appointment made by the Branch Manager was wholly without jurisdiction, the order of appointment itself was void. In the instant case, he worked and completed 240 days of service. The termination of service without complying with the provisions of Section 25F of the ID Act was, thus illegal. However, the appellant cannot be made to suffer owing to a mistake on the part of the Court. Respondent cannot take advantage of a wrong order.

22. 1995 SCC (L&S) 1152 SC.
23. 2006 SCC (L&S) 434.
24. 2006 SCC (L&S) 422; *State of Punjab* v. *Jagdish Singh*, AIR 1964 SC 521 applied.
25. 2005 SCC (L&S) 154 ; *Dhampur Sugar Mills Ltd.* v. *Bhola Singh*, 2005 SCC (L&S) 292 followed.

The Supreme Court held that interest of justice would be subserved if, in place directing reinstatement of the services of the respondent, the appellant is directed to pay a sum of Rs. 10,000 by way of compensation to him, and the appeal was allowed with aforementioned direction and observations.

In *State of M.P.* v. *Onkar Prasad Patel*,[26] the respondent filed a petition under Section 31 (3) read with Section 61 of the M.P. Industrial Relations Act, 1960 for regularisation on the ground that he had rendered services for more than 6 months in a permanent post and was, therefore, entitled to be classified as a permanent employee with difference of salary and consequential benefits. The matter was brought before the Supreme Court in appeal.

The Supreme Court held that in view of clear definition of a "permanent employee" as given in the Standard Standing Order, the applicant workman cannot be categorised as a permanent employee even though he may have completed six month's satisfactory service. The other requirement that the service was rendered in a clear vacancy in one or more posts was not established. The conditions are cumulative and are not independent of each other. That being the position, the Labour Court, the Industrial Court and the High Court were not justified in directing that the respondent workman was to be categorised as a permanent employee. That apart of the direction is set aside. The appeal was allowed accordingly.

(4) Appeals.—It sometime happens that one of the parties does not feel the order of the certifying Officer just and proper, such a party has power to appeal against the order of the Certifying Officer. Section 6 contains the following provision in respect of appeals.

(1) [27][Any Employer, Workman, Trade Union or other Prescribed representatives of the workmen] aggrieved by the order of the Certifying Officer under sub-section (2) of Section 5 may within thirty days from the date on which copies are sent under sub-section (3) of that section, appeal to the appellate authority, and the appellate authority, whose decision shall be final, shall by order in writing confirm the standing orders either in the form certified by the Certifying Officer, or after amending the said standing orders by making such modification thereof or additions there to as it thinks necessary to render the standing orders certifiable under this Act.

(2) The appellate authority shall within seven days of its order under sub-section (1),send copies thereof to the Certifying Officer, to the employer and to the trade union or other prescribed representatives of the workmen, accompanied, unless it has confirmed without amendment the standing orders as certified by the Certifying Officer, by copies of the standing orders as certified by it and authenticated in the prescribed manner.

In *B.H.E.L. Employees* v. *Chief Labour Commissioner*,[28] it was held that the appeal papers sent on 4th Feb, 1985 in the ordinary course of post should have reached the Central Labour Commissioner on or before 7th Feb, 1985. The petitioner cannot be held responsible for any delay caused in transit when it has used sufficient care to see that the papers were mailed in time so that they could reach the appellate authority in ordinary course of post. Hence the person filing the appeal can take the benefit of Section 27 of the General Clauses Act. Hence the appeal is not time barred and the appellate authority is directed to take the appeal on his file and dispose of the same on merits.

26. 2006 SCC (L&S) 501.
27. Subs for words 'any person' by Act, 18 of 1982 w.e.f. 17.5.1982.
28. (1986) II LLJ 260 Karn.

In *Kerala Agro Machinery Corpn Ltd.* v. *Industrial Tribunal and others*,[29] it was held by the High Court of Kerala that the appellate authority has right to dispose of that appeal by an order which shall be final. The power of the appellate authority is contained in the second part of clause (1) of Section 6. That power is to confirm the standing order either in the form certified by the officer or by amending the same by making such modification or additions as it thinks necessary to render the order certifiable under the Act. The appellate authority can exercise only those powers conferred on it by the said provision. As per that section the appellate authority can confirm the order or modify it has no power to cancel the standing orders that are appealed against. In other words, the appellate authority has no jurisdiction to set aside the order passed by the certifying officer.

In *Bharat Petroleum Corpn. Ltd.* v. *Maharashtra General Kamgar Union and others*,[30] where the appellant submitted draft standing orders to certifying officer for certification which were intended to be applicable to the marketing division, Western Region, including its head office, at Bombay. On receipt of the draft standing orders, the certifying officer, issued notices to various employees unions and after following the statutory procedure and after giving the parties an opportunity of hearing, certified the draft standing orders on October 14, 1991 by an order passed under Section 5 of the Act. The Draft Standing Orders, as submitted by the appellant, were not certified in their entirety but were modified in various respects.

One of the clause of the Draft Standing Orders, which was not certified by the Certifying Officer, related to the representation of an employee in the disciplinary proceedings.

Ultimately the matter came before the Supreme Court where the question was whether an employee against whom disciplinary proceedings have been initiated, can claim to be represented, by a person, who, though, is a member of the trade union but is not an employee of the appellant.

It was contended by the appellant that the Model Standing Orders, framed by the Central Government under the Industrial Employment (Standing Orders) Central Rules, 1946 can operate only during the period of time when the standing orders are not made by the establishment itself. If and when those standing orders are made they have to be compulsorily made in terms of the Act and they have to be submitted to the certifying officer and if they are certified, they take effect from the date of their notification and effectively replace the Model Standing Orders. The order of the certifying officer is appealable before the appellate authority and the appellate authority can legally interfere with the order passed by the certifying officer and set it aside or uphold. There is no restriction under the Act that the Management or the Establishment, or, for that matter, the employer would, adopt the Model Standing Orders. It was also contended that the standing orders have only to be in consonance with the Model Standing Orders beside being fair and reasonable.

The Supreme Court considered the aims and objects of the Act, provisions of Section 12-A dealing with Temporary application of Model Standing Orders, procedure for certification of standing orders set out in Section 5, provision of Section 6 regarding appeals, provisions of Section 7 dealing with date of operation of standing orders or amendments and Section 10 dealing with duration and modification of standing orders, and earlier decisions of its own and observed that we have seriously perused the judgment of

29. (1988) II LLJ 18 Kerala.
30. (1999) I LLJ 352 SC.

the High Court, which curiously, has treated the decision of this Court in *Crescent Dyes and Chemicals Ltd.* v. *Ram Naresh Tripathi*,[31] as a decision in favour of respondent No. 1. The process of reasoning by which this decision has been held to be in favour of respondent No. 1 for coming to the conclusion that he had a right to be represented by a person who, though an office-bearer of the trade union, was not an employee of the appellant is absolutely incorrect and we are not prepared to subscribe to this view. Consequently, we are of the opinion that the judgment passed by the High Court in so far as it purports to quash the order of the Appellate authority, by which the Draft Standing Orders were certified, cannot be sustained.

Concluding the Supreme Court held that the Model Standing Orders, no doubt, provided that a delinquent employee could be represented in the disciplinary proceedings through another employee who may not be the employee of the parent establishment to which the delinquent belongs and may be an employee elsewhere, though he may be a member of the Trade Union, but this rule of representation has not been disturbed by the certified standing orders, inasmuch as it still provides that the delinquent employee can be represented in the disciplinary proceedings through an employee. The only embargo is that the representative should be an employee of the parent establishment. The choice of the delinquent in selecting his representative is affected only to the extent that the representative has to be a co-employee of the same establishment in which the delinquent is employed. There appears to be some logic behind this as a co-employee would be fully aware of the conditions prevailing in the parent establishment, its service Rules, including the Standing Orders, and would be in a better position, than an outsider, to assist the delinquent in the domestic proceedings for a fair and early disposal. The basic features of the Model Standing Orders are thus retained and the right of representation in the disciplinary proceedings through another employee is not altered, affected or taken away. The standing orders conform to all standards of reasonableness and fairness and, therefore, the appellant authority was fully justified in certifying the draft standing orders as submitted by the appellant. The appeals were consequently allowed setting aside the order of the High Court.

(5) Date of operation of Standing Orders.—Section 7 of the Act provides that Standing Orders shall unless an appeal is preferred under Section 6, come into operation on the expiry of thirty days from the date on which authenticated copies thereof are sent under sub-section (3) of Section 5, or where an appeal as aforesaid is preferred, on the expiry of seven days from the date on which copies of the order of the appellate authority are sent under sub-section (2) of Section 6. The standing orders become mandatory provisions thereafter and must be followed if an industrial dispute arises.

In *Rajasthan State Road Transport Corporation and others* v. *Deen Dayal Sharma*,[32] it has been observed that the case of respondent as set up in the plaint is that in the absence of departmental enquiry as contemplated in the Standing Orders, the order of dismissal is bad

31. 1993 I LLJ 907 relied and clarified. *N. Kalindi* v. *Tata Locomotive and Engineering Co. Ltd.*, AIR 1960 SC 914 relied on; *Dunlop Rubber Co. (India) Ltd.* v. *Workmen*, AIR 1965 SC 1392 relied on; *Brook Bond India (P) Ltd.* v. *Subbaraman*, 1961 II LLJ 417 SC referred to *Salem Erode Electricity Distribution Co. (P) Ltd.* v. *Employees Union*, 1966 I LLJ 443 SC relied on *Glaxo Laboratories (I) Ltd.* v. *Presiding Officer, Labour Court, Meerut*, 1984 SCC (L&S) 42: 1984 I LLJ 16 relied on. *Sudhir Chandra Sarkar* v. *Tata Iron and Steel Co. Ltd. and other*, 1984 II LLJ 223 SC relied on *Agra Electric Supply Co. Ltd.* v. *Alladin*, 1969 II LLJ 540 SC relied on *Workmen* v. *Firestone Tyre and Rubber Co. of India (P) Ltd.*, 1973 I LLJ SC relied on.

32'. (2010) 2 SCC (L&S) 269.

in law. It is true that the respondent pleaded that he has been dismissed from service without affording any opportunity of defence and hearing and in breach of the principles of natural justice but the said plea has to be understood in the backdrop of his pleading that the dismissal order has been passed contrary to the Standing Orders without holding any departmental enquiry. The legal position that Standing Orders have no statutory force and are not in the nature of delegated/subordinate legislation is clearly stated in *Krishna Kant*[33] where the Supreme Court while summarising the legal principles stated that the certified Standing Orders framed under and in accordance with the Industrial Employment (Standing Orders) Act, 1946 are statutorily imposed conditions of service and are binding both upon the employers and the employee, though they do not amount to "statutory provisions" and any violation thereof entitles an employee to appropriate relief either before the forum created by the Industrial Disputes Act or the Civil Court where recourse to Civil Court is open according to principles indicated therein. In *Bal Mukund Bairwa*,[34] the position has been explained that if the infringement of the Standing Orders is alleged, the Civil Court's jurisdiction may be held to be barred but if the suit is based on the violation of principles of common law or constitutional provisions or on other grounds, the Civil Court's jurisdiction may not be held to be barred. In the instant case, the respondent who hardly served for three months, has asserted his right that the departmental enquiry as contemplated under the Standing Orders, ought to have been held before issuing the order of dismissal and in absence thereof such order was liable to be quashed. The Supreme Court ruled that such right, if available, could have been enforced by the respondent only by raising an industrial dispute and not in civil suit. In the circumstances, the Civil Court has no jurisdiction to entertain and try the suit filed by the respondent. In the result the appeal was allowed and the order of the High Court and the judgments of the Courts below were set aside.

(6) Register of Standing Orders.—Section 8 of the Act provides that copy of all standing orders as finally certified under this Act shall be filed by the Certifying Officer in a register in the prescribed form maintained for the purpose and the Certifying Officer shall furnish a copy thereof to any person applying therefor on payment of the prescribe fee.

(7) Posting of Standing Orders.—Section 9 of the Act requires that the text of Standing Orders as finally certified in accordance with the provisions of this Act be permanently posted by the employer in English and in the language understood by the majority of his workmen on special boards to be maintained for the purpose at or near the entrance through which the majority of the workmen enter the industrial establishment and in all departments thereof where the workmen, are employed.

(8) Duration and modification of Standing Orders.—Section 10 of the Act makes the following provisions in regard to duration and modification of standing orders :

(1) Standing orders finally certified under this Act shall not, except on agreement between the employer and the workmen [35][or a trade union or other representative body of the workmen] be liable to modification until the expiry of six months from the date on which the standing orders or the last modifications thereof came into operation.

(2) Subject to the provisions of sub-section (1), an employer or workmen may apply to the Certifying Officer to have the Standing Orders modified and such application shall be

33. *Rajasthan SRTC* v. *Krishna Kant*, 1995 SCC (L&S) 1207.
34. *Rajasthan SRTC* v. *Bal Mukund Bairwa*, (2) (2009) 1 SCC (L&S) 812 applied.
35. Inserted by Act 18 of 1982.

accompanied by five copies of the modifications proposed to be made, and where such modification are proposed to be made by agreement between the employer and the workmen, a certified copy of that agreement shall be filed along with the application.

(3) The foregoing provisions of this Act shall apply in respect of an application under sub-section (2) as they apply to the certification of the first standing orders.

(4) Nothing contained in sub-section (2) shall apply to an industrial establishment in respect of which the appropriate Government is the Government of the State of Gujarat or Government of the State of Maharashtra.

It has been observed by the Supreme Court in *Management Shahadara (Delhi) Saharanpur Light Railway Co. Ltd.* v. *S.S. Railway Workers Union*,[36] that the policy of Section 10 is clear that a modification should not be allowed within six months from the date when the standing orders or the last modifications thereof came into operation. The object of providing the time limit was that the standing orders or there modifications should be allowed to work for a sufficiently long time to see whether they work proper or not. Even that time limit is not rigid because a modification even before six months is permissible if there is an agreement between the parties.

An application for modification would ordinarily be made, where (1) a change of circumstances has occurred, or (2) where experience of the working of the standing orders last certified results inconveniences, hardship, anomaly etc., or (3) where some fact was lost sight of at the time of certification, or (4) where the applicant feels that a modification will be more beneficial. In category (1) there would be no difficulty as a change of circumstance has taken place. But in case falling under the rest of the categories there will be no change of circumstances. But that does not mean that though the implementation of standing orders has resulted in hardship, inconvenience of anomaly, no modification can be asked for because there is no change of circumstances. In an application for modification, the issue before the authority would be not as to the reasonableness or fairness of the standing orders or their last modification but whether the modification now applied for is fair and reasonable.

In *Indian Express Employees Union, Kaloor, Cochin* v. *Indian Express (Madurai) Ltd.*[37] where the petitioner, a registered trade union of the workmen of the first respondent company challenged a refusal by the certifying authority to delete Standing Order No. 16 of the respondent, certified on June 23, 1978. The standing order concerned stated that a workman was liable to be transferred inter-departmentally or to any branch or subsidiary concerns managed by the company. The authority declined to modify it on the grounds that the certified standing orders has been followed since 1978 without any complaint, that appointment orders contained transfer as a conditions of service, that Government of India issued amendment to the Rules which is applicable to whole of India, that the application was filed for deletion of the Certified Standing Order No. 16 and not for modification and that the authority had no jurisdiction under Section 10(2) of the Act to delete any standing order certified by the authority. The petitioner submitted that relying on the transfer clause contained in the standing orders indiscriminate transfers were being effected and it was in the above circumstances, the application was moved for modification of the standing orders under Section 10(2) of the Act. It was further contended that there is no time limit for seeking modification and modification can be applied for, at any time, when the conditions

36. AIR 1969 SC 513.
37. 1999 I LLJ 490 (Kerala).

contained in the standing orders become inconvenient or against the interest of any of the parties.

It was, however, contended by the first respondent that the petitioner-trade union is not recognised one, does not have the representative character.

The High Court of Kerala observed that under Section 10(2), an employer or workmen or trade union or other representative body of the workmen can apply for modification of the standing orders. This shows that applicant need not be trade union. It can either be a workman. That workmen need not be the sizable number of workmen. Trade Union can also be an applicant. It needs only be a trade union registered under the Trade Unions Act. The Act does not say that it shall have recognition or a representative character with substantial majority. The High Court held that standing order on transfer was not in conformity with the Act. The certifying officer has a special function of duty under Section 6 of the Act to see that the standing orders are in conformity with provisions of the Act and are fair. Apart from exercising power under Section 10, he can also modify the standing orders by reasons of the power conferred by Section 6 deleting that part of the certified standing orders which is not in conformity with the provisions of the Act. So it cannot be said that, as decided by the certifying officer, an application for deletion of a clause is not an application for modification or that he has no jurisdiction to delete any standing order. The court, thus for reasons stated above, directed the authority to consider application of the petitioner afresh after issuing notice to the parties and also to the other unions of workmen and any other representative bodies of the workmen of the first respondent.

(9) Payment of Subsistence Allowance.—In 1982 a new Section 10-A has been added to make a provision for subsistence allowance to suspended workmen. Section 10-A provides :

(1) Where any workman is suspended by the employer pending investigation or inquiry into complaints or charges of misconduct against him, the employer shall pay to such workman subsistence allowance—

(a) at the rate of fifty per cent of the wages which the workman was entitled to immediately preceding the date of such suspension, for the first ninety days of suspension, and

(b) at the rate of seventy-five percent of such wages for the remaining period of suspension if the delay in the completion of disciplinary proceedings against such workman is not directly attributable to the conduct of such workman.

(2) If any dispute arises regarding the subsistence allowance payable to a workman under sub-section (1) the workman or the employer concerned may refer the dispute to the Labour Court, constituted under the Industrial Disputes Act, 1947 (14 of 1947) within the local limits of whose jurisdiction the industrial establishment wherein such workman is employed is situate and the Labour Court to which the dispute is so referred shall, after giving the parties an opportunity of being heard, decide the dispute and such decision shall be final and binding on the parties.

(3) Notwithstanding anything contained in the foregoing provisions of this section, where provisions relating to payment of subsistence allowance under any other law for the time being in force in any State are more beneficial than the provisions of this section, the provisions of such other law shall be applicable to the payment of subsistence allowance in that State.

In *B. D. Shetty and others* v. *CEAT Ltd. and another*[38] where the appellants were employees of the respondent company. They resigned from the membership of the Mumbai Shramik Sangh Union which had been the only trade union in the respondent company and accepted the membership of Shramik Utkarsha Sabha. An employee of the respondent company and vice-president of Mumbai Shramik Sangh made a false complaint on account of union rivalry against the appellants that they had assaulted him. They were arrested and released on bail and the suspension orders were issued on account of criminal cases, and the respondent company issued charge sheets alleging misconduct under model Standing Orders. However, the charges were denied. The appellants filed complaints before Labour Court, under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The Labour Court stayed the domestic inquiry till the completion of the criminal trial. Against the order of the Labour Court respondent filed revision application before the Industrial Tribunal which were pending. The respondent reduced the subsistence allowance from 75% to 50% on account of alleged delay caused by the appellants, in the domestic inquiry.

The appellants filed complaints in the Industrial Tribunal invoking the provisions of the MRTU and PULP Act and claimed 100% subsistence wages. On dismissal of the complaint they filed Writ Petition in the High Court. They could not get any relief, from the High Court and ultimately, they approached the Supreme Court in appeal.

The Supreme Court considered the provisions of the Section 10-A of the Industrial Employment Standing Orders Act, 1946 and held that it is clear from Section 10-A that the employer is required to pay subsistence allowance to a workman suspended pending inquiry at the rate of 50% of wages for the first 90 days and at the rate of 75% of wages for remaining period of suspension, if delay in completion of disciplinary proceedings is not directly attributable to the conduct of the workman concerned. If a workman is entitled to more beneficial provisions regarding subsistence allowance under any other law in force in any State, then the provisions of such other law shall prevail. However, as an exception a workmen can be denied payment of subsistence allowance at the rate of 75% after expiry of 90 days of suspension, if the delay in the completion of disciplinary proceedings is directly attributable to the conduct of such a workman.

The Court examined the question whether delay of any kind is covered by mischief of Section 10-A (1)(b) of the Act and observed that in order to deny a workman subsistence allowance at the rate of 75% the delay should be directly attributable to the conduct of such a workman in completion of disciplinary proceedings and not that every kind of delay is covered by the said provision. If that was the intention of the legislature there was no need for emphasis by adding the word "directly" and instead they would have simply used the words "attributable to".

Therefore, the use of the word "directly" in the provision has to be given meaning and effect in the context of the said provision under the scheme of the Act. Merely because legal proceedings will be pending in a court or before other authority and they take some time for disposal, may be inevitably, that itself cannot be a ground to deny subsistence allowance to a workman against a statutory obligation created on the employer under Section 10-A (1) (b).

The provisions of the subsistence allowance made is to serve a definite purpose of sustaining the workman and his family members during the bad time when he is under

38. 2002 SCC (L & S) 131; *May and Baker Ltd.* v. *Kishore Jakishandas Icchaporia*, 1991 Lab. IC 2066 (Bom.) approved.

suspension, pending inquiry. This provision is enacted with a view to ensure social welfare and security. Assuming two views are possible, the one, which is in tune with the legislative intention and furthers the same, should be preferred to the one which would frustrate it. The Supreme Court set aside the order and held that the appellants are entitled to subsistence allowance at the rate of 75%. The appeal was allowed accordingly.

It has been observed by the Supreme Court in *Vijaya Bank* v. *Shyamal Kumar Lodh*,[39] that undisputedly the dispute pertains to subsistence allowance. From a plain reading of Section 10-A(2) of the Industrial Employment (Standing Orders) Act it is evident that the Labour Court constituted under the Industrial Disputes Act, 1947 within the local limits of whose jurisdiction the establishment is situated, has jurisdiction to decide any dispute regarding subsistence allowance. The relief sought for, if falls within the jurisdiction of the Court, it cannot be thrown out on the ground of its erroneous label or wrong mentioning of provision. In the present case the Labour Court, Dibrugarh satisfies all the requirements to decide the dispute raised by the employee before it. Thus the Supreme Court directed the Labour Court to decide the dispute within six months and dismissed the appeals with costs.

(10) Powers of Certifying Officers and Appellate Authority.—Section 11(1) of the Act provides that every Certifying Officer and the Appellate Authority shall have all the powers of a Civil Court for following purposes and shall be deemed to be a Civil Court within the meaning of Sections 345 and 346 of the Code of Criminal Procedure, 1973 :

(a) receiving evidence,

(b) administering oaths,

(c) enforcing the attendance of witnesses, and

(d) compelling the discovery and production of documents.

It has been provided under Section 11(2) that clerical or arithmetical mistakes in any order passed by a Certifying Officer or appellate authority, or errors arising therein from any accidental slip or omission may, at any time, be corrected by that Officer or authority or the successor in office of such officer or authority, as the case may be.

(11) Oral evidence in contradiction of Standing Orders not admissible.—It has been provided under Section 12 of the Act that no oral evidence having the effect of adding to or otherwise varying or contradicting standing orders finally certified under this Act shall be admitted in any Court.

(12) Temporary application of model Standing Orders.—Section 12-A of the Act contains following provisions in respect of temporary application of model standing orders:—

(1) Notwithstanding anything contained in Sections 3 to 12 for the period commencing on the date on which this Act becomes applicable to an industrial establishment and ending with the date on which the standing orders as finally certified under this Act come into operation under Section 7 in that establishment, the prescribed model standing orders shall be deemed to be adopted in that establishment, and the provisions of Section 9, Section 13(2) and Section 13-A shall apply to such model standing orders as they apply to the standing orders so certified.

(2) Nothing contained in sub-section (1) shall apply to an industrial establishment in respect of which the appropriate Government is the Government of the State of Gujarat or the Government of State of Maharashtra.

39. (2010) 2 SCC (L&S) 456 ; *Treogi Nath* v. *Indian Iron and Steel Co. Ltd.*, AIR 1968 SC 205 relied upon.

In *Karnataka Agro-Industries Corpn. Employees Association* v. *State of Karnataka*,[40] the majority of workmen are working in the Head office/Administrative Office and 150 workmen are working in the workshops. The petitioner Union filed a writ petition in the nature of *mandamus* to direct the State Government to grant necessary sanction for prosecuting the Corporation under Section 13(3) of the Industrial Employment Standing Orders Act, 1946 and for a further direction not to enforce service Rules covering the service conditions of its employees.

It was held that five workshops of the Corporation are registered under the Factories Act. Even assuming that majority of workmen are working in the Head Office, the Corporation will not cease to be an industrial establishment. It is, therefore, obligatory on its part to comply with Sections 3, 4 and 5 of the said Act. It cannot bind the workmen to the Service Rules unilaterally prescribed by the Board of Management. Following the decision of the Division Bench of Karnataka High Court[41] wherein it was laid down that it is open to the Court in appropriate case to grant declaratory reliefs the High Court of Karnataka in this case held that the petitioner union is entitled to a declaration that the Service Rules framed by the Corporation are not binding on the workmen and till such time as certified standing orders are brought into force in accordance with the provisions of the Act the Model Standing Orders provided for under Section 12-A of the Act shall be applicable. Thus writ was allowed.

In *M.C. Raju* v. *Executive Director*,[42] it has been held that language of Section 12-A makes it clear that the Model Standing Orders shall be deemed to be applicable until the standing orders are made as contemplated by the Act. The reference to the Standing Orders, as finally certified under the Act in Section 12-A is obviously to the first Standing Orders made for the establishment after the Act came into force. It, therefore, follows that if the Model Standing Orders are amended subsequent to the coming into operation of the first standing orders in respect of the particular establishment, the same do not automatically become applicable to the establishment concern. Thus when the model standing orders are amended, the only way to give effect to the amendment is by resorting to the procedure of amendment contemplated by Section 10 of the Act and that until the existing certified standing orders are suitably amended, the amended Model Standing Order cannot be deemed to be applicable to concerned establishment.

In *Maharashtra State Co-operative Cotton Growers Marketing Federation Ltd.* v. *Employees Union and another*,[43] where the question was whether the Model Standing Orders would also apply to seasonal employees. It was held by the Supreme Court that Model Standing Orders do not apply to seasonal employees. They are governed by their own service conditions.

In *Regional PF Commissioner* v. *Central Arecanut & Coca Marketing and Processing Coop. Ltd.*,[44] the Supreme Court held that admittedly the Standing Orders were not at the relevant time certified. Therefore, in term of Section 12-A of the Standing Orders Act, the model standing orders are deemed to be applicable. Under the model standing orders an apprentice is described as a learner who is paid allowance during the period of training. In the present case trainees were paid stipend during the period of training. They had no right

40. (1987) II LLJ 62, *Associated Cement Co. Ltd.* v. *Their Workmen*, (1960) I LLJ 1 SC followed.
41. *H.M.T. Ltd.* v. *C.N. Nanjapa* referred in the case.
42. (1985) I LLJ 210 Karnataka.
43. 1995 SCC (L&S) 36 SC.
44. 2006 SCC (L&S) 323.

to employment, nor any obligation to accept any employment, if offered by the employer. Therefore, the trainees were apprentices engaged under the Standing Orders of the establishment. Above being the position, it cannot be said that 45 trainees concerned were employees in terms of Section 2 (f) of the EPF Act as the apprentice engaged under the Apprentices Act or under the Standing Orders is excluded from the definition of employee.

(13) Penalties and Procedure.—Section 13 of the Act deals with penalties and procedure in case of violation of the provisions of the Act. It contains the following provisions in this regard :—

(1) An employer who fails to submit draft Standing Orders as required by Section 3 or who modified his standing orders otherwise than in accordance with Section 10, shall be punishable with fine which may extend to five thousand rupees, and in the case of a continuing offence with a further fine which may extend to two hundred rupees for every day after the first during which the offence continues.

(2) An employer who does any act in contravention of the standing orders finally certified under this Act for industrial establishment shall be punishable with fine which may extend to one hundred rupees, and in the case of a continuing offence with a further fine which may extend to twenty-five rupees for every day after the first during which the offence continues.

(3) No prosecution for an offence punishable under this section shall be instituted except with the previous sanction of the appropriate Government.

(4) No Court inferior to that of [a Metropolitan magistrate or Judicial Magistrate of the second class] shall try any offence under this section.

(14) Interpretation of Standing Orders.—Section 13-A deals with the procedure to be followed in case the question of interpretation of any standing order arises. It provides that if any question arises as to the application or interpretation of a standing order certified under this Act, any employer or workmen[45][or a trade union or other representative body of the workmen may refer the question to any one of the Labour Courts constituted under the Industrial Disputes Act, 1947 (14 of 1947) and specified for the disposal of such proceeding by the appropriate Government by notification in the Official Gazette, and the Labour Court to which the question is so referred shall, after giving the parties an opportunity of being heard, decide the question and such decision shall be final and binding on the parties.

It has been observed by the Supreme Court in *Rajasthan State Road Transport Corpn.* v. *Krishna Kant*,[46] that the limited purpose of Section 13-A is to provide a forum for determination of any question "as to the application and/or interpretation of certified standing orders" as such, in case either the employer or the employee (s) entertain a doubt as to their meaning or their applicability. Probably it was thought that a decision of the appointed forum on the said question would itself facilitate the resolution of an industrial dispute, whether existing or apprehended. So far as the Labour Court, Industrial Tribunal

45. The words in bracket in Sec. 13-A inserted after words [or workmen] by the Amendment Act, 18 of 1982 vide Sec. 8.

46. 1995 II LLJ 728 SC; *Bangalkot Cement Co. Ltd.* v. *R.K. Pathan*, 1962 I LLJ 203 SC ; *Buckingham and Carnatic Co. Ltd.* v. *Venkatiah*, 1963 II LLJ 638 SC; *The Workmen of Dewan Tea Estate* v. *The Management*, (1994) 1 LLJ 358 SC : *Workmen of Bukingham and Carnatic Mills, Madras* v. *Buckingham and Carnatic Mills, Madras*, (1970) 1 LLJ 26 SC : *D.K. Yadav* v. *JMA Industries Ltd*, (1995) II LLJ 669 SC : All these cases were considered.

or other adjudicatory bodies under the Industrial Dispute Act are concerned it is agreed on hands—and we endorse it—that where a dispute is referred to any of them are undoubtedly competent to go in and decide questions as to the application or interpretation of the Standing Orders in so far as they are necessary for a proper adjudication of question or dispute referred.

In this case the issue of nature and character of standing orders was also discussed at length. It was held that the certified Standing Orders are not in the nature of delegated/subordinate legislation. It is true that the Act makes it obligatory upon the employer to submit draft Standing Orders providing for several matters prescribed in the Schedule to the Act and it also provides the procedure *inter alia*, the certifying officer has to examine their fairness and reasonableness for certification thereof. Yet it must be noted that these are conditions of service framed by the employer—the employer may be a private corporation, a firm or an individual and not necessarily a statutory Corporation—which are approved/certified by the prescribed statutory authority, after hearing the concerned workmen. The Act does not say on such certification, the Standing Orders acquire statutory effect or become part of a statute. Though these Standing Orders are undoubtedly binding upon both the employer and the employees and constitute the conditions of service of the employees, it appears difficult to say, on principle, that they have statutory force.

Indeed, if it is held that certified Standing Orders constitute statutory provisions or have statutory force, a writ petition would also lie for their enforcement just as in the case of violation of the Rules made under the proviso to Article 309 of the Constitution. Neither a suit would be necessary nor a reference under Industrial Disputes Act. We do not think the Standing Orders can be elevated to that status. It is one thing to say that they are statutorily imposed conditions of service and altogether different thing to say that they constitute statutory provisions themselves.

In *Crescent Dyes and Chemicals Ltd.* v. *R.N. Tripathi*,[47] the question was whether a delinquent is entitled to be represented by an office-bearer of another trade union, who is not a member of either a recognised union or a non-recognised union functioning within the undertaking in which delinquent is employed. The Supreme Court considered several decisions on the point such as *Kalindi (N)* v. *Tata Locomotive & Engineering Co. Ltd.*,[48] *Brooke Bond India (P) Ltd.* v. *Subha Raman*,[49] *Dunlop Rubber Co. Ltd.* v. *Workmen*,[50] and held that the Law in India does not concede an absolute right of representation as an aspect of right to be heard, one of the elements of principle of natural justice. It was observed that in all the above cases it was ruled that there is no right to representation as such unless the company by its Standing Orders recognises such a right. From the decisions of the English Courts as well such as *Maclean* v. *Workers' Union*,[51] *Pett.* v. *Greyhound Racing Association Ltd.*,[52] *Jackson & Co.* v. *Napper*,[53] *Queen* v. *Assessment Committee*,[54] *University of Ceylon* v. *EFW Fernando*,[55] *Maynard* v. *Osmand*.[56]

47. 1993 SCC (L&S) 360 per Ahmadi J.
48. AIR 1960 SC 914.
49. 1961 II LLJ 417.
50. AIR 1965 SC 1392.
51. 1929 All ER 468.
52. (1968) 2 All ER 545.
53. (1886) 35 Ch. D. 162.
54. (1891) 1 QB 378.
55. (1960) 1 WLR 223.
56. (1977) QB 240.

After considering aforementioned English and Indian decisions it was observed by the Supreme Court that it is clear from the above case law that the right to be represented through counsel or agent can be restricted, controlled or regulated by statute, rules regulation or standing orders. A delinquent has no right to be represented through counsel or agent unless the law specifically confers such a right. In the instant case, the right was regulated by the Standing Orders which permitted a Clark or a workman working with him in the same department to represent him and this right stood expanded on Sections 21 and 22 (ii) of Maharashtra Recognition of Trade Unions and Unfair Labour Practices Act, 1971, permitting representation through an officer, staff-member or a member of the union, albeit on being authorised by the State Government. The object and purpose of such provisions is to ensure that the domestic enquiry is completed with despatch and is not prolonged endlessly. Secondly, when the person defending the delinquent is from the department or establishment in which the delinquent is working he would be well conversant with the working of that department and the relevant rules and would, therefore, be able to render satisfactory service to the delinquent. Thirdly, not only would the entire proceedings be completed quickly but also inexpensively. It is, therefore, not correct to contend that the Standing Order or Section 22(ii) of the Act conflicts with the principle of natural justice. It was held thus that the enquiry officer was legally justified in refusing the workman's agent Talraja from participating in the domestic enquiry since he was not a member of recognised union or the unrecognised union functioning in the employer's establishment.[57]

In *Calcutta Electric Supply Corpn. Ltd.* v. *Shew Kr. Singh and others*[58] the maintainability of an application for the interpretation of the standing order in question was the subject matter for decision.

In the present case one S. K. Mukherjee had been dismissed without holding an enquiry. However, that matter became final as the Labour Court and the High Court dismissed the order made therein. It was contended that unless there is proper interpretation of the said certified Standing order the management is likely to victimise the workmen. The High Court held that the apprehension of respondent-1, applicant cannot be stated to be as one purely imaginary not based on facts and merely an apprehension in his mind. His claim for interpretation of clause 15 is that there was action taken invoking the provisions of clause 15 in a particular manner correctness of which was put in issue for interpretation and that such a matter cannot be stated to be one not covered by Section 13-A of the Act. The view taken by the High Court, therefore, did not call for any interference. The appeal was thus dismissed.

In *U.P. State Road Transport Corpn.* v. *U.P. Rajya Sadak Parivahan Karamchari Union*[59] where on an application under Section 11-C of the U.P. Industrial Disputes Act, read with Section 13-A of the Industrial Employment Standing Orders Act, the Labour Court directed that the workmen concerned who were appointed on contract basis as drivers and conductors, be given the minimum wages admissible to the regular employees in the pay scales of drivers and conductors. The Labour Court also held that the said workmen were employees of the Corporation. The Corporation contended before the Labour Court that Regulation 2 of the U.P.S.R.T.C. Employees (Other than Officers) Service Regulations, 1981 clearly mentions that these Regulations shall not apply to the employees working on

57. *Crescent Dyes and Chemicals Ltd.* v. *R.N. Tripathi*, 1993 SCC (L&S) 360.
58. 2001 SCC (L & S) 252.
59. (2008) 1 SCC (L&S) 715 Markandey Katju, J.

contract basis. The Labour Court rejected the objection and decided in favour of the said employees. The Corporation filed a writ petition before the High Court which was dismissed. The matter came before the Supreme Court.

The Supreme Court considered the scope of Section 11-CInterpretation, etc. of Standing Orders of the U.P. Industrial Disputes Act, 1947 and also Section 13-A (Interpretation etc. of Standing orders) of the Industrial Employment (Standing Orders) Act, 1946 and held that the power of Labour Court under Section 11-C of the U.P. Industrial Disputes Act, 1947 or under Section 13-A of the Industrial Employment (Standing Orders) Act, 1946 is much narrower than the power of Labour Court on a reference under Section 10 of the Industrial Disputes Act, 1947 which corresponds to Section 4-K of the U.P. Industrial Disputes Act, 1947. In our opinion, the Labour Court cannot amend the Regulations while hearing an application under Section 11-C of the U.P. Industrial Disputes Act. The scope of Section 11-C is limited to decide a question arising out of an application or interpretation of a standing order and the Labour Court cannot go beyond the scope of Section 11-C.

For the reasons given above the Supreme Court allowed the appeals and impugned judgment of the High Court as well as the order of the Labour Court were set aside. However, it was left open to the workmen to raise their grievances before the authority concerned under Section 4-K of the U.P. Industrial Disputes Act or under Section 10 of the Industrial Disputes Act, as the case may be, and if the State Government refers such a dispute to Labour Court or Tribunal, the same will be decided expeditiously.

In *Triveni Engineering and Industries* v. *Jaswant Singh and others*,[60] where Respondent 1 Jaswant Singh claimed to be a workman of M/s Gangeshwar Ltd. now known as Triveni Engineering and Industries Ltd. During course of his employment, he was transferred to Ram Kola Chini Mill but as he did not join the place where he was transferred, his services were terminated.

Subsequently a special leave petition was filed against the order of the Division Bench. It was observed by the Supreme Court that it is established by the records that the appellant has raised an issue regarding the applicability of the Standing Orders to the service conditions of respondent 1 contending that respondent 1 is not a workman and therefore Standing Orders relied upon by the Respondent have no application in the case before the Labour Commissioner. The Labour Commissioner as also the learned single Judge upheld the said contention, but the Division Bench set aside the order holding that the said issue can be decided by the Labour Commissioner as it is ancillary to the issue of applicability and the interpretation of Standing Orders and held that Division Bench has erroneously held that aforesaid issue is an ancillary issue of the applicability and interpretation of the Standing Orders. Whether or not a person is workman is a matter that relates primarily to the facts and circumstances of the case. It has nothing to do with the application and interpretation of the Standing Orders. What was needed to be examined for deciding the aforesaid issue was the nature of job performed by the person concerned, duties and responsibilities vested in him and other such relevant material. Consequently, the Supreme Court set aside the order of the Division Bench and upheld and restored the orders passed by the Single Judge as also by the Labour Commissioner and allowed the appeal to that extent.

(15) Act not to apply to certain industrial establishments.—Section 13-B specifies certain industrial establishments to which the provisions of this Act are not applicable. It

60. (2010) 2 SCC (L&S) 736 ; *Sharad Kumar* v. *Govt. of NCT of Delhi*, 2002 SCC (L&S) 533 ; *UPSRTC* v. *U.P. Rajya Sadak Parivahan Karamchari Union*, (2008) 1 SCC (L&S) 715 relied upon.

provides that nothing in this Act shall apply to an industrial establishment in so far as the workmen employed therein are person to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Services) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence (Classification, Control and Appeal) Service Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette apply.

In *U. P. S. E. Board* v. *Hari Shanker*,[61] the Supreme Court observed that they (the words) are used to describe subordinate legislation made by authorities to whom the statute delegates that function. The words can have no other meaning in Section 13-B. Therefore, the expression 'workmen.....to whom.....any other rules or regulations that may be notified in this behalf, means, in the context of Section 13-B, workmen enjoying a statutory status, in respect of whose conditions of service the relevant statute authorises the making of rules or regulations. The expression cannot be construed as narrowly as to mean Government servant only, nor can it be construed so broadly as to mean workmen employed by whomsoever including private employer, so long as their conditions of service are notified by the Government under Section 13-B.

Industrial Employment (Standing Orders) Act is a Special Act dealing with specific subject, namely, the conditions of service, enumerated in the Schedule, of workmen in industrial establishments. It is obvious that Parliament did not have before it the Standing Orders Act when it passed the Electricity Supply Act and Parliament never meant that the Standing Orders Act should stand *pro tanto* repealed by Section 79 (c) of the Electricity Supply Act. The provisions of the Standing Orders Act must prevail over Section 79 (c) of the Electricity Supply Act in regard to matters to which the Standing Orders Act applies.[62]

(16) Power to exempt.—Under Section 14 of the Act the appropriate Government has been given power to exempt conditionally or unconditionally any industrial establishment or class of industrial establishments from all or any of the provisions of this Act. However, in such a case it has to issue a notification in the Official Gazette.[63]

(17) Delegation of Powers.—Section 14-A provides that the appropriate Government may by notification in the Official Gazette, direct that any power exercisable by it under this Act or any rules made thereunder shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also—

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

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

(18) Power to make rules.—Section 15(1) of the Act authorises the appropriate Government to make rules to carry out the purpose of this Act after previous publication by Notification in the Official Gazette.

Section 15(2) provides that in particular and without prejudice to the generality of the foregoing power, such rules may—

61. (1978) II LLJ 399 SC ; *P. T. Corpn.* v. *Presiding Officer Addl. Labour Court*, (1984) II LLJ 132.
62. *U.P. State Electricity Board* v. *Hari Shankar Jain*, (1978) II LLJ 399.
63. Industrial Employment (Standing Orders) Act, 1946, S. 14.

(a) prescribe additional matters to be included in the Schedule, and the procedure to be followed in modifying standing orders certified under this Act in accordance with any such addition;

(b) set out model standing orders for the purposes of this Act;

(c) prescribe the procedure of Certifying Officers and appellate authorities ;

(d) prescribe the fee which may be charged for copies of standing orders entered in the register of standing orders;

(e) provide for any other matter which is to be or may be prescribed :

Provided that before any rules are made under clause (a) representatives of both employer and workmen shall be consulted by the appropriate Government.

Section 15(3) of the Act provides that every rule made by the Central Government under this section shall be laid as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or [64][in two or more successive sessions, and if before the expiry of the session immediately following the session or successive sessions aforesaid] both House agree in making any modification in the rule or both House agree that the Rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

The provisions of this section clearly empower the appropriate Government to make rules for carrying out the purposes of this Act but there is one restriction that is the appropriate Government is under duty to consult representatives of both, the employer as well as of the workmen concerned before the rules made are given final shape.

In pursuance of the Act, the Central Government published the Industrial Employment (Standing Orders) Central Rules in 1946, which have been amended from time to time. They extend to all Union Territories, and shall also apply in any State other than a Union Territory to industrial establishments under the control of the Central Government or a Railway administration or in a major port or oil field.

In the Schedule to the Act, after Item 10, the following additional matters shall be inserted namely :—

(1) Medical aids in case of accidents; (2) Railway travel facilities; (3) Method of filling vacancies; (4) Transfers; (5) Liability of manager of the establishment or mine ; (6) Service certificate ; (7) Exhibition and supply Standing Orders.

Amended Rules are quite comprehensive as they cover all relevant matters.[65]

The cursory analysis of the provisions of the Industrial Employment (Standing Orders) Act, 1946 shows that the interests of the working community have been adequately safeguarded. Generally conflicts and frictions among the employers and workmen arise only on terms and conditions of employment such as hours of work, leave rules, rules regarding attendance, entrance and search while going out of the Industrial establishment wherein they are to work according to the service conditions and such small points of frictions take the shape of industrial disputes. The purpose of the act was to require the employers to lay down service conditions in clear terms so that the workmen may be able to

64. The words in brackets substituted by Act 18 of 1982 *vide* Sec. 9.
65. Rule 2-A has been subs. by GSR 30 (E) dt. 17-1-1983.

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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