



The Uttar Pradesh Industrial Disputes Act, 1947



THE UTTAR PRADESH INDUSTRIAL DISPUTES ACT, 1947

[U.P. ACT NO. XXVIII *or* 1947 AS AMENDED BY U.P. ACT NO. XXV
OF 1950^{*†‡§**}, No. XXIII OF 1953*, ACT NO. 1 OF 1957*, ACT
No. XXIII OF 1957*, ACT NO. 2 OF 1966*, U.P. ACT
34 OF 1978, 26 OF 1983 AND U.P. ACT 3 OF 1991]

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Adopted and modified by the Adaptation of Laws Order, 1950

(Passed by the U.P. Legislative Assembly on November 10, 1947 and by the United Provinces Legislative Council on November 17, 1947)

(Received the assent of the Governor-General on December 21, 1947 under Section 76 of the Government of India Act, 1935 and was published in the U.P. Government Gazette of January 10, 1948)*

An Act to provide for powers to prevent strikes and lock-outs, to settle industrial disputes and for other incidental matters

Preamble.—Whereas it is necessary to provide for powers to prevent strikes and lock-outs, and for the settlement of industrial disputes and other incidental matters;

It is hereby enacted as follows :

The following extracts from the Statement of Objects and Reasons may be usefully noticed:

“Shortly after coming into office, the present Ministry introduced in the Legislature a bill known as the United Provinces Trade Disputes Bill, 1946; as was stated in the Statement of Objects and Reasons to this bill, it was not comprehensive and was intended primarily to 6. See Gazette, 1948, Part VII-A, pp. 1-4.replace Rule 81-A of the Defence of India Rules as an effective measure of the prevention of strikes and lock-outs and the speedy settlement of trade disputes. For certain reasons, however, Government did not proceed with this bill at the time.

“Following the lapse of Rule 81-A of the Defence of India Rules, the Government of India enacted the Industrial Disputes Act, 1947, but this Act was found inadequate to deal with the spate of strikes, lock-outs and industrial disputes occurring in the province. Government were, therefore, compelled to promulgate the United Provinces Industrial Disputes Ordinance, 1947, as an emergency measure till more comprehensive legislation on the subject was enacted.

“Although more than two years have passed since the termination of the war, normal life is still far from sight. There is a shortage of foodgrains and all other essential commodities and necessities of life. Maximum production is required to relieve the common want and misery. Prices continue to be rising and life has become very difficult for the common man. The loss of every working hour adds to the suffering of the community. In these circumstances it is essential that Government should have powers for maintaining industrial peace and production and for the speedy and amicable settlement of industrial disputes. The bill which is similar to the Ordinance already in force, provides for

such powers”. *Vide* U.P. Gazette, Extra., dated 27th October, 1947. The amending Act No. XXV of 1950 was published in U.P. Gazette, Extra., dated August 21, 1950 and came into force when it was published in U.P. Gazette.

1. Short title, extent and commencement.—(1) This Act may be called “The Uttar Pradesh Industrial Disputes Act, 1947”.

(2) It extends to the whole of [Uttar Pradesh].’

(3) It shall come into force on such date* as the [State Government] may by notification in the Official Gazette, appoint in this behalf.

Note.—The provisions contained in this Act shall not apply to cooperative societies. *Vide* U.P. Act XI of 1966, S. 135.

2. Definitions.—(a) ‘Apprentice’ means a person employed in an industry for the purpose of training therein in accordance with a scheme prepared in that behalf and approved by the State Government;

(6) ‘Average Pay’ means the average of the wages payable to a workman—

(») in the case of monthly paid workman, in the three complete calendar months; .

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

(Hi) 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 shall be calculated as the average of the wages payable to a workman during the period he actually worked;

(c) ‘Award’ means an interim or final determination of any industrial **dispute** or of any question relating thereto by any Labour Court or Tribunal and includes an arbitration award made under Section 5-B;

(d) ‘Board’ means a Conciliation Board constituted under clause (c) of **Section 3 j**

(«) ‘Central Government’ means Central Government as defined in **Clause 8** of Section 3 of the General Clauses Act, 1897;

**[(«♦) ‘Closure’ means the permanent closing down of a place of employment or part thereof;]

(/) ‘Conciliation Officer’ means a Conciliation Officer appointed under **Section 4-F**;

(g) ‘Continuous service*’ means uninterrupted service, and includes **service** which may be interrupted merely on account of sickness or authorized **leave** or an accident or a strike

which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman, **and a** workman, who during a period of twelve calendar months has actually **worked** in an industry for not less than two hundred and forty days shall be **deemed** to have completed one year of continuous service in the industry.

Explanation.—In computing the number of days on which a workman has actually worked in an industry, the days on which—■

- (i) he has been laid off under the agreement or as permitted by standing order made under the Industrial Employment (Standing Orders) Act, 1946, or under this Act or under any other law applicable to the industrial establishment, the largest number of days during which he has been so laid off being taken into account for the purposes of this clause;
- (it) he has been on leave with full wages, earned in the previous year, and

(Hi) in the case of a female she has been on maternity leave; so however that the total period of such maternity leave shall not exceed twelve weeks, shall be included;

whose name is bore on the muster-rolls of his industrial establishment and who has not been retrenched;

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

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

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

(o) 'Lock-out' means the closing of a place of employment or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him ;

(/ >) 'Prescribed' means prescribed by the rules framed under this Act;

(?) 'Public Utility Service' means—

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- (») any section of an industrial establishment, on the working of which the safety of the establishment or the worken employed therein depends;
 - (it) any industry which supplies power, light or water to the public;
 - (tit) any system of public conservancy or sanitation;

(io) any industry or undertaking, which the State Government may, if satisfied that public emergency or public interest so requires, by notification in the Official Gazette, declare to be a public utility service for the purposes of this Act, for such period as may be specified in the notification:

Provided that the period so specified shall not, in the first instance, exceed six months but may, by a like notification, be extended from time to time, by any period not exceeding six months at any one time, if in the opinion of the State Government public emergency or public interest requires such extension ;

(r) 'Registration' as respects any settlement means registration in accordance with Section 6-B;

(r) 'Retrenchment' means the termination by the employer of the service of a workman or any reason whatsoever, otherwise than as punishment inflicted by way of disciplinary action, but does not include—

(i) voluntary retirement of the workmen; or

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

NOTES

Termination of services of employees on account of closure amounts to retrenchment. *U. P. Chalchitra Mgam Ltd. v. Statu of U. P.*, 1991 Lab IC 1277 : 62 FLR 24: (1991) 1 Cur LR 478 <A11>(DB).

Abandonment of job does not amount to retrenchment. Where the workman remained absent for a long period of more than two years without leave ignoring a number of notices from the employer it was held that this was certainly a case of abandonment of his job and that therefore his services stood automatically terminated. *Kshetriya Sri Gandhi Ashram v. Ram Saivujh Maurya*, 1990 Lab IC 1406.

Resignation does not fall within the first part of the definition of 'retrenchment'. It rather amounts to voluntary retirement within the meaning of exception clause (i). Hence, in such a case the question of granting compensation under Section 6-N does not arise. *J.K. Cotton Spinning and Weaving Mills Co. Ltd. v. State of U. P.*, (1990) 4 SCC 27 : 1990 SCC (L & S) 570 : 1990 Lab IC 1511. Reversing *J.K. Cotton Spinning and Weaving Mills Co. Ltd. v. State of U.P.*, (1986) 1 LLN 569.

(t) 'Settlement' means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such an agreement has been signed by the parties thereto in such a manner as may be prescribed and a copy thereof has been sent to the State Government and the Conciliation Officer;

(u) 'State Government' means the Government of Uttar Pradesh;

(f) '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;

(to) 'Tribunal' means an Industrial Tribunal appointed under Section 4-B;

(x) 'Union' means a Trade Union registered under the Indian Trade Unions Act, 1926;

(y) 'Wages' means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a workman in respect of his employment, or of work done in such employment, and includes—

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

(it) 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 ;

(Hi) any travelling concession, but does not include—■

(a) any bonus;

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

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

(z) 'Workman' means any person (including an apprentice) employed in any industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the 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 connexion with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person —

(t) who is subject to the Army Act, 1950 or the Air Force Act, 1950, or the Navy (Discipline) Act, 1934; or

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

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

(iv) who, being employed in a supervisory capacity, draws wages exceeding five hundred 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.

NOTES

The definition of 'workman' includes contract labourers. *Basti Sugar Mills Ltd. v. Ram Ujagar*, AIR 1964 SC 355: (1963) 2 LLJ 447: (1964) 2 SCR 838.

Casual labourers of a university have been held to be workmen. *Narendra Deo Krishi E'sam Proudyogik Vishuravidyalaya Mazdoor Union v. Kulpati, Narendra Deo Krishi Evam Prouyogik ' Vishwavidyalaya*, (1990) 1 LLN 28 (A11)(DB).

The expression "employed in any industry" takes in employees employed in connexion with operations incidental to the main industry. Hence, malis employed by a spinning and weaving company to look after the gardens attached to residential buildings of its officers and directors, have been held to be workmen. *J.K. Cotton*

***Spinning and Weaving Mills v. Labour Appellate Tribunal*, (1963) 2 LLJ 436; AIR 1964 SC 737; (1964) 3 SCR 724.**

A person engaged as salesman in a cooperative society is a workman. ***Shree Krishna v. State of U. P.*, (1992) 64 FLR 390.**

Inspectors, salesmen and retail salesmen of a company whose writing work took 75% of the time have been held to be workmen. ***Western India Match Co. v. Workmen*, AIR 1964 SC 472 : (1963) 2 LLJ 459: (1964) 3 SCR 560.**

An Amin of a Krishi Utpadan Samiti is a workman. ***Chairman Krishi Vtpadan Samiti v. Labour Court*, (1992) 1 Cur LR 972 : (1992) 64 FLR 412.**

A sweeper employed by a municipal board is a workman. ***Prabhari Adhikari Nagar Palika v. Ramesh Chandra*, (1992) 1 LLJ 639: 62 FLR 265.**

An Assistant Engineer in U. P. Sugar Corporation, doing work of technical nature without powers to allocate jobs to, or exercise disciplinary control over, the workmen, even though receiving more than Rs. 500 per month as wages, is a workman. ***U. P. State Sugar Corporation Ltd. v. Deputy Labsur Commissioner*, (1992) 1 LLJ 177 : 1990 Lab IC 645 : (1990) 1 LLN 328 (All). See also *Workman, U:P. State Sugar Corpn. Ltd. v. Labour Court*, (1990) 60 FLR 557: (1990) 1 Cur LR 844.**

A medical practitioner not employed, but retained as a consultant, by a company so as to enable its employees to receive medical aid, is not a workmen so as to resort to Section 6-H(2) to recover the amounts due to him. ***Universal Tyres Ltd. v. K.C. Srivastava*, (1992) 64 FLR 393.**

A Supervisor in the Ware House Department of Swadeshi Cotton Mills, assigned with the task of maintaining discipline and sanctioning leave to labour force under his control, is not a workman. ***Rama Shanker v. Swadeshi Cotton Mills*, (1992) 64 FLR 962.**

***Master-servant relationship: Test to determine.*—Payment on piece rate by itself does not disprove the relationship of master and servant. The right to reject the work coupled with the right to refuse further work would certainly establish such relationship. *Shining Tailors v. Industrial Tribunal*, (1983) 4 SCC 464: 1983 SCC (L & S) 533: (1983) 2 LLJ 413.**

^{9a}[2-A. Dismissal etc., of an individual workman to be deemed to be an industrial dispute.—Where any employer discharges, dismisses,

9a. Ins. by U.P. Act No. 34 of 1978. 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.

NOTES

Section 2-A does not enable raising of an industrial dispute in regard to termination service effected prior to enactment of that section. ***Jagdeo Pandey v. Labour Court*, (1987) 55 FLR 421.**

The remedy available under the act does not bar a suit to impugn termination of service. *Dstii Charan Srivastava v. Elgin Mills Co. Ltd.*, (1983) 2 LLN 350: 1982 Lab IC 175: 44 FLR 20.

Power to prevent strikes, lock-outs, etc.—If, in the opinion of the [State Government] it is necessary or expedient so to do for securing the public safety or convenience or the maintenance of public order or supplies and services for any incidental or supplementary matters which appear to the [State Government] necessary or expedient for the purposes of of the order:

Provided that no order made under clause (Z>)—

- (i) shall require an employer to observe terms and conditions of employment less favourable to the workmen than those which were applicable to them at any time within three months preceding the date of the order;

NOTES

Clause (J), though not retrospective, does enable the State Government to direct the factories to pay bonus to the workmen in respect of past years. *State of U. P. v. Basti Sugar Mills Co. Ltd.*, AIR 1961 SC 420: (1961) 1 LLJ 220.

Normally, a regulation can be enforced either in praesenti or in future. Therefore, the notification dated 18-6-1971 (fixing minimum wages in electricity undertakings), issued by the State Government in exercise of the “police powers or regulatory powers” under Section 3(4), cannot be given retrospective operation. *U. P. State Electricity Board v. Third Labour Court*, (1985) 1 LLN 715.

In *Scientific Instrument Co. Ltd. v. State of U.P.*^{1**}, validity of the State Government notification dated 26-9-1980, fixing minimum wages in engineering industries and issued under Section 3(4), was questioned on the grounds of non existence of emergency. Rejecting this plea it was held that notice of strike given by employees of engineering establishments, as mentioned in the notification, could sustain the Government’s conclusion that grave emergency had arisen. However, part of the notification which directed that increase by any agreement entered earlier should not be adjusted, was struck down as unreasonable, w

Section 6-J prevails over clause 21(1) of the Standing Order enforced under Section 3(b), which permits lay-off in the event of shortage of orders or other trade reasons. Hence, Clause 21(1) cannot be resorted to in an establishment with less than 50 workers. *Bhagwan Finance Corporation Pvt. Ltd. v. District Judge, Bareilly*, 1984 48 FLR 495.

The State Government’s order under Section 3(f) appointing one of the partners to run the undertaking to the exclusion of others, has been held incompetent. *R.S. Seth v. Shanti Sarup*, AIR 1955 SC 624.

Section 3(g) does not suffer from excessive delegation. *Swadeshi Cotton Mills Co. Ltd. v. Industrial Tribunal, U.P.*, AIR 1961 SC 1381: (1961) 2 LLJ 419.

¹⁶[3-A. Control of trade or business of public utility service or a subsidiary undertaking.—(1) Where the trade or business of any public utility service or any subsidiary undertaking has closed or is likely to be closed the State Government may, on

the application of more than one-half of the total number of partners and owning between them more than fifty per cent share therein, by order, published in the Gazette, authorize any person to carry on the trade or business, for the period in the manner and to the extent provided in the order:

Provided that no such order shall be made unless the State Government is further satisfied that it is necessary for the maintenance of supplies and services essential to the life of the community or for maintaining employment :

Provided further that the State Government may, from time to time, by order, published in the Gazette, extend the period specified in the order aforesaid.

(2) While a person authorized under sub-section (1) is carrying on the trade or business of the service or undertaking—

(z) such person shall be entitled to the management of the affairs of the service or undertaking to the exclusion of any other person acting or purporting to act on behalf of the firm, and for the purposes of such management shall be entitled to employ such staff or other agency, as he thinks fit;

(6) the partners or any other person shall not have the right to control or take part in or the carrying on of the trade or business ;

(c) such person shall be deemed to be acting as the agent of the service or undertaking and, subject only to such restrictions as the State Government may impose, shall have in relation to the management of the affairs of the service or undertaking all such powers and authority as the service or undertaking itself would have if its trade or business were not taken over under subsection (1) ;

(rf) such person shall not, in respect of such matters relating to the

* said management as may be specified by order of the State Government, be bound by any obligation or limitation imposed on him as agent of the service or undertaking by or under any law, instrument or contract;

(«) such person shall be entitled to retain out of the assets of the service or undertaking all cost, charges and expenses of, or incidental to, the said management and such remuneration as may be fixed by the State Government.

(3) No person authorised under sub-section (1) to carry on the trade or business of any service or undertaking shall be personally liable for acts done by him in good faith in the course of management of such trade or business.

(4) Upon the publication of the order under sub-section (1), the State Government shall, by order, direct the partners, directors, secretary, manager or any other person in charge of the management of the said service or undertaking to hand over the management of the trade or business of the said service or undertaking to the person mentioned in the said order.

(5) The Collector may, at the request of the person authorized under sub-section (1), deliver charge of the service or undertaking to said person and may take or cause to be taken such steps and use or cause to be used such force as may be necessary for this purpose.]

¹⁵**[3-B. Person exercising control under Section 3(f) to be deemed to be appointed under Section 3-A.—**Where on the date immediately preceding the date of the commencement on the Uttar Pradesh Industrial Disputes (Amendment) Act, 1950 any person was, in pursuance of an order made under clause (f) of Section 3, exercising control over any public utility service or any subsidiary undertaking, he shall, notwithstanding anything in the said clause or Section 3-A, be deemed from the commencement of the said Act to have been a person validly authorized under and in accordance with Section 3-A and the order aforesaid shall have effect as if it were an order duly or validly passed under Section 3-A.]

4.

^U**[4-A. Labour Court.—**(1) The State Government may, by notification in the Official Gazette, constitute one or more Labour Courts for the, adjudication of industrial disputes relating to any matter specified in the First Schedule and for performing such other function as may be assigned to them under this Act.

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

(3) A person shall not* be qualified for appointment as the Presiding Officer of a Labour Court unless—

¹⁸[(a) he has, for a period of not less than three years, been a District Judge or an Additional District Judge ; or

(A) he has held the Office of the Chairman or any other member of the Labour Appellate Tribunal constituted under the Industrial Disputes (Appellate Tribunal) Act, 1950, or of any Tribunal, for a period of not less than two years; or

(c) he has been a Presiding Officer of a Labour Court constituted under any Provincial Act or State Act for a period of not less than five years; or]

¹⁹[(d) he has held any judicial office in India for not less than seven years; or

(e) he is enrolled in the list prepared under Section 4-D.]

NOTES

Section 4-A(i) postulates the constitution of Labour Courts and not the appointment of the Presiding Officers, by notification in the Gazette. *Jain Sudh Vanaspati Ltd. v. Labour Court*, 1933 Lab IC 1249: (1983) 2 LLN 364: 46 FLR 324.

The Presiding Officers of the Labour Courts are not covered by the expression ‘judicial service’ as defined in Article 236(6) of the Constitution of India. Hence, the procedure contained in Article 234 is not applicable to their appointment. *Jain Sudh Vanaspati Ltd. v. Labour Court*, 1983 Lab IC 1249: (1983) 2 LLN 364: 46 FLR 324.

The State Government is not devoid of the power to transfer the Presiding Officer from one Labour Court to another. *Jain Sudh Vanaspati Ltd. v. Labour Court*, 1983 Lab IC 1249: (1983) 2 LLN 364: 46 FLR 324.

It is not correct to say that clause (e) of Section 4-A(3) is only a procedural section and that it can only contain names of those persons who possessed

qualifications mentioned in clauses (a) to (d). Otherwise, Section 4 E would become redundant. *Jain Sudh Vanaspati Ltd. v. Labour Court*, 1983 Lab IC 1249: (1983) 2 LLN 364: 46 FLR 324.

Section 4-A(3) cannot be said to be discriminatory merely because clause (c) thereof, in contract to clauses (a) to (A), enables appointment as Presiding Officer of Labour Court, of some persons without judicial experience. *Jain Sudh Vanaspati Ltd. v. Labour Court*, 1983 Lab IC 1249 : (1983) 2 LLN 364: 46 FLR 324.

Want of experience subsequently made up : Not open to challenge.—Where a person, not possessing the requisite 5 year experience under sub-section (3)(r) was appointed as the Presiding Officer of the Labour Court and completed the requisite period, it was held that his appointment could not be declared invalid at this stage. *Pojsha Industrial Co. Ltd. v. State of U.P.*, 1985 Lab IC 1683 : (1985) 2 LLN 956.

16. Deleted by U.P. Act No. 1 of 1957. .

17. Ins. by U.P. Act 1 of 1957.

18. Ins. by U.P. Act No. 2 of 1966.

Existing clauses (a) and (6) re-numbered as clauses (d) and (e) by Act No. 2 of 1966.

The word 'or' occurring in sub-section 3(d) cannot be read as 'and*'. *Poyiha Itidvritrial Co. Lid. v. Stato of U.P.*, 1985 Lab IC 1683: (1985) 2 LLN 956(DB).

^M[4-B. Tribunal.—(1) The State Government may, by notification in the Official Gazette, constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter whether specified in the First Schedule or the Second Schedule.

(2) A Tribunal shall, except where otherwise provided under Section 5-A, consist of one person only to be appointed by the State Government.

(3) A person shall not be qualified for appointed as the Presiding Officer of a Tribunal unless—

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

²¹[(aa) he has, for a period of not less than three years, been a District Judge or an Additional District Judge; or]

(6) he has held the Office of the Chairman or any other member of the Labour Appellate Tribunal constituted under the Industrial Disputes (Appellate Tribunal) Act, 1950, for a period of not less than two years or of any tribunal constituted under the U.P. Industrial Disputes Act, 1947, for a period of not less than five years; or

(c) he is enrolled in the list prepared in accordance with Section 4-D.

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

¹⁰[4-C. Disqualifications for the Presiding Officer of Labour Court or Tribunal.— No person shall be appointed to or continue in, the Office of the Presiding Officer of a Labour Court or Tribunal, if—

(i) he is not an independent person; or

(c) he has attained the age of 65 years.]

²⁰**[4-D. List of persons for appointment as Presiding Officer of Labour Court and Tribunal.]**—For the purpose of constituting a Labour Court under Section 4-A and an Industrial Tribunal under Section 4-B the State Government shall cause to be prepared—
(i) a list of all persons who may be appointed Presiding Officer of a Labour Court, and (ii) a list of all persons who may be appointed Presiding Officer of an Industrial Tribunal, and shall maintain the list by making such alterations therein as may, from time to time, be reported by the Committee appointed under Section 4-E.

²¹ **[4-E. Committee to prepare lists under Section 4-D.]**—(1) The State Government shall constitute a Committee consisting of the following:
(t) A Chairman who shall be appointed by the State Government and shall be a person who is or has been a Judge of a High Court;
(ii) the Chief Secretary to the State Government;

19. Int. by U.P. Act 1 of 1957.

20. ZIM. by U.P. Act No. 2 of 1966.

- (in) the Secretary to the State Government in the Labour Department ;
^{21a}[(t) the Labour Commissioner, Uttar Pradesh;];
(io) the Legal Remembrancer to the State Government; and
^{21b}[(o) a person who is, or has been, a member of a Public Service Commission, appointed by the State Government.]

- (2) The Committee constituted under sub-section (1) shall, in the manner prescribed, prepare the lists referred to in Section 4-D having regard—
(a) in the case of the list referred to in clause (i) of the said section, to the education and practical experience of the person in matters relating to Labour and Industry, and
(b) in the case of the list referred to in clause (ii) thereof, also to special knowledge of the person in those matters.

(3) No person who is not or who has not been a member of the Indian Administrative Service or the State Higher Judicial Service, ^{21c}[or the Uttar Pradesh Nyayik Sewa or the State Labour Service or who is not or who has not been such member of the State Civil Service (Executive Branch) as has experience of working for at least three years in the Labour Department of the State], shall be eligible for enrolment in the lists prepared under subsection (2).]

NOTES

Sub-section (2): Validity.—Sub-section (2) has not left any legislative function at all to be performed by the Committee. The Committee has merely to execute the legislative policy which has been laid down in clear and unequivocal terms. The Committee has not been given absolute discretion to include all and sundry who are members of the various services mentioned in sub-section (3). Therefore, it cannot be said that sub-section (2) suffers from the vice of excessive delegation of legislative powers. *Poysha Industrial Co. Ltd. v. State of U.P.*, 1985 Lab IC 1683: (1985) 2 LLN 956.

Sub-section (2) is intra vires Article 14 of the Constitution of India. *Ibid.*

State Labour Service-. When came into existence.—The existence of the State Labour Service is implicit in the creation of the Department of Labour in the Government of U.P. as a result of appointment of a Minister by the Governor and allocation of the portfolio of Labour to him in the purported exercise of powers under Article 154(1) read with Article 154(3) of the Constitution of India. *Poysha Industrial Co. Ltd. v. State of U.P.*, 1985 Lab IC 1683: (1985) 2 LLN 956(DB). See also *Jain Sudh Vanaspati Ltd. v. Labour Court*, 1983 Lab IC 1249: (1983) 2 LLN 364 : 46 FLR 324.

²²[**4-F. Conciliation Officer.**—(1) The State Government may, by notification in the Official Gazette, appoint such number of persons as it thinks fit, to be Conciliation Officers, charged with the duty of mediating in, and promoting the settlement of, industrial disputes, in the manner to be prescribed.

(2) A Conciliation Officer may be appointed for specified area or areas.]

^{22a}[**4-G. Filling of vacancies.**—If, for any reason a vacancy occurs in the Office of the Presiding Officer of a Labour Court or Tribunal, the State

21a. *Ins.* by U.P. Act 34 of 1978.

21b. *Subs.* by U.P. Act 2 of 1966.

21c. *Subs.* by U.P. Act 34 of 1978.

21. *Ins.* by U.P. Act I of 1957.

22a. *Ins.* by U.P. Act I of 1957.

4-H. **Finality of order***; _____ <4 c 1
 appointing any person on the Rnm.ri 1 2C^r Oi State Government Court or Tribunal shall be
She/- as the Residing Officer of a Labour
 proceeding before 7nv L J i TM question in any manner; and no act or question in anv TM Y
 B T , Labour Court or Tribunal shall be called in ?n nr T n grOund merely of the existence of
 any vacancy

in, or defect in, the Constitution of such Board, Labour Court or Tribunal.]

^{22b}[**4-I. Notice of change.**—No employer who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Third Schedule, shall effect such change—

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

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

- (i) where the change is effected in pursuance of any settlement, award or decision of the Appellate Tribunal constituted under the Industrial Disputes (Appellate) Tribunal Act, 1950: or
 (ii) where the change is likely to affect workmen who are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Civil Service Regulations or any other rules or regulations that may be notified in this behalf by the State Government in the Official Gazette apply.]

NOTES

Where the weekly holiday was being observed on Wednesday for a long period of

over ten years it was held that changing the same to Sunday would materially affect the workmen and would, therefore, attract Section 4-1. *UP. Electronics Corpn. Karamchhari Sangh v. Uptron India Ltd.*, (1991) 1 LLJ 316: 1989 Lab IC 895: (1989) 2 LLN 741 (AU)(DB).

Item No. 5 of the Third Schedule makes it clear that a matter relating to leave with wages and holidays is a condition of service. Hence, leave, holidays etc. admissible to the workmen in a concern for a long period (about seven years in this case) during the pre- production stage, became a condition of service and could not be curtailed, even at the post production stage, without complying with the provisions of Section 4-1. *Kanpur Sahkhri Milk Board v. Industrial Tribunal*, (1982) 44 JLR 36(l)B).

The workmen in the administrative office a company were getting lessee wages lesser than the wages of similarly circumstances! workmen in the company's mill. However, the enjoyed certain additional benefits not available to the latter. These benefits included 40 days paid holidays, two months' advance salary and uniform allowance etc. certain workmen of the administrative office raised an industrial dispute which culminated in an award, which declared them to be integrally the employees of the Mills and entitled to wages as admissible to similarly circumstanced employees of the Mills. A Single Judge of the Allahabad High Court held that the award only clarified the status of the said employees from the very beginning of their appointments and not from the date of the award. That necessarily meant that being the employees of the Mills, they were getting those additional "benefits while working at the administrative office. Therefore, the additional benefits could not be withdrawn in purported implementation of the award. Such withdrawal could- be effected only in accordance with the procedure prescribed by Section 4(1). *Swadeshi Cotton Mills v. Industrial Tribunal*, (1991) 63 FLR 374.

22b. *Ins.* by U.P. Act I of 1957.

Where the working hours were increased by half an hour per day, after giving the requisite notice under Section 4-1 and without exceeding the maximum limit of daily or weekly working hours prescribed by Sections 54 and 51 of the Factories Act, it was held that mere compliance with the said statutory provisions could not relieve the employer of his liability to pay extra wages for the additional half an hour work per day. *Neiv Victoria Mills v. Labour Court*, (1991) 1 Cur LR 145: (1990) 2 LLJ 575.

The Act affords the forum for adjudication of a dispute relating to a unilateral change in a condition of service without observance of the statutory pre-requisite for it. Hence, a writ petition for that purpose is not maintainable. *I.E.L. Employees Union v. Indian Explosives Ltd.*, 1982 Lab IC 1116:44 FLR 275: (1982) 2 LLN 168.

²³[4-J. Power of Government to exempt.—Where the State Government is of opinion that the application of the provisions of Section 4-1 to any class of industrial establishments or to any class of workmen employed in any industrial establishment affects the employers in relation thereto so prejudicially that such application may cause serious repercussion on the industry concerned and that public interest so requires, the State Government may, by notification in the Official Gazette, direct that the provisions of the said section shall not apply, or shall apply, subject to such conditions as may be

specified in the notification, to that class of industrial establishments or to that class of workmen employed in any industrial establishment.]

²⁴[**4-K. Reference of disputes to Labour Court or Tribunal.**— Where the State Government is of opinion that any industrial dispute exists or is apprehended, it may at any time by order in writing refer the dispute or any matter appearing to be connected with, or relevant to, the dispute to a Labour Court if the matter of industrial dispute is one of those contained in the First Schedule, or to a Tribunal if the matter of dispute is one contained in the First Schedule or the Second Schedule for adjudication :

Provided that where the dispute relates to any matter specified in the Second Schedule and is not likely to affect more than one hundred workmen, the State Government may, if it so thinks fit, make the reference to a Labour Court.]

NOTES

After issuing a notification under Section 3(i), it is not obligatory for the State Government at the instance of a party, to make a reference under Section 4-K. *Govind Sugar Mills Ltd. v. Hind Mazdoor Sabha*, (1976) 1 SCO 60: 1975 SCC (L & S) 450 : (1975) 2 LLJ 370.

Even if an industrial dispute exists or is apprehended, the Government can refuse to make a reference if the dispute is frivolous or bogus or there are some other good reasons for the refusal. *Lalta Prasad-v. State of U.P.*, (1992) 64 FLR 280. Section 6(2-A) of the Act and Section 11-A of the Central Industrial Disputes Act do not have the effect of controlling the power conferred on the Government by Section 4-K. *Ibid.*

Even when on failure of conciliation proceedings, the R.C.O. submits a report, the Government is not duty bound to act mechanically on the report. It has to apply its mind to the material on the record including the report and thereafter pass an appropriate order under Section 4-K. *Lalta Prasad v. State of U.P.*, (1992) 64 FLR 280.

There is not statutory requirement that an order refusing to make a reference should be a speaking one. However, giving of reasons is desirable. *Mahabir Jute Mills v. Shibban Lal Saxena*, (1975) 2 SCC 818: 1975 SCC (L & S) 460: (1975) 2 LLJ 326. *Followed in Lalta Prasad v. State of U.P.*, 1992 64 FLR 280.

Where the State Government, by a non speaking order, rejected the Conciliation Officer's recommendation to refer the industrial dispute, it was held that the Government ought to have given reasons for its decision. *Jagdamba Prasad Misra v. State of U.P.*, (1989) 2 LLN 569 : 59 FLR 325 (DB).

16. *Subs.* by U.P. Act I of 1957.

Ins. by U.P. Act 1 of 1957.

A non speaking order of refusal to make a reference can, if impugned, be justified by placing record before the Labour Court or by giving reasons in the counter affidavit. *Lalta Prasad v. State of U.P.*, (1992) 64 FLR 280.

The existence of a settlement initiated by a federation lacking competence to represent the workmen, cannot negative the existence of an industrial dispute and cannot render the

reference of such a dispute, incompetent. *Northern India Gas Co. v. Labour Court*. (1985) 51 FLR 635.

An order refusing to refer an industrial dispute merely on the ground that the Government did not find the same to be a fit one for reference is bad. *Chandra Pratap Singh v. U.P. State Cement Corporation*, (1988) 2 LLN 181(DB).

The State Government's refusal to make a reference on the ground that the demand had no force and that the dispute was time barred amounts to deciding the dispute on merits and is, therefore, illegal. *U.P. State Electricity Board v. State of U.P.*, 1992 Lab IC 151: 63 FLR 184.

The Government's refusal to refer a matter does not preclude it from reconsidering its decision. *Western India Match Co. v. Western India Match Co. Workers' Union*, (1970) 1 SCO 225: AIR 1970 SC 1205: (1970) 3 SCR 370; *Mahabir Jute Mills Ltd. v. Shibban Lal Saxena*, (1975) 2 SCO 818 : 1975 SCO (L & S) 460: 1975 Lab IC 1497. Followed in *U.P. State Electricity Board v. State of U.P.*, 1992 Lab IC 151: 63 FLR 184.

Referring a dispute to the Labour Court or the Industrial Tribunal, whether at the first instance or subsequently after once declining to refer, does not affect any of the civil rights of the employer. Hence, a reference cannot be impugned for want of affording prior opportunity to the employer. *U.P. State Electricity Board v. State of U.P.*, 1992 Lab IC 151: 63 FLR 184.

Making a written demand on behalf of the workmen to the employer is not a condition precedent for giving rise to an industrial dispute and making a reference thereof under Section 4-K. *Abad Husain v. Labour Court*, (1982) 44 FLR 396: 1982 ALJ 735.

Where a municipal employee answered also the definition of 'workman' and the service rules of the municipal board did not provide a remedy of appeal against termination of service, it was held that mere existence of the service rules could not bar such person from seeking relief under the U.P. Industrial Disputes Act. *Prabhari Adhikari Nagae Palika v. Ramesh Chandra*, (1992) 1 LLJ 639: 62 FLR 265.

The U.P. Government Roadways was an industry and its employees, even when on deputation with the U.P. State Road Transport Corporation, continued to be workmen. In case of termination of service of such a person the remedy, even though sought against the State Government only, could be had under the Central or the U.P. Industrial Disputes Act and not under the U.P. Public Services Tribunals Act, 1976. *Surendra Pal Singh v. State of U.P.*, (1988) 56 FLR 463(DB).

A dispute arising after the closure of the business between the quondam employer and employees cannot be the subject matter of a reference. *Pipraich Sugar Mills Ltd. v. Pipraich Sugar Mills Mazdoor Union*, AIR 1957 SC 95: (1957) 1 LLJ 235, a case under Section 3 as it then stood.

A registered trade union, representing the interest of the entire body of workers, entered into a settlement with the company to post date the promotions of 218 workmen enabling them to get pay higher than the pay of 110 workmen promoted earlier. It was further stipulated in the settlement that no anomalies in pay or seniority arising out of such post dating of promotions would be entertained and that no relief on that count would be

admissible. Subsequently, at the instance of the union, a reference was made under Section 4-K of an industrial dispute that the pay of the 110 workmen should be enhanced to the level of the pay of the 218 workmen. It was held that during the survival of the settlement, such a reference was not maintainable. *Hindustan Aeronautics Ltd. v. State of U.P.*, (1992) 1 LLJ 172 : 1990 Lab IC 1197 : 60 FLR 134.

The Legislature intended that for giving effect to the provisions of Section 4-F and 6-B of the Act the provisions of Sections 18 and 19 of the Central Industrial Act, 1947 will be complied with as far as possible. Therefore, a settlement arrived at in a conciliation proceeding and intended to enure for a specified period cannot, during such period, be terminated by notice from one of the parties. Nor can the subject-matter of such settlement be referred under Section 4-K of the Act during that period. *British India Corporation v. Labour Court*, (1984) 48 FLR 234. The Labour Commissioner, acting as Conciliation Officer, has no jurisdiction to decide whether the settlement reached between the management and workmen continued to be binding or whether the excuse set forth by the management for non performance of its obligations was correct or not. Nor can he direct the enforcement of the settlement. *U.P. State Sugar Corporation Ltd. v. Competent Labour Commissioner*, (1991) 2 Cur LR 463: 62 FLR 748 : (1991) 2 LLN 78(A11)(DB).

Where during the pendency of proceedings under Section 33-C(2) initiated by the employees on the basis of a settlement, the State Government made a reference to the Industrial Tribunal covering the very provisions of the settlement upon which the applications under Section 33-C(2) were based, it was held that the effect of making of the reference was that the proceedings under Section 33-C(2) became infructuous and could not be decided on merits. *National Textile Corporation v. Presiding Officer Labour Court*, (1984) 48 FLR 31.

Different concerns of the J.K. Group of Industries managed a guest house and bore its expenses in a fixed proportion. In absence of a relation of employer and employee between the workers of the guest house and the individual industrial concerns it was held that the demand of better wages and service conditions for workers of the guest house did not constitute an industrial dispute and that the reference of the same under Section 4-K was bad in law. *Cotton and Woollen Textile Workers Union v. Industrial Tribunal*, 1982 Lab IC 1329: 44 FLR 429: (1982) 2 LLN 159.

The Labour Court can examine whether the dispute raised by an individual was an industrial dispute capable of being raised under Section 2-A. *Jagdeo Pandey v. Labour Court*, (1987) 55 FLR 421.

The Labour Court cannot go beyond the terms of reference of the industrial dispute. *U.P. State Bridge Corporation Ltd. v. Presiding Officer, Labour Court*, (1989) 58 FLR 429.

Where the dispute referred to the Labour Court was only in respect of dismissal of workers on account of closure, it was held that the Labour Court could not go into the question of the factum of closure. *Balaji Vegetable Products (Pot.) Ltd. v. State of U.P.*, 1982 Lab IC (NOC) 130.

The Labour Court cannot invoke Section 10(4) of the Industrial Disputes Act, 1947 to decide incidental matters in a reference under Section 4-K. *Balaji Vegetable Products (Pvt.) Ltd. v. State of U.P.*, 1982 Lab IC (NOC) 130.

Even in case of closure of an industry subsequent to reference of a dispute, the Tribunal must complete the adjudication and make its award. *U.P. Electricity Supply Co. Ltd. v. Workmen*, (1971) 3 SCC 495: (1971) 2 LLJ 528: AIR 1971 SC 2521.

An order of reference, although mentioning a particular Presiding Officer of the Labour Court does not come to an end merely on account of retirement, resignation or removal of the Presiding Officer and has to be decided by the successor Presiding Officer. *Meerut District Cooperative Bank Ltd. v. Labour Court*, (1992) 65 FLR 41.

Once an employer passes an order of termination simpliciter, it is not open to him to justify the same by framing charge for the first time and initiating disciplinary proceeding before the Tribunal. *Sahkari Ganna Vikas Samiti Ltd. v. Presiding Officer, Labour Court*, 1991 Lab IC 1426.

A party accepting the terms of reference and not getting the same amended or amplified by the Government cannot subsequently impugn the consequent award on the ground that a particular point which ought to have been referred to for adjudication had not been so referred. *U.P. State Bridge Corporation Ltd. v. Presiding Officer, Labour Court*, (1989) 58 FLR 429.

A person aggrieved by retrenchment in violation of Section 6-N has adequate and efficacious remedy under Section 4-K. Unless, on the facts and circumstances of his case, he proves otherwise by demonstrating the existence of any exceptional or extraordinary circumstances, a writ petition seeking relief against such grievance will not be maintainable. *Chandrama Singh v. Managing Director U.P. Cooperative Union*, (1991) 2 LLN 1084 (A11)(FB). See also *Wajeeh Ullah v. District Assistant Registrar Cooperative Societies Banda*, 64 FLR 20(DB). *Amba Dutt Joshi v. State of U.P.*, (1992) 1 LLN 975 : 64 FLR 920 ; *U.P. Chalchitra Nigam Ltd. v. State of U.P.*, 1991 Lab IC 1277: (1991) 1 Cur LR 478 : 62 FLR 24(DB). The contra opinion in *Ashok Kumar Sriastava v. State of U.P.*, appears to be not good law.

Unsustainability of mere some of the reasons and grounds of the Labour Court's award cannot justify interference by High Court under Article 226 of the Constitution of India with such an award. *U.P. State Road Transport Corporation v. State of U.P.*, 1991 Lab IC 1090.

Where in reply to a writ petition impugning termination of service, the very validity of the appointment was questioned by the alleged employer, it was held that Section 4-K did not provide an alternative remedy in such a case and that the writ petition was maintainable. *Surrendra Nath Rai v. Managing Director, U.P. Cooperative Union*, (1992) 65 ILR 160.

Where an objection as to the maintainability of a writ petition on the ground of availability of an alternative remedy under the Act was taken at the stage when affidavits had already been exchanged between the parties and the petitioners were relying only upon the facts stated in the counter affidavit and the annexures thereto, a Division Bench of the Allahabad High Court overruled the objection. *Ambika Singh v. U.P. State Sugar Corpn. Ltd.*, 1991 Lab IC 343(A11)(DB).

Award: Interim stay by High Court.—The concept of distributive justice has to be kept in mind before passing an interim stay particularly when the contest is between two unequals, viz., the employer and workman. Hence, where the employer impugned, and

sought the stay of, the award of reinstatement of a workman, who had remained out of employment for nine long years, the High Court granted the stay subject to the depositing of half of the back wages with the Labour Court by the employer. The High Court directed the amount to be paid to the workman, and also directed payment of full salary in future till the disposal of the writ petition. *Sahkari Bank, Basti v. State of U.P.*, 1989 Lab IC 915 : (1988) 57 FLR 428 : * (1988) 2 LLN 849.

Where the High Court set aside the Government's order of refusal to make a reference, the High Court could ask the Government to reconsider the matter but could not give preemptory directions to make a reference. *Covind Sugar Mills Ltd. v. Hind Mazdoor Sabha*, (1976) 1 SCC 60 : 1975 SCC (L & S) 450 : 1975 Lab IC 1216. See also *Mahabir Jute Mills Ltd. v. Shibban Lal Saxena*, (1975) 2 SCC 818: 1975 SCC (L & S) 460: 1975 Lab IC 1497.

5. Power to include other undertakings in any adjudication.—

(1) Where an industrial dispute referred to adjudication ²³[under Section 4-A] has arisen only in a particular undertaking or group of undertakings, the [State Government] may include in the adjudication proceedings any other undertaking either of its own motion or on an application received in this behalf, whether an industrial dispute exists at the time in that undertakings or not, provided that the ²⁵[State Government] is satisfied—

- (i) that the undertaking to be so included is engaged in the same type of industry or business as the undertaking or the group of undertakings in which the industrial dispute referred for adjudication has arisen; and
- ²⁶[(u) that the issues involved in the industrial dispute referred for adjudication have already given rise, or are such as, in the circumstances, may reasonably be expected to give rise, to a similar dispute in the undertaking to be so included.]

(1) Where an undertaking has been included in adjudication proceedings under sub-section (1), the provisions of any order made under this Act, shall, save as may be expressly provided to the contrary in any such order or award, apply to and in relation to such undertaking as they apply to and in relation to any undertaking or group of undertakings in which the industrial dispute referred for adjudication arose.

²⁷[5-A. Special composition of Tribunal.—(1) **Where any industrial dispute may be referred to an Industrial Tribunal under Section 4-K, the State Government, if, having regard to the nature of the dispute and the effect which its decision is likely to have on industry or any section thereof,**

or, if the dispute is such as is likely to affect more than one industrial establishment, it so considers necessary, may constitute, notwithstanding anything in the said section, a tribunal consisting of three persons, of whom one to be designated by the State Government, shall be the Chairman.

(2) Except as provided in sub-section (1) all the provisions of this Act relating to the constitution of an industrial tribunal, the qualification and disqualification of persons to be appointed thereto, the powers and duties of such tribunals, the procedure to be followed by it in the hearing and disposal of industrial disputes, the making of the award, its modification and enforcement shall *mutatis mutandis* apply to a tribunal constituted under this section].

²⁷[5-B. Voluntary reference of disputes to arbitration.—(1) Where any industrial dispute exists or is apprehended and the employer and the workmen agree to refer the dispute to arbitration, they may, at any time before the dispute has been referred under Section 4-K to a Labour Court or Tribunal, by a written agreement, refer the dispute to arbitration and the reference shall be to such person or persons (including the Presiding Officer of a Labour Court or a Tribunal) as an arbitrator or arbitrators as may be specified in the arbitration agreement.

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

(3) A copy of the arbitration agreement shall be forwarded to the State Government, the Conciliation Officer and Labour Commissioner, and the State Government shall within fourteen days from the date of receipt of such copy, publish the same in the Official Gazette.

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

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

^{27a}[5-G. Procedure and powers of Boards, Labour Courts and Tribunals.—(1) Subject to any rules that maybe made in this behalf, an arbitrator, a Labour Court or a Tribunal shall follow such procedure as the arbitrator, the Labour Court or the Tribunal concerned may think fit.

(2) A Presiding Officer of a Labour Court or a Tribunal may for the purpose of enquiry into any existing or apprehended industrial disputes, after giving reasonable notice, enter the premises occupied by any establishment to which the dispute relates.

(3) Every Board, Labour Court and Tribunal shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters, namely—

(a) enforcing the attendance of any person and examining him on oath or affirmation or otherwise ;

requiring the discovery and production of documents and material objects;

(b) issuing commissions for the examination of witnesses;

(c) inspection of any property or thing including machinery concerning any such dispute; and

(d) in respect of such other matters as may be prescribed;

and every enquiry or investigation by a Labour Court or Tribunal shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code.]

NOTES

If a proper request is made at the proper stage either by an employer or an employee before the Tribunal or any other forum created under the Act for the framing of a preliminary issue the same may be considered and allowed. *Star Paper*

***Mills Ltd. v. Presiding Officer, Labour Court*, 1987 Lab IC 1854: 54 FLR 779 s (1987) 2 LLN 230. Distinguishing *Shankar Chakravarti v. Britannia Biscuit Co. Ltd.*, (1979) 3 SCC 371 : 1979 SCC (L & S) 279: 1979 Lab IC 1192.**

After framing a preliminary issue as to the competence of the union to raise the dispute, the Industrial Tribunal cannot postpone decision on this issue till the making of the final award. ***Mitra Prakashan (P) Ltd. v. Stats of U.P.*, (1987) 1 LLN 92.**

The Labour Court feeling that it had committed a mistake in giving its decision in favour of a party in disregard of a settlement arrived at between the parties, reviewed and modified its earlier orders. The Act, though does not contain a provision for review, a Single Judge of the Allahabad High Court held that the Labour Court had acted within its jurisdiction in reviewing its earlier orders in the exercise of its inherent powers. ***Trivem Prasad Shukla v. Labour Court*, (1986) 1 LLN 81: 51 FLR 323.**

In a reference regarding the propriety of the supersession of a workman, before passing an award adversely affecting the promotion of the superseding workman, the Labour Court ought to give the latter an opportunity of having his say in the matter on the principles of natural justice. ***Jamwant Singh v. Stats of U.P.*, (1986) 2 LLN 483: 53 FLR 25.**

Rule 16 of U.P. Industrial Rules, 1957 does not bar the Labour Court from permitting a party to participate in the proceedings of the court on the adjourned date of hearing even though on account of that party's absence on the earlier date, the Court had passed an order that it would proceed ex parte against that party and the party had failed to seek recall of that order within the time prescribed by Rule 16. ***Sangam Fishing Works v. Labour Court*, (1989) 2 LLN 132: (1989) 2 Cur LR 147: 58 FLR 888.**

By virtue of Rule 12(1) («) of the Rules under the Act, the Labour Court can permit the filing of additional written statement at any stage. ***Allahabad Patrika Pvt. Ltd. v. Labour Court*, (1984) 1 LLJ 297 : 48 FLR 11.7.**

Where on the date fixed for filing of rejoinder affidavit and framing of issues, the Presiding Officer was on leave, it was held that without informing the workman about the next date, the Presiding Officer could not give an ex parte award. ***U.P. Road Transport Corpn. v. Stats of U.P.*, 1990 Lab IC 1444.**

^{27a}**[5-D. Power of the Conciliation Officer.—**(1) A Conciliation Officer may call for and inspect any document which he has ground for considering to be relevant to the industrial dispute or which he considers necessary for verifying the implementation of any award or for carrying out any other duty imposed on him under this Act, and for the aforesaid purposes, the Conciliation Officer shall have the same powers as are vested in a Civil Court under the Civil Procedure Code, 1908, in respect of compelling the production of documents before it.

(2) A Conciliation Officer may, for the purpose of enquiry into any existing or apprehended dispute, after giving reasonable notice enter the premises occupied by any

establishment.]

^{27a}**[5-E. Award of Costs.**—Subject to any rules made under this Act, the costs of, and incidental to, any proceeding before an arbitrator, a Labour Court or Tribunal shall be in the discretion of the arbitrator, Labour Court or Tribunal, and the arbitrator, Labour Court or Tribunal, as the case may be, shall have full power so determine by and to whom and to what extent and subject to what condition, if any, such costs are to be paid, and to give all necessary directions for the purpose aforesaid and such costs may, on application made to the State Government by the person entitled be recovered by the State Government in the same manner as an arrears of land revenue.]

²⁸**[6. Awards and action to be taken thereon.**—(1) Where an industrial dispute has been referred to a Labour Court or Tribunal for adjudication, it shall hold its proceedings expeditiously and shall as soon as it is practicable on the conclusion thereof, submit its award to the State Government.

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

^{28a}[2-A) An award in an industrial dispute relating to the discharge or dismissal of a workman may direct the setting aside of the discharge or dismissal and reinstatement of the workman on such terms and conditions if any, as the authority making the award may think fit, or granting such other relief to the workman, including the substitution of any lesser punishment for discharge or dismissal, as the circumstances of the case may require.]

(3) Subject to the provisions of sub-section (4) every arbitration award and the award of a Labour Court or Tribunal, shall, within a period of thirty days from the date of its receipt by the State Government be published in such manner as the State Government thinks fit.

^{28b}[(4) Before publication of an award of a Labour Court or Tribunal under sub-section (3), if the State Government is of the opinion that,—

- (a) the adjudicating authority has unreasonably refused permission to any party to adduce evidence ; or
- (b) any party was prevented by any other sufficient cause from adducing evidence; or
- (c) new and important material fact or evidence has come to notice, which after the exercise of due diligence, was not within the knowledge of, or could not be produced by, the party at the time when the award was made; or
- id*) the award is likely to disturb the industrial peace ; or
- (e) the award is likely to affect prejudicially the national or State economy; or
- (e) the award is likely to interfere with the principles of social justice; or
- (f) the award has left undetermined any of the matters referred for adjudication, or where it determines any matter not referred for

28. ***Subs. by U.P. Act 1 of 1957.***

28a. *Zw. by U.P. Act 34 of 1978.*

28b. *Subs. by U.P. Act 3 of 1991, S. 2 (w.e.f. 13-8-1990).* adjudication and such

matter cannot be separated without affecting the determination of the matters referred; or
(A) the award is so indefinite as to be incapable of being enforced; or

(») illegality of the award is apparent upon the face of it, it may, after giving the parties reasonable opportunity of being heard, for reasons to be recorded, remit the award for reconsideration of the adjudicating authority, and that authority shall, after reconsideration, submit its award to the State Government, and the State Government shall publish the award in the manner provided in sub-section (3).

(5) Subject to the provision of Section 6-A, an award published under sub-section (3) shall be final and shall not be called in question in any court in any manner whatsoever.

(6) A Labour Court, Tribunal or Arbitrator may either of its own motion or on the application of any party to the dispute, correct any clerical or arithmetical mistakes in the award, or errors arising therein from any accidental slip or omission; whenever any correction is made as aforesaid, a copy of the order shall be sent to the State Government and the provision of this Act; relating to the publication of an award shall *mutatis mutandis* apply thereto.]

NOTES

The insertion of sub-section (2-A) by Act No. 34 of 1978 has enlarged the jurisdiction of the Labour Court immensely, qualitatively as regards the appraisal of the evidence and quantitatively as regards the quantum of punishment to be awarded to the workman. But even before the ena'tmment of this sub-section, the Labour Court could look into the findings recorded by the enquiry officer in the domestic enquiry and ascertain as to whether the same was vitiated on account of commission of certain irregularities or violation of principles of natural justice or whether the findings were perverse or whether the workman was punished or account of his trade union activities. If so, the Labour Court can certainly grant an appportunity to the employer to lead evidence to substantiate the charges against the workman. *Ramsey Pharma Pvt. Ltd. v. Sant Lal*, (1987) 54 FLR 37

Even in a case of proved misconduct, the Tribunal can take a view that the order of discharge or dismissal is not correct and can substitute the same with lesser punishment. *Kalyan Karyalaya v. Labour Court*, 1992 Lab.IC 774.

Dismissal or discharge can be substituted by any other punishment only if the workman concerted is reinstated. Reinstatement negatives the snapping of employer employee relationship at any stage and, there, entitles such a workman to back wages. *Nagina Sahkari Ratal Mills Ltd. v. Nagina Sahkari Mill Matdoor Union*, 1991 Lab IC (NOC) 15.

Merely because the enquiry was fair and the findings were not vitiated the Labour Court is not barred from interfering with the order of termination of the workman's service. Hence where with a view to give an appportunity to the dismissed workman to improve, the Labour Court ardered. reinstatement and awarded 75% back wages without casts, the decision was upheld by the Supreme Gourt. *Scooters India Ltd. v. Labour Court*, 1989 Supp (1) SCO 31: 1989 SCC (L & S) 180.

A suit for declaring an award, duly published under Section 6(6), illegal is not

maintainable. *Ranush Chand Sharma v. Naharwar Engineering Works*, 1987 Lab IC 737: (1987) 2 LLN 45: 54 FLR 115.

Section 6(4) is violative of Article 14 of the Constitution of India. *B.B. Rajwanshi v. State of U.P.*, (1988) 2 SCC 415: 1988 SCC (L & S) 559: (1988) 2 LLN 13 reversing *B.B. Rajwanshi v. State of U.P.*, 1987 Lab IC 1 and overruling *V.R. Thomas v. State of U.P.*, 1978 ALJ 1118. Hence, in *V.R. Thomas v. Industrial Tribunal*^{2*0}, an order made by the Governor returning the award under Section 6(4) was held bad and the State Government was directed to publish the award under Section 6(3).

(3) 28c. (1989) 1 LLN 827: (1989) 1 Cur LR 166 : 58 FLR 141 (SC),

Parties to an award cannot re-agitate issues which have already been adjudicated under a previous award. *Hind Mazdoor Sabha v. State of U.P.*, (1987) 54 FLR 496.

Omission in the part of the Industrial Tribunal to decide a question or issue referred to it by the Government is an error which is liable to be corrected by the Tribunal. *Bijli Mazdoor Sangh v. Industrial Tribunal*, (1990) 2 LLN 15: 60 FLR 721: (1990) 2 Cur LR 108.

Where omission on the part of the Industrial Tribunal to notice a document on record evidencing the completion of 240 days continuous service, resulted in refusal of relief against termination, it was held that such omission was an accidental error and that the award suffering from that error could be amended under Section 6(6). *Bahraick District Cooperative Bank v. Ramesh Chandra Khanna*, (1989) 59 FLR 202.

The two extremities of time provided in Section 6-D cannot be used as a ground for inferring a time limit for the correctional jurisdiction u/s 6(6). *Tulsipur Sugar Co. Ltd. v. State of U.P.*, (1969) 2 SCO 100: AIR 1970 SC 70: (1969) 2 LLJ 662.

²⁸[6-A. Commencement of the award.—(1) An award (including an arbitration award) shall become enforceable on the expiry of thirty days from the date of its publication under Section 6 :

Provided that if the State Government is of the opinion that it will be inexpedient ^{so}[on public grounds affecting national or State economy or social justice] to give effect to the whole or any part of the award, the State Government may, by notification in the Official Gazette, declare that the award shall not-become enforceable on the expiry of the said period of thirty days:

Provided⁴further that an arbitration award shall not become enforceable where the State Government after such enquiry as it considers necessary, is satisfied that the same has been given or obtained through collusion, fraud or misrepresentation.

(2) Where any declaration has been made in relation to an award under the first proviso to sub-section (1), the State Government may within ninety days from the date Of publication of the award under Section 6, make an order rejecting or modifying the award, and shall on the first available opportunity lay the award together with a copy of the order before the Legislature of the State.

(3) Where any award as rejected or modified by an order made under sub-section (2) is laid before the Legislature of the State, such award shall become enforceable on the expiry of fifteen days from the date on which it is so laid and where no order under sub-

section (1) is made in pursuance of a declaration under the first proviso to sub-section (1), the award shall become enforceable on the expiry of the period of ninety days referred to in sub-section (2).

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

81[6-B. Settlement outside conciliation proceedings.—(1) A settlement arrived at by agreement between the employer and workmen otherwise than in the course of conciliation proceeding shall except as provided in sub-section (4), be binding on the parties to the agreement:

29. *Ins. by U.P. Act I of 1957.*

30. *Subs, by U.P. Act XXIII of 1957.*

Ins. by U.P. Act I of 1957.

Provided that if the period for which a settlement shall remain in force has not been laid down in such settlement itself, it shall remain in force for one year from the date of its registration.

(2) As soon as settlement referred to in sub-section (1) has been arrived at, the parties to the settlement or any one of them may apply to the Conciliation Officer of the area concerned in the prescribed manner for registration of the settlement.

(4) On receipt of application for registration under sub-section (2) the Conciliation Officer or an authority notified by the State Government in this behalf, either: (i) register the settlement in the prescribed manner, or (ii) refuse registration if it considers it to be inexpedient to do so on public grounds affecting social justice, or if the settlement has been brought about as a result of collusion, fraud or misrepresentation.

(5) Where a settlement under sub-section (1) has been refused registration, it shall not be binding under this Act.]

NOTES

Section 6-B does not prescribe any period of limitation for submitting the settlement for registration. The provision in Rule 26 for sending the application for registration within a month of the date of settlement is directory and not mandatory. Moreover, the grounds for refusing registration as contained in sub-section (3) do not include limitation. Hence, where no prejudice was caused to either party, it was held that a few days' delay in submitting the application could not be made a ground for refusing registration. *Maya Press (P) Ltd. v. State of U. P.*, (1991) 63 FLR 370.

A settlement between the employer and workmen registered in accordance with Section 6-B could not be assailed on the ground that it provided for suspension wages at a rate less than that provided in the Standing Orders. *S.P. Tyagi v. Labour Court*, (1984) 48 FLR 253.

Where relying on an unregistered settlement the management withdrew certain

benefits from the workmen, it was held that the workmen were not bound by the unregistered settlement. *Swadeshi Cotton Mills v. Industrial Tribunal*, (1991) 63 FLR 374.

The word 'may' in sub-section (2) should be read as 'shall'. *Western India Match Co. v. Workmen*, (1974) 3 SCC 330 : 1973 SCC (L & S) 531: AIR 1973 SC 2650.

^{31a}[6-C. Award of Labour Court or Tribunal or arbitration and its operation.— An award shall in the first instance remain in operation for a period of one year or such shorter period as may be specified therein:

Provided that the State Government may extend the period of operation of an award from time to time, if it thinks fit:

Provided further that where the State Government whether of its own motion or on the application of any party bound by the award, considers that since the award was made there has been a material change in the circumstances on which it was based, the State Government may, after such enquiry as it may think fit, shorten the period of operation of the award.]

NOTES

Section 6-C refers to an award which has become final and not to an award pending before a Tribunal or a Court. *Swadeshi Cotton Mills Co. Ltd. v. Rajeshwar Prasad*, AIR 1961 SC 429: (1960) 2 LLJ 707.

^{S1}»[6-D. Commencement and conclusion of proceeding.—Proceedings before a Labour Court or Tribunal shall be deemed to have commenced

on the date of reference of a dispute to adjudication, and such proceedings shall be deemed to have concluded on the date on which the award becomes enforceable under Section 6-A.j

»u>[6-E. Conditions of service, etc. to remain unchanged in certain circumstances during the pendency of proceedings.—(1) During the pendency of any conciliation proceeding before a Conciliation Officer or a Board or of any proceeding before a Labour Court or Tribunal in respect of an industrial dispute, no employer shall—

- (a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding, or
- (4) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise any workman concerned in such dispute save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute—

- (a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding, or
- (A) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman:

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

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

- (a) by altering, to the prejudice of such protected workman, the conditions of service applicable to him immediately before the commencement of such proceeding, or
 - (b) by discharging or punishing, whether by dismissal or otherwise, such protected workman,
- save with the express permission in writing of the authority before which the proceeding is pending.

Explanation.—For the purposes of this sub-section, a ‘protected workman’ in relation to an establishment, means a workman who, being an officer of a registered trade union connected with the establishment, is recognized as such in accordance with rules made in this behalf.

In every establishment, the number of workmen to be recognized as protected workmen for the purposes of sub-section (3) shall not exceed one per cent of the total number of workmen employed therein subject to a minimum number of five protected workmen and a maximum number of one hundred protected workmen and for the aforesaid purpose, the State Government may make rules providing for the distribution of such protected workmen among various trade unions, if any, connected with the establishment and the manner in which they may be chosen and recognized as protected workmen.

(5) Where an employer makes an application to a Board, Labour Court or Tribunal under the proviso to sub-section (2) for approval of the action taken by him, the authority concerned shall, without delay, hear such application and pass, as expeditiously as possible, such order in relation thereto as it deems fit.]

NOTES

Section 6-E prohibits the exercise of the common law right of an employer or a master to dismiss its employees or servants on justifiable grounds. It further provides that the embargo would be lifted only if permission is granted by the Industrial Tribunal or the Labour Court concerned. *Glaxo Laboratories (India) .Ltd. v. City Magistrate*, (1990) 59 FLR 569.

The date of birth does not constitute a condition of service. Therefore, sub-section (1)(a) does not have the effect of prohibiting the employer from retiring the workman on the basis of the recorded date of birth during the pendency of an industrial dispute before the Labour Court as to the correctness of that date. *Kailash Singh v. Swadeshi Cotton Mills*, 63 FLR 813.

Where the domestic enquiry is not an improper one and the proposed action is not by way of victimisation, the function of the Labour Court in an application

seeking permission to dismiss the workman is limited to examining whether the employer had a *prima facie* case for the proposed action. It cannot weigh the evidence in regard to the alleged misconduct itself. *Cawnpore Textiles Ltd. v. Labour Court*, (1982) 2 LLN 415: 45 FLR 194.

Sub-section 2(b): Powers of Industrial Court.—In considering the question of granting approval to the termination of the workman's service, the Industrial Tribunal cannot reappraise the evidence like a court of appeal and hold that the charges were not proved and that the domestic enquiry was vitiated. *Moti Mahal Talkies v. Industrial Tribunal*, (1985) 51 FLR 45: (1985) 2 LLN 307.

The expression 'application for approval of the action taken* occurring in the proviso to sub-section (2) implies the existence of an order of actual discharge or dismissal made by the employer. This is borne out from Form XV of the Rules. The said expression does not refer to a mere proposed action. *Strawboard Manufacturing Co. v. Gobind*, (1962) 1 LLJ 420: AIR 1962 SC 1500. The making of such application should be simultaneous with the dismissal or discharge and the payment of wages. In other words the said three things should form the part of the same transaction. Whether the application was made as part of the same transaction is a question of fact and will depend upon the circumstances of each case, Hence, where the employer at Saharanpur passed the order of dismissal on 1-2-1960 and sent two applications by post to the Tribunals sitting at Meerut and Allahabad who received the same on 3-2-1960 and 4-2-1960, it was held that the application was made in accordance with the proviso. *Ibid*.

³²[6-F. Special provision for adjudication as to whether the conditions of service, etc. changed during the pendency of proceedings. _____]

Where an employer contravenes the provisions of Section 6-E during the pendency of proceedings before a Labour Court or Tribunal, any workmen aggrieved by such contravention may make a complaint in writing in the prescribed manner, to the Labour Court or Tribunal as the case may be and on receipt of such complaint that Labour Court or Tribunal as the case may be, shall adjudicate upon the complaint as if it were a dispute referred to or pending before it, in accordance with this Act and shall submit its award to the State Government and the provisions of this Act shall apply accordingly.]

NOTES

A workman was dismissed after a domestic enquiry during the pendency of a reference under Section 4-K. Therefore, he filed a complaint under Section 6-F. The Tribunal found that the domestic enquiry had been vitiated by violation of principles of natural justice. Notwithstanding the absence of any application from the employer for permission to lead evidence to justify the dismissal by evidence, it was held that the Tribunal acted, within its powers when it did not dismiss the complaint on the ground of infirmity in the domestic enquiry and *suo motu* gave opportunity to the management to justify the dismissal on merits. *Desh Raj Gupta v. Industrial Tribunal*, (1991) 1 SCO 249: 1991 SCC (L & S) 303: AIR 1990 SC 2174 upholding *Des Raj Gupta v. Industrial Tribunal*, 1983 Lab IC 1548: 47 FLR 258: (1983) 2 LLN 726 (All).

Once the Tribunal finds the termination to be justified, it cannot grant relief to

the workman on a ground which had not been raised by him. *Indian Engineering and Construction Co. Ltd. v. Fourth Industrial Tribunal*, (1986) 1 LLN 711: (1986) 52 FLR 339.

In a complaint under Section 6-F only such questions as are germane to the controversy can be put to the workman in cross examination. Hence, where the controversy was as to whether the service conditions of the workman had been changed during the pendency of the proceedings before the Labour Court or the Tribunal, notwithstanding the fact that the workman had filed an affidavit stating that he had been appointed as a handicapped person, it was held that the employer could not be permitted to cross examine the workman about the nature of his , initial appointment. *Artificial Limbs Manufacturing Corporation of India v. Industrial Tribunal*, (1990) 1 LLJ 548: (1990) 1 LLN 322: 59 BLR 582.

³²[6-G. Power to transfer certain proceedings.—^{32a}(1) The State Government may by order in writing for reasons to be recorded withdraw and transfer a -proceeding from—

- (i) one Labour Court to another Labour Court or any Tribunal;
- (ti) one Tribunal, to another Tribunal or to a Labour Court if the dispute is within the jurisdiction of the Labour Court, for the disposal of the proceeding and the Labour Court or Tribunal to which the proceeding is so transferred may, subject to any special directions in the order of transfer, proceed either *de novo* or from the stage at which the proceeding was so transferred.]

(2) Without prejudice to the provisions of sub-section (1) any Tribunal, if so authorized by the State Government, may transfer any proceeding under Section 6-E or Section 6-F pending before it to any one of the Labour Courts specified for the disposal of such proceedings by the State Government by notification in the Official Gazette and the Labour Court to which the proceeding is so transferred shall dispose of the same.

NOTES

Section 6-G empowers the State Government to withdraw the proceedings -from one Labour Court or Tribunal only for the purpose of transferring the same to another Labour Court or Tribunal. It has no absolute power to withdraw any proceedings. *Shree Sila Ram Sugar Co. Ltd. v. Presiding Officer, Labour Court*, (1974) 3 SCC 239 : 1973 SCC (L & S) 513: 1973 Lab IC 1236.

Where no transfer is involved, the State cannot, after referring an industrial dispute to a Labour Court, withdraw it even for the purpose of re-referring it with amendments. *Mechanical and Technical Workers' Union v. Arun Metal Industries*, (1983) 1 LLN 92 : 45 FLR 189. Orders of such withdrawal and re-reference cannot be sustained even by invoking Section 21 of the General Clauses Act. *Ibid.* Hence, notwithstanding such withdrawal and re-reference, the Labour Court should dispose of the original reference on merits. *Ibid.*

The question of giving opportunity to the parties before transferring the proceedings to another Labour Court or Tribunal always depends upon the facts of each case. If the 32a. Subs, by U. F. Act 34 of 1978. transfer is necessitated by the abolition of a Labour Court or Tribunal or any other similar exigency, there will be no question of giving opportunity but prior opportunity will have to be given if, after

commencement of the trial, the proceedings are transferred on account of any allegation of bias or prejudice against the Presiding Officer. *Hindustan Lovor Ltd. v. Gout, of V.P.*, 1978 Lab IC 864: (1978) 2 LLN 54 (DB): 36 FLR 361. Followed in *Wimco IM. v. Labour Court*, 1983 Lab IC 344 : 45 FLR 183: (1983) 1 LLN 605.

The reasons for transfer of proceedings must be proper, adequate and intelligible and not perfunctory. *Simbhaoli Mastdoor Sangh v. Stats of U.P.*, 1986 Lab IC 477 : (1985) 2 LLN 621: 51 FLR 225 (DB).

Normally, a successor Presiding Officer should proceed from the stage where the matter rests when he comes in. A *do novo* trial may be ordered in exceptional cases. For doing this a strong case has to be made out. Hence, where the parties had already closed their evidence, the successor Presiding Officer could not order *do novo* hearing of the case. *Tata Iron and Stool Co. Ltd. v. Socond Labour Court*, (1983) 2 LLN 737: 47 FLR 171.

³ [6-H. Recovery of money-due from an employer.—(1) Where any money is due to a workman from an employer under the provisions of Sections 6-J to 6-R or under a settlement or award, or under an award given by an adjudicator or the State Industrial Tribunal appointed or constituted under this Act, before the commencement of the Uttar Pradesh Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956, the workman may, without prejudice to any other mode of recovery, make an application to the State Government for the recovery of the money due to him, and if the State Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same as- if it were an arrear of land revenue.

i

Where any workman is entitled to receive from the employer any benefit which is capable of being computed in terms of money, the amount at which such benefit should be computed may, subject to any rules that may be made under this Act, be determined by such Labour Court as may be specified in this behalf by the State Government, and the amount so determined may be recovered as provided for in sub-section (1) ned may be recovered as provided for in sub-section (1)

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

NOTES

Where the Labour Court directed reinstatement of the discharged workman with full back wages, it was held that the Deputy Labour Commissioner could, acting under subsection (1), calculate or ascertain the back wages so payable. *Kisan Sowa Sahkari Samiti Ltd. v. Deputy Labour Commissioner*, (1991) 63 FLR 418.

A workman reinstated with back wages after setting aside termination, can resort to sub-section (1) and not sub-section (2) for recovering the back wages. *Exocutivo Engineer v. Kailash Chandra Gautam*, (1990) 61 FLR 441.

• A dispute regarding retrenchment is exclusively within the competence of Industrial Tribunal by virtue of Item 10 of the Second Schedule and not within the competence of the Labour Court. Hence, no such application is maintainable under Section 6-H(2). *U. P. Electric Supply Co. Ltd. v. R.K. Shukla*, (1969) 2 SCC 400: AIR 1970 SC 237 : (1969) 2 LLJ 728.

The powers exercised under Section 6(1) are quasi-judicial and the order must contain the reasons for being satisfied that the money was due and also the correct amount before the certificate for recovery could be issued. *Kisan Sowa Sahkari Samiti Ltd.*, (1991) 63 FLR 418.

The authority acting under Section 6-H(l) must afford the employer an effective opportunity to participate in that proceeding before directing recovery of the amount claimed by the workman. *Omrao Industrial Corporation Pot. Ltd. v. Addl. Labour Commr.*, 1982 Lab IC 609: 44 FLR 236.

When an application made under Section 6-H(2) is dismissed for default, the dismissal does not amount to an action under Rule 16 and a fresh application is maintainable. *Agra Electric Supply Co. Ltd. v. Labour Court*, (1969) 1 SCC 243: AIR 1970 SC 806: (1970) 1 LLJ 1.

Where the workman's petition under Section 6-H for lay off compensation was opposed by the employer on the ground that the establishment was a seasonal one working intermittently, it was held that the dispute had necessarily to be referred to State Government for decision under Section 6-J and that the proceeding under Section 6-H had to await such decision. *Satya Narain Glass Works v. Deputy Labour Commissioner*, 1984 Lab IC (NOC) 119.

^{83a}[6.I. Representation of the parties.—(1) Subject to the provisions of sub-sections (2) and (3), the parties to an industrial dispute may be represented before a Board, Labour Court, or Tribunal in the manner prescribed.

(2) No party to any proceeding before a Board shall be represented by a legal practitioner, and no party to any proceeding before a Labour Court or Tribunal shall be represented by a legal practitioner, unless the consent of the other party or parties to the proceeding and the leave of the Presiding Officer of the Labour Court or Tribunal, as the case may be, has been obtained.]

³¹ [(3) No officer of a Union shall be entitled to represent any party unless a period of two years has elapsed since its registration under the Indian Trade Unions Act, 1926, and the Union has been registered for one trade only:

Provided that an officer of a federation of unions may subject to such conditions as may be prescribed represent any party.]

NOTE

The Tribunal can permit the workman to change his representative on the ground of loss of confidence. *Vikram Cotton Mills v. Industrial Tribunal*, (1990) 1 LLJ 425: (1989) 2 LLN 747 : 59 FLR 386.

³⁵ [6-J. Non-application of the provision for lay-off in certain cases.—(1) Sections 6-K to 6-M inclusive shall not apply—

(a) to industrial establishments in which less than fifty workmen on an average per working

day have been employed in the preceding calendar month, or

(6) to industrial establishments which are of a seasonal character or in which work is performed only intermittently.

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

Explanation.—In this section and in Sections 6-K, 6-L and 6-M “industrial establishment” means—■

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

33a. Ins. by U.P. Act No. 1 of 1957, as amended by U.P. Act No. XXIII of 1957.

34. Subs, by U.P. Act No. XXIII of 1957.

Ins. by S. 8 of U.P. Act No. 1 of 1957.

(M) a mine as defined in clause (f) of Section 2 of the Mines Act, 1952, or

(in) a plantation as defined in clause (l) of Section 2 of the Plantation Labour Act, 1951.]

³⁸ **[6-K. Right of workmen laid-off for compensation.**—(1) Whenever a workman (other than a substitute or a casual workman) whose name is borne on the muster-rolls of an industrial establishment and who has completed not less than one year of continuous service under an employer is laid-off, he shall be paid by the employer for all days during which he is so laid-off except for such weekly holidays as may intervene, compensation which shall be equal to fifty per cent of the total of the basic wages and dearness allowance that would have been payable to him had he not been so laid-off:

Provided that the compensation payable to a workman during any period of twelve months shall not be for more than forty-five days.

(2) Notwithstanding anything contained in the proviso to sub-section (1), if during any period of twelve months, a workman is laid-off for more than forty-five days, whether continuously or intermittently, and the lay-off after the expiry of the first forty-five days comprises continuous periods of one week or more, the workman shall, unless there is any agreement to the contrary between him and the employer, be paid for all the days comprised in every such subsequent period of lay off for one week or more compensation at the rate specified in sub-section (1) : «

Provided that it shall be lawful for the employer in any case falling within this sub-section to retrench the workman in accordance with the provisions contained in Section 6-N at any time after the expiry of the first forty-five days of lay-off and when he does so, any compensation paid to the workman for having been laid-off during the preceding twelve months may be set off against the compensation payable for retrenchment.

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

³⁸**[6-Lr Duty of an employer to maintain muster rolls of workmen.**— Notwithstanding that workmen in any industrial establishment have been laid-off, it shall

be the duty of every employer to maintain for the purposes of Sections 6-J to 6-R a muster-roll, and to provide for the making of entries therein by workmen who may present themselves for work at the establishment at the appointed time during normal working hours.]

³⁶**[6-M. Workmen not entitled to compensation in certain cases.—**No compensation shall be paid to a workman who has been laid-off—

if he refuses to accept any alternative employment in the same establishment from which he has been laid-off, or in any other establishment belonging to the same employer situate in the same town or village or situate within a radius of five miles from the establishment to which he belongs, if, in the opinion of the employer, such alternative employment does not call for any special skill or previous experience and can be done by the workman, provided that the wages which would normally have been paid to the workman are offered for the alternative employment also;

(») if he does not present himself for work at the establishment at the appointed time during normal working hours at least once a day;

(Hi) if such laying-off is due to a strike or slowing down of production on the part of workmen in another part of the establishment,]

^{38a}**[6-N. Conditions precedent to retrenchment of workmen.—**No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

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

Provided that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of service;

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

(c) notice in the prescribed manner is served on the State Government.]

NOTES

By virtue of Section 6-R, the provisions of Section 6-N apply irrespective of any infirmity under any other law, in the appointment of the workman. So, the protection of Section 6-N is available even to a workman who, though not regularly appointed according to rules, fulfils the condition of having worked -for 240 days. *Bhraich District Cooperative Bank Ltd. v. Ramesh Chandra Khanna*, (1989) 59 FLR 202.

Retrenchment of a workman appointed for a shorter period, but allowed to work for 240 days continuously in a calendar year, attracts Section 6-N. *Shirpa Ghoshal v. Secretary, Department of Cane*, (1990) 60 FLR 870: (1990) 2 Cur LR 226. See also 5. *JV. Rai v. Managing Director, U.P. Coop. Union*, (1992) 65 FLR 160.

Not less than one year's continuous service under the employer who retrenched the workman and 240 day's service during 12 months are two conditions precedent for invoking Section 6-N. *Mahesh Chandra Sharma v. Labour Court*, 1982 Lab IC (NCC) 131.

The provisions of Section 6-N are not dependent on the availability of the post. *Mahesh Chandra v. State of U.P.*, (1991) 63 FLR 229.

Section 6-N does not become in applicable merely because of the service of the workman being temporary and, under the terms of contract, terminable on one month's notice or pay in lieu thereof. *Chairman Krishi Utpadan Samitt v. Labour Court*, (1992) 1 Cur LR 972 : (1992) 64 FLR 412.

A mention in the employment order that the employment was for a certain period, does not amount to an agreement and, therefore does not attract the proviso to clause (a). *Ram Bilas v. State of U.P.*, (1990) 2 LLJ 564: (1990) 1 LLN 946 : 60 FLR 567.

An order, terminating the services of a workman, without paying retrenchment compensation, is illegal. *U.P. State Road Trnnsport Co-operation v. Stats of U.P.*, (1991) 63 FLR 757.

Retrenchment of a workman, who had been in continuous service for one year, without following the Procenure contained in Section 6-N of the Act and Rule 42 of the U.P. Industrial Disputes Rules, 1957 is illegal and liable to set aside. *Cooperative Textile Mills Ltd. v. Labour Court*, 1988 Lab IC 425: (1987) 1 LLN 512 : 54 FLR 252.

Non-compliance with Section 6-N renders the retrenchment illegal. *Ram Bilas v. State of U.P.*, (1990) 2 LLJ 564: (1990) 1 LLN 946: 60 FLR 567; *Shafqat Ullah Khan v. U.P. State Electricity Board*, 59 FLR 136(DB).

An order of retrenchment without paying compensation cannot be validated by subsequent payment. *Ram Bilas v. State of U.P.*, (1990) 2 LLJ 564: (1990) 1 LLN 946: 60 FLR 567.

In cases of termination of service without complying with Section 6-N, the proper relief is reinstatement with effect from the date of termination. *Ahmad Ullah Siddiqui, Presiding Officer, Labour Court*, (1990) 1 LLJ 109: (1989) 2 LLN 564: 59 FLR 265.

In a case of termination without retrenchment compensation, the relief of reinstatement with back wages cannot be denied merely because the termination was effected in view of a policy decision of the Head Office of the employer Corporation. *Arvind Kumar Ahnihotri v. U.P. State Handloom Corporation*, (1992) 65 FLR 144.

A workman had completed more than one year service. His services were terminated without service of notice in the prescribed manner on the State Government and without payment of compensation. It was held that such termination was void *ab initio* and that the proper relief was reinstatement with full back wages and continuity of service. *Shanker Prasad Titeari v. State of U.P.*, 1992 Lab IC 324.

The services of a workman, who frequently absented himself from duty for long periods. Therefore, his services were terminated. The workman impugned his termination as violative of Section 6-N. The period of absenteeism was not denied by the workman. Moreover, the workman had, during the post termination period

remained gainfully self- employed. In such circumstances a Single Judge of the Allahabad High Court directed him to be reinstated without back-wages. *Ramsla Sahkari Chini Mills v. Presiding Officer, Labour Court*, (1939) 1 Cur LR 327: 58 FLR 49.

An order of termination of temporary services, passed as a result of an allegation of embezzlement, cannot be upheld as discharge simpliciter under Section 6-N. In such a case the Labour Court should rest its decision on the question whether a domestic enquiry was held and whether opportunity of defence was afforded. *Shesh jVarain Bajpai v. Labour Court*, (1992) 64 FLR 417.

Abandonment of service does not amount to retrenchment and in such a case the question of paying compensation does not arise. *Kshetriya Sri Gandhi Ashram v. Ram Samujh Maurya*, 1990 Lab IC 1406.

Section 6-N is not applicable in cases of acceptance of voluntary resignation. *J.K. Cotton Spinning and Weaving Mills Co. Ltd. v. State of U.P.*, (1990) 4 SCO 27 : 1990 SCC (L&S) 570: 1990 Lab IC 1511. Reversing *J.K. Cotton Spinning and Weaving Mills Ltd. v. State of U.P.*, (1986) 1 LLN 569.

Even where all the conditions laid down in Section 6-N have been complied with. Sections 6-P and 6-Q restrict the employer's power to turn out the workman. *Ram Bilas v. State of U.P.*, (1990) 2 LLJ 564: (1990) 1 LLN 946: 60 FLR 567.

Adequate and efficacious remedy against violation of Section 6-N is available under Section 4-K. Hence, in absence of any exceptional or extraordinary circumstances, a writ petition against such grievance will not be maintainable. *Chandrama Singh v. Managing Director, U.P. Cooperative Union*, (1991) 2 LLN 1084(A11)(FB). See also *Wajeeh Ullah v. District Assistant Registrar Cooperative Societies, Banda*, 64 FLR 20(DB); *Amba Dutt Joshi v State of U.P.*, (1992) 1 LLN 975: 64 FLR 920; *U.P. Chalchitra Nigam Ltd. v. State of U.P.*' 1991 Lab IC 1277; (1991) 1 Cur LR 478: 62 FLR 24(DB). Therefore, the contra opinion in *Ashok Kumar Srivastava v. State of U.P.*, appears to be not good law.

^{86a}[6-O. Special provisions relating to workmen employed in undertakings which are transferred.—Notwithstanding anything contained in Section 6-N no workman shall be entitled to compensation under that section by reason merely of the fact that there has been a change of employers in any case where the ownership of management of the undertaking in which he is employed is transferred, whether by agreement or by operation of law, from one employer to another:

Provided that—

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

and has not been interrupted by the transfer,]

NOTES

Where the fulfilment of the conditions prescribed by Section 6-0 were disputed, it was held that without deciding this issue the Labour Court could not compute the amount of compensation payable to the workman. *U.P. Electric Supply Co. Ltd. v. R.K. Shukla*, (1969) 2 SCC 400: (1969) 2 LLJ 728: AIR 1970 SC 237.

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

NOTES

Section 6-P operates independent of Section 6-N. Hence, for an application under Section 6-P, requirement of continuous service for the period prescribed in Section 6-N need not be satisfied. *Kamlesh Singh v. Presiding Officer*, 1986 Supp SCC 679: 1987 SCC (L & S) 75.

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

NOTES

Resignation pursuant to notice of closure amounts to retrenchment. Hence, in such a case where the closed factory was restarted after a short spell of about one year and seven months, it was held to be incumbent upon the employers to offer re-employment to the workmen who had resigned in pursuance of the closure notice. *Saroop Vegetables Product Industries Ltd. v. State of U.P.*, 1987 Lab IC 1286: (1986) 2 LLN 835: 53 FLR 218.

Section 6-Q, does not require the employer to exempt the retrenched employees from the qualifications prescribed by the employer for fresh recruitment. *Rajendra Kumar Shukla v. U.P.S.R.T. Corporation*, (1991) 1 LLN 69 (AU)(DB).

^{37a}**[6-R. Effect of laws inconsistent with Sections 6-J to 6-Q.—**

(1) The provision from Sections 6-J to 6-Q shall have effect notwithstanding anything inconsistent therewith contained in any other law (including Standing Orders) made under the Industrial Employment (Standing Orders) Act, 1946:

Provided that nothing contained in this Act shall have effect to derogate from any right which a workman has under the Minimum Wages Act, 1948, or any notification or order issued thereunder or any award for the time being in operation or any contract with the employer.

(2) For the removal of doubts, it is hereby declared that nothing contained in Sections 6-J to 6-R shall be deemed to affect the provision of any other law for the time being in

force so far as that law provides for the settlement of industrial disputes, but the rights and liabilities of employers and workmen in so far as they relate to lay-off and retrenchment shall be determined in accordance with the provisions of Sections 6-J to 6-Q.

NOTES

The provisions of the Act regarding retrenchment and re-employment prevail over government orders or other Acts relating to selection of a candidate by the Institutional Service Board. *Ram Bilas v. Staff of U.P.*, (1990) 2 LLJ 564: (1990) 1 LLN 946: 60 FLR 567.

Where workmen putting in a minimum attendance of a specified number of days⁴ during a year were, under a settlement, entitled to good attendance leave at the specified rate in the next year, it was held that even for the period of lay off the workmen were entitled to this benefit in addition to lay off compensation. *Hind Lamps v. Staff of U.P.*, 1989 Lab IC 629.

U.P. Act No. 1 of) 957 inserted Section 6-R(2) in the U.P. Industrial Disputes Act, 1947, subsequent in incorporation of Section 25-J in the Industrial Disputes Act, 1947, and received the assent of the President. Therefore, by virtue of Section 6-R(2) of the U.P. Act prevails over Section 25

J of the Central Act. *U.P. Electric Supply Co. Ltd. v. R.K. Shukla*, (1969) 2 SCC 400 : 1970 Lab IC 276 : (1969) 2 LLJ 728. Holding the contrary observations in *Rohtak and Hissar Districts Electricity Supply Co. Ltd. v. State of U.P.*, (1966) 2 LLJ 330: AIR 1966 SC 1471 as not good law.

Therefore, the observations *in Hind Lamps Ltd. v. State of U.P.*, 1989 Lab IC 629: 57 FLR 703(All) to the effect that an industrial in relation to lay off though initiated, and pending before a forum constituted, under a State law should be adjudicated upon in accordance with the provisions of Chapter V of the Central Act appears to be *per incuriam*.

^{3, a}**[6-S. Prohibition of illegal strikes and lock-outs.—**(1) No peremployed in an industrial establishment shall go on strike—

- (a) without giving to the employer a notice of strike within thirty days before striking; or
 - (i) within fourteen days of giving such notice; or
 - (c) before the expiry of the date of strike specified in any such notice as aforesaid; or
 - (d) during the pendency of any conciliation proceeding before a Conciliation Officer or a Board and thirty days after the conclusion of such proceeding, if he is concerned in the dispute which is the subject-matter of such proceeding ; or
 - (e) between the commencement and the conclusion of proceeding before a Labour Court or a Tribunal, if he is concerned in the dispute which is the subject-matter of such proceeding; or
 - (/) during any period in which a settlement or award is in operation, in respect of the matters covered by the settlement or award.
- (2) No employer shall lock out any of his workmen—
- (a) without giving him notice of lock-out within thirty days before locking out; or
 - (b) within fourteen days of giving such notice; or

- (c) before the expiry of the date of lock-out specified in any such notice as aforesaid; or
- (J) during the pendency of any conciliation proceeding before a Conciliation Officer or a Board, and thirty days after the conclusion of such proceeding, if the workman is concerned in the dispute which is the subject-matter of such proceeding; or
- (e) between the commencement and the conclusion of proceeding before a Labour Court or a Tribunal, if the workman is concerned in the dispute which is the subject-matter of such proceeding ; or
- (/) during any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award.

(3) The notice of strike or lock-out under this section shall not be necessary which a lock-out or, as the case may be, a strike already exists in the industrial establishment, but the employer shall send intimation of the lock-out or strike on the day on which it is declared, to such authority as may be prescribed.

(4) Every notice of a strike or lock-out under this section shall specify a date within three days of which if no strike or lock-out takes place in pursuance of the notice, the notice shall cease to have effect and fresh notice shall have to be given for a strike or lock-out.

(5) The notice of strike, referred to in sub-section (1), shall be given by such number of persons to such person or persons, and in such manner as may be prescribed.

(6) The notice of lock-out, referred to in sub-section (2), shall be given in such manner as may be prescribed.]

^{37b}**[6-T. Illegal strikes and lock-outs.—(1) A strike or lock-out shall be illegal if it is commenced or declared in contravention of Section 6-S or is continued beyond the date on which the industrial dispute to which the strike or, as the case may be, the lock-out relates, is taken up by a Board or is referred for adjudication to a Labour Court or Tribunal.**

- (2) A strike declared in consequence of a illegal lock-out or a lock-out declared in consequence of an illegal strike in an industrial establishment shall not be deemed to be illegal.]

³⁸**[6-U. Prohibition of instigation or incitement to illegal strikes and lock-out.—No person shall aid, instigate or incite others to take part in or otherwise act in furtherance of any strike or lock-out which is, or when commenced, will be in contravention of the provisions of this act.**

38a[6-V. Application of Sections 6-W and 6-X.—(1) The provisions of Sections 6-W and 6-X shall apply to an industrial establishment pertaining

37b. Ins. by S. 8 of U.P, Act No. 1 of 1957.

³⁸. **Ins. by S. 7 of U.P. Act No. XXIII of 1957.**

38a. Ins. by U.P. Act No. 26 of 1983 (w.e.f. 3-8-1983).

to an industry other than an industry referred to in sub-clause (i) of clause (a) of Section 2 of the Industrial Disputes Act, 1947 (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than three hundred workmen were employed on an average per working day for the preceding twelve months;

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

6-W. Procedure for closing down an undertaking.—(1) An employer who intends to close down an undertaking of an industrial establishment shall, in the prescribed manner, apply, for prior permission, at least ninety days before the date on which the intended closure is to become effective, to the State Government stating clearly the reasons for the intended closure of the undertaking and a copy of such application shall also be served simultaneously on the representatives of the workmen in the prescribed manner:

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

&

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

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

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

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

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

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

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

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

NOTES

Section 6-W is ultra vires Article 19(1)(g) of the Constitution of India. *Jas Sheet Tea and Industries Ltd. Industrial Tribunal, 1990 Lab IC 1411: 60 FLR 608: (1990) 1 LLN 936.*

6-X. Special provisions as to the restarting of certain undertakings.—(1) If the State Government is of opinion in respect of any undertaking of an industrial establishment which has been closed down before or after the commencement of the Uttar Pradesh Industrial Disputes (Amendment) Act, 1983—

(a) that such undertaking was closed down otherwise than on account of unavoidable circumstances beyond the control of the employer;

(b) that there are possibilities of restarting the undertaking;

* (c) that it is necessary for the rehabilitation of the workmen employed in such undertaking before its closure or for the maintenance of supplies and services essential to the life of the community to restart the undertaking or both; and

(d) that the restarting of the undertaking will not result in hardship to the employer in relation to the undertaking;

(e) that the restarting of the undertaking will not result in hardship to the employer in relation to the undertaking;

it may, after giving an opportunity to such employer and workmen for reason, to be recorded in writing direct, by order published in the Gazette, that the undertaking shall be restarted within such time (not being less than one month from the date of the order) as may be specified in the order.

(2) Where the employer is aggrieved from an order passed under subsection (1), he may refer the matter in the prescribed manner to the Tribunal for adjudication and the Tribunal may pass such orders as it thinks proper and reasonable in the circumstances of the case.]

7. Power to continue order passed under other enactments.

Without prejudice to the generality of the power vesting under "[the provisions of this Act] the [State Government] may, by order, for the purposes contemplated in Section 3— continue, with such modifications as it may consider necessary,

under such conditions and such period as may be specified in the order, any order which was previously passed under any other enactment in force, enforcing all or any of the decisions of an adjudicator or recommendations of a conciliator or any agreement reached in conciliation proceedings between the parties to an industrial dispute;

(it) enforce ^{40tt}[in the prescribed manner] for such period as may be specified, the whole or any part of an agreement reached in conciliation proceedings between the parties to an industrial dispute.

8. Power to obtain information.—Without prejudice to any other provision

contained in this Act the ^{††} [State Government] or an officer authorised by it in this behalf may—

- (i) require by order any person to furnish or produce before any specified authority or person such information or article in his possession as may be specified in the order, being information or article which the ⁴¹ [State Government] or such officer considers it necessary or expedient to obtain or examine for the purposes of this Act;
- (it) authorise any person to enter or search any premises, or to inspect and seize any books or other documents or articles belonging to or under the control of any person which the ⁴¹[State Government] or the officer making the order may consider necessary for enforcing such order.

9. False statements.—If any person—

- (i) when required by order to make any statement or furnish any information, makes any statement or furnishes any information which he knows or has reasonable cause to believe to be false or not true, in any material particular; or
- (it) makes any such statement as aforesaid in any account, declaration, estimate, return or other document, which he is required by order to furnish, he shall be punishable with imprisonment for a term which may extend to three years, or with fine or with both.

10. Power to require production of book, etc.—Where any person is required by order to make any statement or furnish any information to any authority, that authority may by order with a view to verifying the statement made or the information furnished by such person, further require him to produce any books, accounts or other documents relating thereto which may be in his possession or under his control.

11. Prohibition against disclosing information.—(1) No person who obtains any information by virtue of this Act, shall, otherwise than in connexion with the execution of the provisions of this Act or of any order made in pursuance thereof, disclose that information to any other person except with permission granted by or on behalf of the ⁴¹[State Government.]

(1) If any person contravenes the provisions of sub-section (1) he shall be punishable with imprisonment for a term which may extend to two years or with fine or with both.

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

⁴²[**11-B. Powers to remove difficulties.**—(1) If in the opinion of the State Government any difficulty or doubt arises as to the interpretation of any provision of an award or settlement, it may refer the question to such Labour Court or Tribunal as it may think fit.

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

^{††} *Sub*), by the A.O. 1950 for “Provl. Govt.”

final and binding on all such parties.]

⁴²[**11-C. Interpretation, etc. of standing orders.**—If any question arises as to the application or interpretation of a standing order certified under the Industrial Employment (Standing Orders) Act, 1946, any employer or workman may refer the question to any one of the Labour Courts specified for the disposal of such proceeding by the State 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.]

NOTES

Section 11-C, on account of Article 254(2) of the Constitution of India, prevails over Section 13-A of the Industrial Employment (Standing Orders) Act, 1946. Hence, a Labour Court constituted under Section 4 of the U. P. Act can, by virtue of Item No. 2 of the First Schedule to that Act, interpret the provisions of Standing Orders applicable to a Central Government factory. *Govt. Opium & Alkaloid Factory v. Labour Court*, 1982 Lab IC 539.

⁴⁰{**11-D. Conciliation Officers and certain others to be public servants.**—Every Conciliation Officer and every member and Chairman of a Board and every Presiding Officer of a Labour Court or Tribunal shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code.]

⁴²[**11-E. Labour Court or Tribunal to be deemed Civil Court for certain purposes.**—Every Labour Court or Tribunal shall be deemed to be a Civil Court for the purposes of Sections 480 and 482 of the Code of Criminal Procedure, 1898.]

⁴⁸[**11-F. Powers of the Labour Court or Tribunal in relation to contempt.**—(1) If any person—

- (a) when ordered by a Labour Court or Tribunal to produce or deliver up any document, being legally bound, intentionally omits to do so, or
- (fr) when required by a Labour Court or Tribunal to bind himself by an oath or affirmation to state the truth, refuses to do so, or
- («) being legally bound to state the truth on any subject to a Labour Court or Tribunal refuses to answer any question put to him touching such subject by such Labour Court or Tribunal, or

⁴². *Iiu.* by S. 10 of U.P. Act No. 1 of 1957.

hi. by S. 10 of U.P. Act No. 1 of 1957.

(rf) refuses to sign any statement made by him when required to do , so by a Labour Court or Tribunal, or

(«) intentionally offers any insult or causes any interruption to a Labour Court or Tribunal at any stage of its judicial proceedings, he shall be deemed to be guilty of

contempt of such Labour Court or Tribunal, as the case may be.

(2) If any person commits any act or publishes any writing, which is calculated to improperly influence a Labour Court or Tribunal, or to bring such Labour Court or Tribunal or the Presiding Officer, thereof into dispute or contempt or to lower its or his authority or to interfere with the lawful process of any such Labour Court or Tribunal, such person shall be deemed to be guilty of contempt of such Labour Court or Tribunal, as the case may be.

(3) The Labour Court or Tribunal shall have and exercise the same jurisdiction, power and authority in accordance with the same procedure and practice in respect of contempt of itself as the High Court has and exercise .in respect of itself.]

^{<4}[**12. Power under Industrial Disputes Act, 1947 to continue.**— Unless any order made under this Act makes express provision to the contrary, nothing in this Act shall affect the power of the State Government to refer any industrial dispute or matters connected therewith under the Industrial Disputes Act, 1947, or to deal with any report or settlement in accordance with the provisions of that Act.]

NOTES

The State Government can refer a dispute to the Labour Court either under this Act or under the Central Industrial Disputes Act. However, it cannot refer the dispute under both the Acts simultaneously. Nor can it make a reference under the other Act after the decision of the dispute on merits in a reference under either of the two Acts. However, where the reference under the U.P. Act was rejected by the Labour Court not on merits but on a technical ground such as incompetence of the union to espouse the cause, it was held that making a fresh reference under the Central Act was not barred. *Tarang Theatre v. State of U.P.*, 1992 Lab IC 1085.

⁴⁴[**12-A.** For the removal of doubt it is hereby declared that nothing in this Act shall be deemed to preclude the Central Government from constituting a National Tribunal under the Industrial Disputes Act, 1947, for the time being in force or any such Tribunal from exercising any powers conferred upon it under that Act.]

13. Arbitration Act, 1940 not to apply.—Nothing in the Arbitration Act, 1940, shall apply to any proceedings under any order made under this Act.

«(**14. Penalty.**—Whoever contravenes any of the provisions of this Act or any rule or order made thereunder shall, if no other penalty is provided by or under the Act for such contravention, be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.)

^{4ia}[**14-A. Penalty for breach of term of award.**—Any person who commits a breach of any term of any settlement or award, which is binding on him under this Act, shall be punishable with imprisonment for a term

43. **Ss. 12 and 12-A, tube. for S. 12 by S. 11 of U. P. Act No. 1 of 1957.**

44. **Subs. by S. 12 of U.P. Act No. 1 of 1957.**

45*. *Iiu.* by U.P. Act 34 of 1978.

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

^{4Sb}[**14-B.** (1) Any employer who closes down an undertaking in contravention of the provisions of Section 3 or Section 6-W shall be punishable with imprisonment for a term which may extend to three years or with **fine** or with both.

(2) Any employer, who contravenes a direction given under Section 6-X shall be punishable with imprisonment for a term which may extend to three years or with fine or with both, and where the contravention is a continuing one, with a further fine which may extend to two thousand rupees for every day during which the contravention continues after the conviction.]

15. Offence to be deemed cognizable.—Notwithstanding anything contained in the Second Schedule to the Code of Criminal Procedure, 1898, any police officer may arrest without warrant any person who is reasonable suspected of having committed, or of committing, or of being about to commit a contravention of any rule or order made under this Act.

16. Cognizance of offence.—(1) No court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made by the District Magistrate or by a public servant other than a District Magistrate with the previous sanction <n writing of the District Magistrate.

(2) No court inferior to that of a magistrate of the first class shall try any offence punishable under this Act.

17. Effect or provisions inconsistent with other enactments. — Any rule or order made or deemed to be made under this Act shall have effect notwithstanding anything inconsistent therewith contained in any other enactment or in any instrument having effect by virtue of any other enactment.

18. Attempt and abetment.—Any person who attempts to contravene or abets a contravention of any rule or order made or deemed to be made under this Act shall be deemed to have contravened that order.

19. Publication, affixation and defacement of notice.—(1) Save as otherwise expressly provided in an order made under this Act, every authority, officer or person who makes any order in writing in pursuance of this Act “[other than an award] shall in the case of an order of a general nature or affecting a class of persons, publish notice of such order in such manner as may in the opinion of such authority, officer or person, be best adapted for informing persons whom the order concern and in the case of an order affecting an individual corporation or firm serve or cause the order to be served in the manner provided for the service of a summons in Order XXIX, Rule 2, or Order XXX, Rule 3, of the Code of Civil Procedure, 1908, as the case may be, and in the case of an order affecting an individual

45b. Ins. by U. P. Act No. 26 of 1983 (w.e.f. 3-8-1983).

45. Ins. by S. 13 of U. P. Act No. 1 of 1957.

person (not being a corporation or firm) serve or cause the order to be served on that person—

(i) personally by delivering or tendering to him the order; or

(ti) by post; or

(Hi) where the person cannot be found, by leaving an authentic copy of the order with some adult male member of his family or by affixing such copy to some conspicuous part of the premises in which he is known to have last resided or carried on business or personally worked for gain.

(2) If in the course of any judicial proceedings, a question arises whether a person was duly informed of an order made in pursuance of this Act, compliance with sub-section (1) shall be conclusive proof that he was so informed but a failure to comply with sub-section (1)—

(:) shall not preclude proof by other means that he was so informed; and

(ii) shall not affect the validity of the order.

(3) Any police officer and any other person authorised by the [State Government] in this behalf may, for any purpose connected with the purposes mentioned in Section 3 for the administration of this Act affix any notice to, or cause any notice to be displayed on any premises, vehicle or vessel and may, for the purpose of exercising the power conferred by this Act, enter any premises, vehicle, or vessel at any time. 4

(4) Any person authorised by the ^{47a}[State Government] in this behalf may, for any purpose mentioned in sub-section (3) by order direct the owner or other person in possession or control of any premises, vehicle or vessel to display, any notice on, or in, the premises, vehicle or vessel in such manner as may be specified in the order.

(5) If any person without lawful authority removes, alters, defaces, obliterates or in any way tampers with any notice affixed, or displayed in pursuance of this Act, or contravenes any order under sub-section (4), he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.

20. Offence by a corporation.—If the person contra venting a rule or order made or deemed to be made under this Act is a company or other body corporate, every director, manager, secretary, or other officer or agent thereof shall, unless he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention, be deemed to be guilty of such contravention.

(2) **Saving.**—(1) The provisions of Section 6 of the United Provinces General Clauses Act, 1904, shall apply upon the expiry or withdrawal of the United Provinces Industrial Disputes Ordinance, 1947, and the United Provinces Industrial Disputes (Second) Ordinance, 1947, as if they had then been repealed by a ^{47a}[Uttar Pradesh] Act; and any order or appointment made or deemed to be made under the said Ordinances and in force immediately before the commencement of this Act shall continue in force and be deemed to be an order or apppointment made under this Act. No ordar made in exercise of any power conferred by or under this Act or the said Ordinances shall be called in question

in any court.

(3) When any order purports to have been made and signed by any authority in exercise of any power conferred by or under this Act or the said Ordinances, a court shall, within the meaning of Indian Evidence Act, 1872, presume that such order was so made by that authority.

21. **Protection.**—(1) No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made or deemed to be made thereunder.

(2) No suit or legal proceedings shall lie against the ⁴⁸ [Government] for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made or deemed to be made thereunder.

22. **Rule-making power.**—^{4*}[(1)] The ^{4,8}[State Government] may make rules consistent with this Act for giving effect to the provisions of this Act.

⁵⁰[(2) Without prejudice to the generality of the foregoing power such rules may provide for—

- (a) the manner of appointment of Presiding Officer of Labour Courts and Tribunals and the conditions of their employments;
- (5) the manner in which reference shall be made to a Labour Court or a Tribunal;
- (c) the manner of appointment of Conciliation Officers and the conditions of their employment;
- (<f) the procedure to be followed in conciliation proceedings;
- (e) the manner of remission of award by the State Government to the adjudicating authority
 - {(/) the manner of registration of settlements;
- (g) the manner and the form in which muster-rolls of workmen shall be maintained; and
- (A) the matters which are to be and may be prescribed.

(3) All rules made under this section, shall as soon as possible after they are made be laid before the State Legislature.]

[THE FIRST SCHEDULE

(See Section 4-A)

(Matters within the jurisdiction of Labour Courts)

1. The propriety or legality of an order passed by an employer under the Standing Orders;
 48. **Subs. by the A.O. 1950, for "Crown".**
 49. **Re-numbered by S. 14 of U.P. Act No. 1 of 1957.**
 50. **Added by S. 14 of U.P. Act No. 1 of 1957.**
 51. **Ins. by S. 15 of U.P. Act No. 1 of 1957,**
2. The application and interpretation of Standing Orders;
3. Discharge or dismissal of workman including reinstatement of, or grant of relief to, workmen wrongfully dismissed;
 4. Withdrawal of any customary concession of privilege;
 5. Illegality or otherwise of a strike or lock-out; and
 6. All matters other than those specified in the Second Schedule.]

NOTE

Where termination of service of a workman, who was appointed for a fixed period, was held bad, the Labour Court could award back wages for the balance of the period but not reinstatement with full back wages, continuity of service and retiral benefits. *U. P. State Road Transport Corporation v. Shambhu Dayal*, 1989 Lab IC 447.

^M{THE SECOND SCHEDULE

(Set Section 4-B)

(Matters within the jurisdiction of Industrial Tribunal)

1. Wages, including the period and mode of payment.
2. Compensatory and other allowances.
3. Hours of work and rest intervals.
4. Leave with wages and holiday.
5. Bonus, profits sharing, provident fund and gratuity.
6. Shift working otherwise than in accordance with standing orders.
7. Classification by grades.
8. Rules of discipline.
9. Rationalization.
10. Retrenchment of workmen and closure of establishment.
- ^{Ma}[10-A. Any matter relating to the closure of the undertaking of an industrial establishment.]
11. Any other matter that may be prescribed.

⁶³ [THE THIRD SCHEDULE

(See Section 4-1)

(Conditions of service for change of which notice is to be given)

1. Wages including the period and mode of payment.
2. Contribution paid, or payable, by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force.
3. Compensatory and other allowances.
4. Hours of work and rest intervals.
5. Leavewith wages and holidays.

52. ***Ins. by S. 10 of U.P. Act No. 1 of 1957.***

52*. Ins. by U.P. Act No. 26 of 1983 (w.e.f. 3-8-1983).

hi. by S. 10 of U.P. Act No. 1 of 1957.

7. Starting, alteration or discontinuance of shift working otherwise than in accordance with standing orders.
6. Classification by grades.
8. Withdrawal of any customary concession or privilege change in usage.
9. Introduction of new rules of discipline, or alteration of existing rules, except in so far as they are provided in standing orders.
10. Rationalization, standardization or improvement of plant or technique which is likely to lead to retrenchment of workmen.
11. Any increases or reduction (other than casual) in the number of persons employed, or to be employed in any occupation or process or department or shift, not due to forced matters.]

TRANSITORY PROVISIONS AS PROVIDED BY THE U.P.
INDUSTRIAL DISPUTES (AMENDMENT AND
MISCELLANEOUS PROVISIONS)
ACT, 1957

Section 1: Short title and commencement.—(») This Act may be called the Uttar Pradesh Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956.

(ii) It shall come into force on such date as the State Government may by notification in the Official Gazette, appoint.

Note.—The amendments under the Act have been enforced with effect from April 16, 1957.

Section 16: Saving.—If immediately before the commencement of this Act, there is pending any proceeding in relation to an industrial dispute before any authority constituted under the U.P. Industrial Disputes Act, 1947, as in force before such commencement, the dispute may be adjudicated and the proceedings disposed of by that authority after such commencement, as if this Act had not been passed.

Note.—This section saves the proceedings 'before a tribunal constituted under the U. P. Industrial Disputes Act, 1947 from the effects of the provisions of U. P. Act No. 1 of 1957. The proceedings can continue uneffected by the Amendment Act.

Section 17 : Removal of transitional difficulties.—(1) The State Government may

for the purpose of removing any difficulties particularly in relation to the transition from the provisions of the principal Act to the provisions of that Act as amended by this Act, by order direct that principal Act amended as aforesaid and any rules or orders framed or issued under the principal Act shall, during the period of two years next after the commencement of this Act, have effect subject to such adaptations, whether by way of modifications, addition or omission, as it may deem to be necessary or expedient.

(2) Every order made under sub-section (1) shall be laid before both the Houses of the State Legislature and the provisions of Section 6-A of the principal Act shall remain enforceable with reference to such proceeding.

Note.—This section authorises the State Government to direct by an order the modification, addition or omission, as it may deem to be necessary or expedient in the principal Act, as amended by this Act, or rules or orders issued under the Act.

“7. Transitory Provision—Section 7 of U.P. Act 34 of 1978.—A reference made under Section 10 of the Industrial Disputes Act, 1947 (Act No. 14 of 1947), arising out of an industrial dispute referred to in Section 2-A of that Act and pending on the date of commencement of this Act shall be deemed to be a reference made under Section 4-K of the principal Act, arising out of an industrial dispute referred to in Section 2-A of the principal Act as inserted by this Act as if the provisions of that section were in force at all material times and any such reference may be withdrawn and transferred under the provisions of the principal Act for disposal by a Labour Court or Tribunal, as the case may be, appointed under the principal Act.”

NOTES

Section 7 is not ultra vires. *Wimto Ltd. v. Labour Court*, 1983 Lab IC 344 : 45 FLR 183: (1983) 1 LLN 605.

A reference deemed under this section to be a reference under Section 4-K, though originally made under the Central Act, can be adjudicated upon by a Labour Court whose Presiding Officer is competent to take cognizance of the dispute under the U. P. Act, even if he does not have the qualifications prescribed by the Central Act. *Wimco Ltd. v. Labour Court*, 1983 Lab IC 344: 45 FLR 183: (1983) 1 LLN 605.

U.P. INDUSTRIAL DISPUTES RULES, 1957

In exercise of the powers conferred by Section 23 of the U.P. Industrial Disputes Act, 1947 (UP. Act No. XXVIII of 1947), the Governor of Uttar Pradesh is pleased to make the following rules, the same having been previously published *for objections and suggestions with Government Notification No. 260(ST)/XXXVI-A—102(ST)-57, dated January 31, 1957.

1. Short title, extent and commencement.—(i) These rules may be called the U.P. Industrial Disputes Rules, 1957.

(is) They extend to the whole of Uttar Pradesh.

(its) They shall come into force at once.

^x[2. Definitions.—In these Rules, unless there is anything repugnant in the subject or context—

- (a) “Act” means the U.P. Industrial Disputes Act, 1947 ;
- (b) “Form” means a form given in the Schedule to these rules;
- (c) “Section” means a section of the Act;
- (d) A Labour Court shall include an Adjudicator unless there is anything repugnant in the context. The expression “Labour Court” shall be deemed to include an Adjudicator, for the purposes of these rules, except Rule 3.]

3. **Preparation of the lists of persons for appointment as Presiding Officers of Labour Courts and Tribunals**—(1) For preparation of the list referred to in Section 4-D of the U.P. Industrial Disputes Act, 1947, the names of persons possessing necessary qualification for appointment as Presiding Officers of Labour Court or Tribunal shall be sent separately by the heads of departments or authorities concerned, to the Labour Secretary to Government of U.P., by such date as the Committee may fix, together with the character rolls, service books and summary of record of work in respect of every such person. The Labour Secretary shall place two consolidated lists of persons eligible for appointment as Presiding Officer of a Labour Court of Tribunal before the Committee for selection, and the Committee may, if it considers necessary, call all or any of the persons on the consolidated list for interview before selection.

(2) The list shall ordinarily be revised after three years in the month of April, unless the State Government directs an early revision.

²[4. **Powers, procedure and duties of Conciliation Officers.**—(1) On receipt of information about an existing or apprehended industrial dispute, the Conciliation Officer may, if he considers necessary, forthwith arrange to interview both the employers and the workmen concerned with the dispute at such place and time as he may deem fit and endeavour to bring about a settlement about the dispute in question.

(2) The Conciliation Officer may hold a meeting of the representatives of all the parties jointly or of each party separately.

(3) The Conciliation Officer shall conduct the proceedings expeditiously and in such manner as he may deem fit. *Subs.*, by Noti. No. 9043(57)/36-I, dated January 19, 1978 (LLT-V-76).

1. **Ins by Noti. No 5627(ST)/XXXVI- A—²20(ST)-67, dated December 16, 1970.**

(4) Where a reference has been made by the State Government in the matter of a dispute under Section 4-K of the Act to the Tribunal or Labour Court or the Adjudicator, the Conciliation Officer concerned shall forthwith forward to the Tribunal or the Labour Court or the Adjudicator concerned, the file of the Conciliation Board relating to that matter, immediately after the application in Form 1 is filed by the Union.]

^{2a}[5. **Memorandum of Settlement.**—(1) A settlement arrived at before a Conciliation Officer or otherwise outside the conciliation proceeding shall be in Form I.

(2) The settlement shall be signed—

- (a) in the case of an employer, by the employer himself or by his authorized agent or when the employer is an incorporated company or other body corporate, by the agent, manager, or other principal officer of the corporation ; and
- (fc) in the case of a workman, either by the workman himself or by the President or the Secretary of the Union of Workmen, competent to represent the workman under Section 6-1, or of a Federation of such Unions, or by an Officer of such Union or Federation

authorized in this behalf by the President of such Union or Federation, or where there is no such Union, by five representatives of the workmen duly authorized in this behalf at a meeting of the workmen held for the purpose.

(3) Where a settlement is arrived at before a Conciliation Officer otherwise than in the course of conciliation proceedings before a Board, the Conciliation Officer shall send a report thereof to the Government with the copy to the Labour Commissioner, Uttar Pradesh.

(4) The State Government shall, subject to the provisions of clause (c) of Section 7, issue orders in Form III-A, for enforcing any settlement arrived at before a Conciliation Officer in the course of conciliation proceedings.]

5-A. Memorandum of settlement before a Board.—(1) In any case where a Board is successful in bringing about an amicable settlement between the parties, it shall prepare a memorandum in Form I-A stating the terms of settlement arrived at, and the Chairman of the Board shall send copies thereof to the Sachiv to Government, Uttar Pradesh, Labour (A) Department, Lucknow, the Labour Commissioner and the parties concerned within seven days (excluding holidays but not annual vacation observed by the Courts subordinate to the High Court) of the close of the proceedings.

(2) Where no amicable settlement can be reached on any of the issues, the Chairman of the Board shall send to the Sachiv to Government, Uttar Pradesh, Labour (A) Department, Lucknow and the Labour Commissioner, a full report setting forth the steps taken by the Board for ascertaining the facts and circumstances relating to the dispute and for bringing about an amicable settlement thereof.

(3) The report under sub-rule (2) above shall be submitted by the Chairman of the Board within thirty days (excluding holidays but not annual vacation observed by courts subordinate to the High Court) of the date on which the reference was made to the Board:

Provided that the State Government may extend the said period from time to time.

(4) The memorandum under sub-rule (1) or the report under subrule (2) above, shall be signed by the Chairman of the Board and such members as may be present:

Provided that the memorandum under sub-rule (1) above, shall also be signed by the parties to the dispute or their authorized representatives :

Provided further that nothing in this rule shall be deemed to prevent any member of the Board from submitting a dissenting report.

(5) The Conciliation Officer shall file all settlements arrived at before him either in the course of conciliation proceedings or otherwise in respect of dispute in the area within his jurisdiction in a register maintained for the purpose in Form II.

(6) The State Government may, subject to the provisions of clause (b) of Section 7, enforce by an order in Form III, any settlement arrived at before a Board in the course of conciliation proceedings].

5-B. Procedure of Boards.—A Board shall, subject to such general or special instructions as may be issued by the State Government in this behalf from time to time, follow such procedure as it thinks fit].

6. Powers to refer additional matters to a Board, Labour Court or Tribunal for

settlement or adjudication.—Where any dispute or matter is pending before a Board or Labour Court or Tribunal, the State Government may, by order in writing, refer any other dispute or matter that may arise between the same parties, to the same Board, Labour Court or Tribunal for settlement of adjudication, as the case may be.

7. **Notice of change.**—(1) Subject to the provisions of Section 4-J, any employer intending to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Third Schedule to the Act, shall give notice of such intention in Form IV to the workman concerned.

(2) Where there are numerous workmen affected by a notice of change, the employer shall, where personal service is not practicable, cause the service of any such notice to be made on the Secretary, or where there is no Secretary, the Principal Officer of the Union/Unions of Workers and also by affixing the same to a notice board at or near the entrance or entrances of the establishment concerned and the notice shall remain so affixed for a period of 21 days. The notice shall be in Hindi and in such other language, if any, which is intelligible to a majority of workers.

(3) A copy of the notice shall simultaneously be forwarded by the employer to the Conciliation Officer of the area concerned and the Labour Commissioner, Uttar Pradesh.

8. **Arbitration agreement.**—(1) An arbitration agreement referred to in Section 5-B(1) of the Act shall be made in Form V, and copies thereof shall be delivered personally or forwarded by registered post^{**} to the authorities mentioned in sub-section (3) of Section 5-B by the signatories to the agreement or any of them.

(2) The arbitration agreement shall be signed,—

⁶[(a) in the case of an employer—

(i) by the employer himself, or

(ii) if any group or association of employers is a party to the agreement, by a person authorized in writing in this behalf by such group or association, or

(iii) if the employer is an incorporated company or other body corporate, by the agent, manager, or other principal officer of the corporation, if so authorized in writing by the employers]

(b) in the case of a workman, either by the workman himself or by the President or the Secretary of the Union of Workmen, competent to represent the workman under Section 61, or of a Federation of such Unions or by an officer of such Union or Federation authorized in this behalf in writing by the President of such Union or Federation, or where there is no such Union, by five representatives of the workmen duly authorized in this behalf at a meeting of the workmen held for the purpose.

9. Evidence.—A Board or Labour Court or Tribunal or an Arbitrator may accept, admit or call for evidence at any stage of the proceedings before it and in such manner as it may think fit.

10. Sammons.—Summons issued by a Board, Labour Court, Tribunal or an Arbitrator shall be in Form VI and may require any person to produce before it any books, papers or other documents and things in his possession or under his control in any way relating to the matter under investigation or adjudication by the '[Board], Labour Court, or Tribunal or Arbitrator which the '[Board], Labour Court, Tribunal or Arbitrator thinks necessary for the purpose of such investigation or adjudication.

11. Service of summons or notice.—Any notice, summons, process or order issued by a Board, Labour Court or Tribunal or Arbitrator may be served either by personal delivery or by registered post or in any other manner prescribed in this behalf in the Code of Civil Procedure, 1908 (Act V of 1908).

⁸[12. Proceedings before the Labour Court or Tribunal.—(1) Where the State Government refers an industrial dispute for adjudication to a Labour Court or Tribunal within two weeks of the date of Receipt of order of reference, the party representing the workmen, or in the case of individual workman, the workman himself and the employer involved in the dispute shall file before the Labour Court or the Tribunal, as the case may be, a statement of , the demands relating only to the issues as are included in the order of reference and shall also forward a copy of such statement to each one of the opposite parties involved in the said dispute :

Provided that where the Labour Court or Tribunal, as the case may be, considers it necessary, it may—

(a) extend the time limit for filing of such statement; or

(b) reduce the time limit for filing of such statement to one week in emergent cases for reasons to be recorded in writing; or

(r) where both the parties agree, reduce the time limit for filing of such statement as per agreement; or

(J) where both the parties agree to dispense with the requirement of filing of such statement altogether; or

(e) allow at any stage of the proceedings, amendment of such statement to the extent as may be necessary for the purpose of determining the real issue included in the order of reference.

(2) Within two weeks of the receipt of this statement referred to in subrule (1) above the opposite party shall file its rejoinder with the Labour Court or the Tribunal, as the case may be, and simultaneously forward a copy thereof to the other party:

Provided that such rejoinder shall relate only to such of the issues as are included in the order of reference:

Provided also that where the Labour Court or the Tribunal, as the case may be, considers it necessary, it may—

- (a) extend the time limit for filing of such a rejoinder or reduce the time limit for filing of such rejoinder to one week in emergent cases for reasons to be recorded in writing;
- (b) permit the workman to file reply to the said rejoinder on a date fixed, by the Presiding Officer, and on such date the parties shall file their documents and issues, if any, arising out of the pleadings of the parties shall be framed.
- (c) fix a date for filing documents and may on the same date frame such issues, if any, as may arise out of the pleadings of the parties after the written statements and rejoinders have been filed.

(3) The Labour Court or the Tribunal, as the case may be, shall ordinarily fix the date for the first hearing of the dispute within six weeks of the date on which it was referred for adjudication:

Provided that the Labour Court or the Tribunal, as the case may be, for reasons to be recorded in writing, fix a later date for the first hearing of the dispute.

(4) The hearing shall ordinarily be continued from day to day, and arguments shall follow immediately after the closing of evidence.

(5) The Labour Court or the Tribunal, as the case may be, shall not ordinarily grant an adjournment for a period exceeding one week at a time, and not more than three adjournments at the instance of any one of the parties to the dispute shall be granted :

Provided that in a very special case only the Labour Court or the Tribunal, as the case may be, may for reasons to be recorded in writing, grant an adjournment exceeding a week, or more than three adjournments at the instance of any one of the parties to the dispute.

(6) At the first hearing of the Labour Court or the Tribunal, the Presiding Officer may call upon the parties to state their case in such order as it may think fit.

(7) Where reference is pending before the Labour Court or the Tribunal, the Labour Court or the Tribunal shall proceed to decide such dispute on a priority basis in which it has been brought to the notice of the said Court or the Tribunal that a strike or lock-out is pending or threatened in the establishment concerned.

(8) The written statement filed by the union or the workmen shall state the grounds on which the claim of the concerned workman is based and the written statement shall be accompanied by an affidavit in which the contents of the written statement are sworn to.

(9) If the affidavit accompanying the written statement of the union or the workmen is not rebutted by the employers, the Labour Court or the Tribunal, as the case may be, shall presume the contents of the affidavit to be true and make an award accepting the facts stated in the written statement.

(10) As and when the application in Form I filed by the espousing union before the Conciliation Officer is received by the Labour Court or the Tribunal, the Presiding Officer concerned shall place on record this document which shall be treated in the proceedings as document of the union or the workman.]

13. Place and time of hearing. The sittings of a Labour Court or Tribunal or of an Arbitrator shall be held at such times and places as the Presiding Officer or the Arbitrator, as the case may be, may fix and the Presiding Officer or Arbitrator, as the case may be, shall inform the parties of the same in such manner as he thinks fit.

14. Proceedings before a Labour Court or Tribunal.—The proceedings before a Labour Court or Tribunal shall be held in public:

Provided that the Labour Court or Tribunal may, at any stage, direct that and witness shall be examined or its proceedings shall be held in camera.

15. Information to be kept confidential.—All books, papers and other documents or things produced before a Labour Court or Tribunal, whether voluntary or in pursuance of a summons, may be inspected by such parties as the Labour Court or Tribunal may allow but the information obtained therefrom shall not, except as provided in the Act, be made public, and such parts of the books, papers, documents or things as, in the opinion of the Labour Court or Tribunal, do not relate to the matters at issue, may be kept in a sealed cover at the discretion of the Presiding Officer.

16. Labour Court or Tribunal or Arbitrator may proceed ex parte.—(1) If, on the date fixed or on any other date to which the hearing may be adjourned, any party to the proceedings before the Labour Court or Tribunal or an Arbitrator is absent, though duly served with summons or having the notice of date of hearing, the Labour Court or Tribunal or the Arbitrator, as the case may be, may proceed with the case in his absence and pass such order as it may deem fit and proper.

(d) (2) The Labour Court, Tribunal or an Arbitrator may set aside the order passed against the party in his absence, if within ten days of such order, the party applies in writing for setting aside such order and shows sufficient cause for his absence. The Labour Court, Tribunal or an Arbitrator may require the party to file an affidavit, stating the cause of absence. As many copies of the application and affidavit, if any, shall be filed by the party concerned as there are persons on the opposite side. Notice of the application shall be given to the opposite parties before setting aside the order.

17. Power of entry and inspection.—The Presiding Officer of a Labour Court or a Tribunal or any other person authorized in writing by a Labour Court or Tribunal in this behalf may, for the purposes of any investigation, enquiry or adjudication entrusted to the Labour Court or Tribunal under the Act after he has given reasonable notice, enter any building, factory, workshop or other place or premises whatsoever, and inspect the same or any work, machinery, appliance or article therein or interrogate any person therein in respect of anything situated therein or any matter relevant to subject-matter of the investigation, enquiry or adjudication.

18. Description of parties in certain cases.—Where in any proceeding before a [Board], Labour Court or Tribunal or an Arbitrator, there are numerous persons arrayed on any side, such persons shall be described as follows—

- (») all such persons as are members of any Union or Association, shall be described by the name of such Union or Association; and
- (it) all such persons as are not members of any Union or Association, shall be described in such manner as the [Board] j Labour Court, Tribunal or Arbitrator, as the case may be, may determine.

19. Manner of service in the case of numerous persons as parties to a dispute.—(1)

Where there are numerous persons as parties to any proceeding before '[Board], Labour Court, Tribunal or an Arbitrator, and such persons are members of any Union or Association, the service of the notice on the Secretary, or where there is no Secretary, on the Principal Officer of the Union or Association shall be deemed to be the service on such persons.

(2) Where there are numerous persons as parties to any proceeding before a '[Board], Labour Court, Tribunal or an Arbitrator, and such persons are not members of any Union or Association, the ⁷⁸[Board], Labour Court, Tribunal or Arbitrator, as the case may be, shall, where in its/his opinion, personal service is not practicable, cause the service of any notice to be made by affixing the same at or near the main entrance of the establishment concerned and in such other manner as the ¹⁰[Board], Labour Court, Tribunal or Arbitrator may deem fit and proper. A notice exhibited in such manner shall also be considered as sufficient in the case of such workmen as cannot be ascertained and found.

^{10a}**20. Assessors.**—(1) The State Government may, if it considers necessary, appoint up to two persons as assessors to advise a Tribunal in the proceedings before it.

(2) Where assessors are appointed to advise a Tribunal under any provisions of the Act, the Tribunal shall, in relation to proceedings before it, obtain the advice of such assessors, but such advice shall not be binding on it.]

roapi. Power of Labour Courts, Tribunals and Arbitrators.— In addition to the powers conferred by the Act, Labour Courts, Tribunals and Arbitrators shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (Act V of 1908), when trying a suit, in respect of the following matters, namely—

- (a) discovery and inspection;
- (b) granting of adjournment; and
- (c) reception of evidence taken on affidavit;

and the Labour Court or Tribunal or Arbitrator may summon and examine any person whose evidence appears to it/him to be material.

22. Expenses of witnesses.—(1) Every person, who is summoned and duly attends or otherwise appears as a witness before a Labour Court or Tribunal or Arbitrator, shall be entitled to receive from the party concerned such allowances for expenses as, subject to such general or special instructions as may be given by Government from time to time, the Labour Court or Tribunal or Arbitrator may determine.

(2) A Labour Court or Tribunal or Arbitrator when summoning a witness at the request of a party, may require the party to deposit expenses of the witness in advance.

23. Right of representatives.—The representatives of the parties appearing before a Labour Court or Tribunal or an Arbitrator shall have the right of examination, or cross-examination, as the case may be, of a witness.

24. Papers, records, documents, files, etc., of an arbitration '» award.—Within fifteen days of submission of an arbitration award to the State Government, the Arbitrator or Arbitrators shall send all papers, records, documents and files relating to the arbitration proceeding, and also the original copy of the arbitration award to the Labour Court or

⁷ *Added* vide U.P. Gazette, Extra., dated March 27, 1958.

⁸ *Added* vide U.P. Gazette, Extra., dated March 27, 1958.

^{10a} *Subs.* by Noti. in U.P. Gazette, Extra., dated April 19, 1982.

Tribunal which has otherwise jurisdiction over the industrial dispute.

25. Copies of awards or other documents of a Labour Court or Tribunal or an Arbitrator.—(1) A party to the dispute shall be entitled at any stage to obtain a copy of the records of the case or any portion thereof, including exhibits which have been put in and finally accepted in evidence, but excluding confidential papers and office notes. "

(2) A stranger to a dispute, on application may, after the decision, obtain a copy of an award or any document on the record of the case, except confidential documents and office notes :

Provided that a stranger may not be given a copy of exhibits admitted in evidence, except with the consent of the person by whom they were produced or his successor-in-interest.

(3) Every such copy shall be examined and certified as correct before it is issued from the office of the Labour Court or Tribunal or an Arbitrator. No copy shall be certified unless it has been prepared in either of the aforesaid offices.

An application for copies of awards or other documents shall be presented between 11 a.m. and 12 noon on any working day in Form VII to the Labour Court or the Registrar of the Tribunal concerned, or in the case of an arbitration award or documents relating thereto, to the Labour Court or the Registrar of the Tribunal which has otherwise jurisdiction over the dispute.

(4) On receipt of an application for a copy, the Head Clerk or Clerk concerned shall inform the applicant of the amount of fee payable and that his application will not be considered complete and the preparation of the copy will not be commenced, until he has deposited the said amount.

The receipts on account of copying and certifying fees shall be credited to the head of account specified by the State Government in this behalf.

(5) If, owing to insufficient or incorrect description, the document of which a copy is sought cannot be traced, that fact shall be endorsed on the application which shall be submitted to the Presiding Officer of the Labour Court or Tribunal concerned.

(6) If the estimated amount of fees is not deposited within seven days of its being notified to the applicant, the application for copy shall be rejected.

(7) If an application has been rejected under sub-section (7) and a copy is still required, a fresh application must be presented and the same will be dealt with in the manner prescribed, as though the original application had not been made.

(8) If and when it is ascertained that additional fees are necessary, the amount thereof shall be immediately notified to the applicant and shall be deposited within seven days of receipt of the notice.

(9) The copies shall be prepared in strict order of priority, and where it is proposed to make any departure for any special reason, prior sanction of the Presiding Officer of the Labour Court or Tribunal or the Arbitrator shall be obtained.

(10) In ordinary circumstances, a copy may be furnished up to 1 p. m. on third day after the necessary fee, or additional fee, has been paid.

(11) If the applicant furnishes his address accompanied by sufficient amount (in cash) to cover the costs of registration (Acknowledgment due), a copy may be sent to him by post.

(12) When a copy is granted, the following particulars shall be recorded on the back of the copy:

- (») Date of application for copy.
- (it) Date of notifying the fee payable.
- (Hi) Date of deposit of fee,
- (w) Date of making over the copy to the applicant.

(13) A register shall be maintained in respect of application for copies in Form VIII and shall be daily checked by the Presiding Officer of the Labour Court or Tribunal or any other person authorized by him in this behalf.

(14) Fees for making a copy of an award of a Labour Court, Tribunal or Arbitrator, or any document filed in any proceeding before a Labour Court, Tribunal or an Arbitrator shall be charged as follows—

- (a) for the first 200 words or less, 75 Naye Paise;
- (b) for every additional 100 words or fraction thereof, 38 Naye Paise:

Provided that where an award or document exceeds five pages, the approximate number of words per page shall be taken as the basis for calculating the total number of words, to nearest hundred for the purpose of assessing the copying fee:

Provided further that, if a party applies for urgent delivery of a copy of any such award or document, an additional fee equal to the fee leviable under this rule, shall be payable by such party.

(15) A fee of Rupee 1 shall be payable for certifying a copy of any such award or document.

(16) Copying and certifying fees shall be payable in advance.

26. Application for registration of settlement.—An application for registration of settlement, arrived at otherwise than in the course of the conciliation proceedings before a Board shall be made in Form XI and shall be sent by the parties to the settlement or any one of them, within one month of the date of settlement, to the Conciliation Officer of the area concerned by registered post acknowledgment due, or by personal delivery. A copy of the memorandum of settlement shall be affixed by the parties to the settlement to a notice board at or near the entrance or entrances of the establishment concerned, and shall remain so affixed for a period of 15 days before making the application for registration.

27. Procedure for registration of settlement.—On receipt of an application for registration of settlement, the Conciliation Officer or the authority notified by the Government in this behalf under Section 6B(3) of the Act, may make an enquiry if he/it considers necessary. If after enquiry, the Conciliation Officer or the authority concerned decides to register a settlement for which an application has been made, under sub-section (2) of Section 6B, the registration shall be made in Form X, and a certificate of registration shall be issued to all the parties to the settlement in Form XI. If the registering authority refuses to register the settlement under subsection (3) of Section 6B, an intimation to this effect, together with reasons for refusal to register, shall be given to all the parties to the agreement. The authority notified by the State Government for registering a settlement shall also give intimation of registration of settlement, settlement or of the refusal thereof, as the case may be, to the Conciliation Officer of the area concerned and to the Labour Commissioner, Uttar Pradesh.

28. Persons on whom awards are binding.—An award which has become enforceable, shall be binding on—

(a) all parties to the industrial dispute;

(6) where a party referred to in clause (a) is an employer, his heirs, successors of assigns in respect of the establishment to which the dispute relates;

29. where a party referred to in clause (a) is composed of workmen, all persons, who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates, on the date of the dispute and all persons who subsequently become employed in the establishment or part. **Recognition of protected workmen.**—(1) A Union desirous of recognition of its officer or officers as “protected workmen”, shall, before the 1st day of September every year submit an application in Form XII to the Registrar, Trade Unions, Uttar Pradesh, Kanpur, appointed by the State Government under the Indian Trade Unions’ Act, 1926 (Act XVI of 1926).

(2) On receipt of an application under sub-rule (1), or on his own initiative if no such application is received, the Registrar of Trade Unions may, after making such enquiries as he may consider necessary, pass appropriate orders in the matter. Such orders shall be communicated to the Union and the employer concerned and also to the Conciliation Officer of the area concerned.

(3) The names of protected workmen recognized under sub-rule (2) above, shall be entered in a register in Form XII to be maintained in the office of the Registrar of Trade Unions, Uttar Pradesh. The register can be inspected by the person on payment of a fee of Re. 1 during such hours as may be prescribed by the Registrar of Trade Unions, Uttar Pradesh.

“(4) The recognition given to an officer under sub-rule (2) shall remain in force till the 31st day of October of the year following that in which the order giving such recognition is made.]

(5) If a vacancy occurs amongst the protected workmen by the reason of any such workmen having died or not remaining in service or for any other reason, the Union concerned shall, within one month of the occurrence of such vacancy, inform the Registrar of it. The Registrar may fill the vacancy after such enquiry as he considers necessary.

30. Distribution of protected workmen.—(1) The distribution of protected workmen for an establishment amongst unions for the purposes of sub-section (4) of Section 6E shall be made by the Registrar of Trade Unions, Uttar Pradesh, in proportion to their membership and after such enquiries as he may consider necessary.

(2) For the up-to-date maintenance of the register in Form XIII, the Registrar of Trade Unions, Uttar Pradesh, may hold such enquiries as may be necessary and pass suitable orders which shall be final and binding on the parties concerned.

31. Application under Section 6E.—(1) An employer intending to obtain express permission in writing of the Conciliation Officer, Board, Labour Court or Tribunal, as the case may be, under sub-section (1) or sub-section (3) of Section 6E, shall present an application in Form XIV in triplicate to such Conciliation Officer, Board, Labour Court or Tribunal, and shall file along with the application as many copies thereof, as there are opposite parties.

(2) An employer seeking the approval of the Conciliation Officer, Board, Labour Court, or Tribunal, as the case may be, of any action taken by him under clause (a) or clause (i) of sub-section (2) of Section 6E, shall present an application in Form XV in

triplicate to such Conciliation Officer, Board, Tribunal, and shall file along with the application as many copies thereof as there are opposite parties.

11. **Sats, by Nod. No. 4873 (ST)/ 7, 1970.**

XXXVI.A—220 (ST)-67, dated April

(3) Every application under sub-rule (1) or sub-rule (2) shall be verified at the foot by the employer making it, or by the person duly authorized in this behalf by the employer acquainted with facts of the case.

(4) The person verifying the application shall, specify by references to the numbered paragraphs of the application, what he verifies of his own knowledge what he verifies upon information received and believed to be true.

(5) The verification shall be signed by the person making it and shall state the date on which and the place at which it was verified.

32. **Application for adjudication as to whether the conditions of service, etc. changed during the pendency of proceedings.—(1)** An application under Section 6F shall be presented in duplicate in Form XVI and shall be accompanied by as many additional copies of the application as there are opposite parties to the complaint.

(2) Every application under sub-rule (1) shall be verified as the foot the workmen making it or by some other person proved to the satisfaction of the Labour Court or Tribunal to be acquainted with the facts of the case.

(3) The person verifying shall specify, by references to the numbered paragraphs of the complaint, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

(4) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.

33. **Application for the recovery of money due from an employer.—**An application for the recovery of money due from an employer made by a workman under sub-section (1) of Section 6H, shall be in Form XVII.

34. **Procedure for computing money value of a benefit.—(1)** Where the State Government has specified a Labour Court for the purpose of computing the money value of a benefit, under sub-section (2) of Section 6H, the Labour Court may, by an order in writing, appoint a Commissioner for such computation and ask the Commissioner to report to the Labour Court within such time as may be specified in the order:

Provided that the Labour Court may, either on its own motion or on an application made to it by the Commissioner grant extension of time for submission of the report by the Commissioner.

(2) The Commissioner shall be paid such fees, if any, as may be specified by the Labour Court in the order appointing the Commissioner and the amount of fee so fixed shall be recoverable from such party as the Court may direct. The party concerned shall in that case deposit the amount with a specified time with the Labour Court for deposit into the nearest treasury. The Commissioner shall not issue until the amount of fees is deposited with the Labour Court by the party concerned:

Provided that the party concerned may, from time to time, be directed by the Labour Court for deposit of further amounts, if any:

(3) Provided further that the Labour Court may, in its discretion, extend the time for depositing the sum by the party concerned. The Labour Court may direct that the fees shall be disbursed to the Commissioner in such instalments and on such dates, as it may think fit.

(4) The undisbursed balance, if any, of the sum deposited, shall be refunded to the party which deposited the sum.

35. Local investigation.—If any industrial dispute in which the Labour Court deems a local investigation to be requisite or proper for the purposes of computing the money value of benefit, the Labour Court may issue a commission to a person referred to in Rule 34 directing him to make such investigation and to report thereon to it.

36. Commissioner's report.—(1) The Commissioner, after such local inspection as he deems necessary and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing signed by him to the Labour Court.

(2) The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the industrial dispute and shall form part of the record of the proceedings in the industrial dispute, but the Labour Court or with the permission of the Labour Court, any of the parties to the industrial dispute may examine the Commissioner personally before the Labour Court, regarding any of the matters referred to him or mentioned in his report or as to his report, or as to the manner in which he has made the investigation.

(3) Where the Labour Court is for any reason dissatisfied with the proceedings of the Commissioner it may direct such further enquiry to be made as it deems fit.

37. Powers of Commissioner.—Any Commissioner appointed under these rules may, unless otherwise directed by the order of appointment—

- (a) examine the parties themselves and any witnesses whom they or any of them may produce, and, any other person whom the Commissioner thinks proper to call upon to give evidence in the matter referred to him;
- (A) call for and examine documents and other things relevant to the subject of enquiry;
- (c) at any reasonable time enter upon or into any land or building mentioned in the order.

38. Summoning of witness, etc.—(1) The provisions of the Code of Civil Procedure, 1908 (Act V of 1908), relating to the summoning, attendance, examination of witnesses and penalties to be imposed upon witnesses, shall apply to persons required to give evidence or to produce documents before the Commissioner under these rules.

(2) Every person who is summoned and appears as a witness before the Commissioner shall be entitled to payment by the Labour Court out of the ~~sum~~ deposited under Rule 34, of an allowance for expenses incurred by him as may be directed by the Labour Court in this behalf.

39. Representation of parties before the Commissioner.—The parties to the industrial dispute shall appear before the Commissioner, either in person or any other person who is competent to represent them in the proceeding before the Labour Court.

12[40. Representation of parties.—(1) The parties may, in their discretion, be represented before a Board, Labour Court or Tribunal—

- (t) in the case of a workman subject to the provision of sub-section (3) of Section 6-1, by—
 - (a) an officer of a union of which he is member, or
 - (i) an officer of a federation of unions to which the union referred to in clause (a) above, is

affiliated, and

- (c) where there is no union of workmen, any representative, duly nominated by the workmen who are entitled to make an application before a Conciliation Board under any orders issued by Government, or any member of the executive, or other officer;
- (it) in the case of an employer, by
- (a) an officer of a union or association of employers of which the employer is a member, or
- (b) an officer of a federation of unions or associations of employers to which the union or association referred to in clause (a) above, is affiliated, or
- (c) by an officer of the concern, if so authorized in writing by the employer:

Provided that no officer of a federation of unions shall be entitled to represent the parties unless the federation has been approved by the Labour Commissioner for this purpose.

(2) A part appearing through a representative shall be bound by the acts of that representative.

(3) An application for approval of a federation of unions for representing the parties before a Board, Labour Court, and Tribunal, shall be made in Form XX to the Labour Commissioner:

Provided that no federation of unions shall be entitled to apply for approval unless a period of two years has elapsed since its formation.

(4) On receipt of an application under sub-rule (3) above, the Labour Commissioner may, after making such enquiries, as he deems fit, approve the federation or reject the application. In case a federation is approved its name shall be notified in the official Gazette otherwise the applicant shall be informed of the position in writing by the Labour Commissioner.

(5) The Labour Commissioner or the Registrar of the Trade Unions, Uttar Pradesh, may, at any time before or after a federation has been approved, call for such information from the federation as he considers necessary and the federation shall furnish the information so called for.

(6) Every approved federation shall—

- (a) intimate to the Labour Commissioner and to the Registrar of Trade Unions, Uttar Pradesh, in Form XXI every change in the address of its head office and in the members of the executive (including its office-bearers) within seven days thereof; and
- (b) submit to the Labour Commissioner and to the Registrar of Trade Unions, Uttar Pradesh by December 31 every year a list of unions affiliated to it in Form XXII.

(7) The Labour Commissioner may, at any time and for reasons to be recorded in writing withdraw the approval granted to federation under sub-rule (4) above.

40. *Subs. by Noti. pub. in 1978 LLT-V-76.*

(8) A party aggrieved by the order of the Labour Commissioner under sub-rule (4) or (7) may within one month from the date of the receipt of such order prefer appeal before the State Government, whose decision in the matter shall be final and binding.]

41. **Muster Rolls of the workmen.**—The muster rolls of the workmen required to be maintained by the employer under Section 6-L, shall be in Form XVIII.

^{12a}[41-A. **Notice of lay off.**—(1) If any workman employed in an Industrial establishment as defined in explanations (i) and (tit) below Section 6-J not being an Industrial establishment referred to in sub-section (1) of that section is laid off then, the employer concerned shall give notices of commencement and termination of such lay off in Forms XVIII-A and XVII-B respectively within seven days of such commencement of

termination, as the case may be.

(2) Such notices shall be given by an employer in every case irrespective of whether, in his opinion, the workman laid off is or is not entitled to compensation under Section 6-M.]

42. Procedure for retrenchment of workmen.—(1) If any employer desires to retrench any workman, employed in establishment who has been in continuous service under him for not less than one year (hereinafter referred to as “workman” in this rule and in Rule 43), he shall give notice of such retrenchment in Form XIX to the Secretary to Government, U.P., Labour (A) Department, to the Labour Commissioner, U.P. and to the Conciliation Officer of the area concerned by registered post, in the following manner:

- (a) Where a notice, as required under clause (a) of Section 6-N is given to the workman, notice of retrenchment shall be sent on the same day on which notice is given to the workman;
- (b) where no notice is given to the workman, and he is paid one month's wages in lieu by notice, notice of retrenchment shall be sent on the same date on which wages are paid to the workman; and
- (c) where retrenchment is or is intended to be carried out under an agreement, which specifies a date for the termination of service, notice of retrenchment shall be sent on the date on which the agreement was made, if the period for the date of the agreement to the date of retrenchment is of less than one month, otherwise not less than one month before the date of retrenchment.

(2) The employer shall prepare a list of the workmen in the particular category from which retrenchment is contemplated, arranged according to the seniority of their service in that category, and cause a copy thereof to be pasted on a notice board in a conspicuous place in the premises of the industrial establishment at least seven days before the date of retrenchment.

(3) Before retrenchment a workman, the employer shall, for the purposes of sending intimation on the workman for re-employment as required in Rule 43 obtain the address of the workman in writing from the workman duly signed, or thumb-impression affixed by the said workman.

43. Re-employment of retrenched workmen.—(1) At least ten days before the date on which any vacancies are to be filled in his industrial

establishment, an employer shall arrange for the display on a notice board in a conspicuous place in the premises of the industrial establishment details of those vacancies and shall also send intimation thereof to everyone of the retrenched workmen eligible to be considered therefor, by registered post or personal delivery to the address given by the workman concerned at the time of retrenchment or at any time thereafter:

Provided that where the number of such vacancies is less than the number of the retrenched workmen, it shall be sufficient if intimation is sent by the employer individually to such number of senior-most amongst the eligible workmen as is not less than double the number of the vacancies:

Provided further that where the vacancy is of a duration of less than one month, there shall be no obligation on the employer to send intimation of such vacancy to individual retrenched workmen :

Provided further that if a retrenched workman does not offer himself for re-employment in spite of having received such intimation the employer may not intimate to him the vacancies that may be filled on any subsequent occasion.

(2) Unless there are good reasons to the contrary, an employer shall re-employ retrenched workmen in order of their seniority as shown in the list maintained under Rule 42.

^{1S}**[44. Intimation of strikes and lock-outs.**—An intimation of the strike or lock-out, referred to in sub-section (3) of Section 6S, shall be given in Form XXIII and be delivered personally or forwarded by registered post to the State Government, the Labour Commissioner and the Conciliation Officer of the area concerned.

45. Notices of strikes and lock-outs.—(1) The notice of strikes, referred to in sub-section (1) of Section 6S, shall be given—

- (a) where there is a registered trade union of workmen, by the President or Secretary or such Union or by an office-bearer of the federation of unions; approved under sub-rule (4) of Rule 40, to which such union is affiliated ; and
- (b) where there is no registered trade union of workmen, by at least seven representatives of workmen duly authorized in this behalf at a general meeting specifically held for the purpose.

(2) The notice, referred to in sub-rule (1) above, shall be given to the Manager and/or the Chief Executive Officer of the industrial establishment and shall be delivered personally or by registered post. Copies of such notice shall be delivered simultaneously, either personally or by registered post, to the State Government, the Labour Commissioner and the Conciliation Officer of the area concerned.

(3) The notice of lock-outs, referred to in sub-section (2) of Section 6S, -shall be given by the Manager and/or the Chief Executive Officer of the

industrial establishment to the President or Secretary of the trade union of workmen of such establishment and where there is no such union by affixing it on the notice board of the establishment at a conspicuous place. Copies of such notice shall be delivered simultaneously, either personally or by

registered post, to the State Government, the Labour Commissioner and the Conciliation Officer of the area concerned.]

^{Ma}**[46. Application for permission for closure.**—(1) Application for prior permission to close down an undertaking of an industrial establishment under sub-section (1) of Section 6-W shall be made in Form XXIV along with its two copies and be delivered to the State Government either personally or by post under registered cover with acknowledgement due and where the application is sent by registered post the date on which the same is delivered to the State Government shall be deemed to be the date on which the application was made for the purpose of sub-section (3) of the said section.

(2) A copy of the said application for prior permission to close down an undertaking of an industrial establishment shall be served on the Presidents or Secretaries of all the registered trade unions working in the establishment through personal service, and where it is not practicable, through registered post acknowledgement due.

(3) A copy of the said application shall also be affixed at or near the main entrance of

the establishment concerned which shall be considered as sufficient service in the case of such workmen as cannot be ascertained and informed.

47. Reference to the Tribunal by the employer.—An employer aggrieved by an order passed under sub-section (1) of Section 6-X who wants to refer the matter to the Tribunal for adjudication shall apply to the Tribunal in Form XXV along with its two copies, stating the grounds thereof, either personally or through an authorised representative. A copy of the impugned order shall also be attached with it.]

SCHEDULE

FORM I

[Section 4-F and Rule 5(1)]

Memorandum of Settlement

Name and addresses of parties.....

Representing employer(s).....

Representing workmen

SHORT RECITAL OF CASE

Terms of Agreement*Signatures of parties*

Witnesses: {Representing employers)

(1)

(2)

Witnesses: {Representing Workmen)

(1)

Place and date

Signature of Conciliation Officer.

“FORM I-A
(Rule 5-A)

Memorandum of Settlement

Names and addresses of parties
Representing employer(s)
Representing workmen

SHORT RECITAL OF CASE

Terms of Agreement

*Signature of parties
or their representatives*

Witnesses: *{Employers}*
(1)
(2)

Witnesses: *(Workmen)*
(1)
(2)

Place and date.....

*Signature of Chairman,
Conciliation Board.*

FORM II
[Section 4-F and Rule 5-A(2)]

Register of Settlements

Part I

Serial Industry Parties to the Date of Remarks* No. settlement settlement

*Here indicate whether the settlement was effected in the course of conciliation proceedings or otherwise at the intervention of the conciliation machinery.

Part II

(Should contain one copy each of the settlement in the serial order indicated in Part I).

^{to}[FORM III

[Section 7(ii) and Rule 5-A (6)]

*Government Order enforcing a settlement arrived at in the course of
Conciliation Proceedings*

Whereas, the Conciliation Board..... constituted under
Clause..... of Government Order No....., dated
,has been successful in bringing about an
amicable settlement in the industrial dispute between the concern known as Messrs and
its workman/workmen (C.B.
Case No of.....);

And, whereas, in the opinion of the Governor, it is necessary, for the maintenance of public order and for maintaining employment, to enforce the said memorandum of settlement, dated..... **contained**
in its report, dated..... ;

Now, therefore, in exercise of the powers, conferred by Section 3, read with Section

7(H) of the U.P. Industrial Disputes Act, 1947 (U.P. Act No. XXVIII of 1947), the Governor is pleased to order as follows, namely :

1. The terms of the said settlement contained in the Schedule annexed herewith, shall be and are hereby enforced and shall remain in force in respect of matters covered by the said settlement and bind the said concern and its workmen for a period of with effect from the date of this order.

2. Any person, who contravenes or attempts to contravene any provision of this order or abets any such contravention, shall be liable, on conviction, under Section 14 of U.P. Industrial Disputes Act, 1947, to fine or to imprisonment not exceeding three years or both.

* FORM III-A

Whereas, the Conciliation Officer during the course of conciliation proceedings has been successful in bringing about an amicable settlement in the industrial dispute between the concern known as Messrs.. and its workmen (Conciliation Case No.....) ;

And, whereas, in the opinion of the Governor, it is necessary for the maintenance of public order and for maintaining employment to enforce the said memorandum of settlement.

Now, therefore, in exercise of the powers conferred by Section 3 read with Section 7(H) of the U.P. Industrial Disputes Act, 1947 (U.P. Act No. XXVIII of 1947), the Governor is pleased to order as follows namely:

1. The terms of the said settlement, contained in the Schedule annexed herewith shall be and are hereby enforced and shall remain in force in respect of matters covered by the said settlement and bind the said concern and its workmen for a period of one year with effect from the date of this order.

2. Any person, who contravenes or attempts to contravene any provision of this order' or abets any such contravention, shall be liable, on conviction under Section 14 of the U.P. Industrial Disputes Act, 1947, to fine or to imprisonment not exceeding three years or both.]

“[FORM mA

Whereas, the Conciliation Officerduring the course of Conciliation Proceedings, has been successful in bringing about an amicable settlement in the industrial dispute between the concern known as Messrs. and its workmen (Conciliation Case No.....),

/ And, whereas, in the opinion of the Governor, it is necessary for the maintenance of public order and for maintaining employment to enforce the ad memorandum of settlement.]

FORM IV

[Section 4-I(a) and Rule 7(1)]

Notice of change in the conditions of service

Name of employer

Address

Dated the.....day of. 19 .

To

In accordance with the provisions of clause (a) of Section 4-1 of the U. P. Industrial Disputes Act, 1947, I/We hereby inform you that it is my/our intention to effect the change (s) specified in the Annexure to this letter with effect from

Signature

Name

Designation

ANNEXURE

Settlement of the Case

(Here specify the change/changes intended to be effected)

FORM V

[Section 5B(1) and Rule 8]

Arbitration Agreement

Names and addresses of the parties

Representing employers:

1

2

Representing workmen:

1

2

It is hereby agreed between the parties to refer the following industrial dispute to the arbitration of.....

[here specify the name(s) and address(es) of the arbitrator(s)].

(») Specify matter in dispute.

(») Details of the parties to the dispute including the name and address of the establishment or undertaking involved.

(Hi) Name(s) of the Union(s), if any, representing the workmen in question.

(to) Total number of workmen employed in the undertaking affected.

(o) Estimated number of workmen affected or likely to be affected by the dispute.

Witnesses:

Signature of parties:

(1) Representing employers

..... *address.*

(2)

Witnesses

Representing workmen

(1) (1)..... *Signature,*

..... *Designation and address.*

(2)

ie FORM VI

(Section 5C and Rule 10)

Registered Acknowledgment Due

SUMMONS

No.....

Before the Conciliation Board/Labour Court /Industrial Tribunal.....

Conciliation Board/Adjudication Case No ... of 19.....

To

(1) The Manager,

(2) The Secretary,

(3)..... Whereas an industrial dispute between..... and its workmen/

Whereas an industrial dispute between.....and its workmen/

This Board under Clause 3 of G. O. No. 738 workmen has been referred to _____;

This Labour Court/Indus. Tri., under Section 4K (ST)/XXXVI-A—112(ST)-1957, dated December, 31, 1957 , you are hereby summoned of the U. P. Industrial Disputes Act, 1947 (U. P.

Act No. XXVIII of 1947), vide G. O. No..... dated

to appear before the Board/Labour Court/Industrial Tribunal in person or through a duly authorized representative in accordance with Rule 40 of the U. P. Industrial Disputes Rules, 1957, on the.....day of a

a.m /p.m. to answer all material questions relating to the said dispute and you are directed to produce on that day all the books, papers and other documents and things in your possession or under your control in any way relating to the matter under enquiry and investigation. Your written statements, if any, should also be presented to the Board/Labour Court/Industrial Tribunal in duplicate on the date specified above.

2. The attention of all concerned is also drawn to Section 6E of the U. P. Industrial Disputes Act, 1947, for strict compliance.

Dated..... 19 .

Chairman, Conciliation Board

Presiding Officer/Registrar, Labour Court/Industrial Tribunal.

FORM VII

of 19..... in the matter of industrial dispute between the concern/concerns known as..... and its/their workmen.

To

[Section 5G and Rule 25(4)]

Application for urgent/ordinary copy of award/document in Case No....

The Presiding Officer, Labour Court/Registrar, Industrial Tribunal, Serial No

Description of document of which a copy is

Application is made by.... ..
theunder signed for a certified copy of the marginally noted documents from the Labour Court's/ Industrial Tribunal's file in the above case which was disposed of on.....

Date

Official Report

The copy will cover

sheets.

Signature of applicant

Estimate of costs.

wanted,

with date when necessary

Applicant's Signature.. Record received on..... Copy will be ready on.. Copy actually ready on Copy delivered on

Serial No.

Received an application for certified copy bearing the above No. Estimated cost Rs

.....nP To attend for copy
on..... Received copy on

Head Clerk.

Applicant.

Note.—The application will not be considered as complete until costs have been supplied in full, which must be done within seven days of the date of the estimate. All enquiries and complaints shall be accompanied by this counterfoil. It will have to be given up when the copy is delivered.

FORM VIII

[Section 5C and Rule 25(14)]

Register of applications for copies of awards and other documents _____

Serial No.	Date of receipt of app	Name of app award	Description of award	Copy of award	Certify fee as	Receipt number and date	Copy delivered *iJ

FORM IX [Section 6B(2) and Rule 26] *Application for*

Registration of Settlement To

Dear Sir/Madam,

We, the following parties, viz. (names and addresses of all the parties) (Employer/Workmen), .

(1)

(2)

do hereby apply for registration of the settlement arrived at between the above parties otherwise than in the conciliation proceedings on.....(date).

The memorandum of settlement in Form I, duly signed by all concerned is hereby enclosed.

A copy of the memorandum of settlement remained affixed on the Notice Board, as required under Rule 26, from.....(date) to....
(date).

Yours faithfully,
*Signatures, designations and names of
the*

A brief recital of the case is also given below :

FORM X [Section 6B(3) and Rule 27] Form of Registration of Settlement

Registr No.	Names addresses partie settler	Terms o me	Date o m	Date o tra	Signatur regist authc	Remark
1	2	3		5	6	

FORM XI

[Section 6B(3) and Rule 27]

[Certificate of Registration of Settlement]

No.....of 19 .

It is hereby certified that the memorandum of settlement, dated
..... arrived at between
.....

as per copy enclosed, has been registered under the U.'P. Industrial Disputes Act, 1947 (U.
P. Act No. XXVIII of 1947), this..... day of

One thousand, nine hundred and...../
..... . . I.....

Conciliation Officer, U. P. and the Certifying Authority.

FORM XII

[Section 6E(3) and Rule 29(1)]

Application for recognition of protected workmen

To

The Registrar of Trade Unions,
Uttar Pradesh,

Kanpur.

Sir,

In the meeting of the Executive Committee of

(Name and address of union) Registration Certificate No. held on
the following members of the Executive who are employed as workmen of
..... have been approved **fname and address of
establishment)**

or being recommended for registration as “protected workmen” for a period of one year
with effect from..... The Union, therefore, requests

you kindly to convey your orders to the undersigned in this matter at your earliest convenience.

Name of father's name	Name of establishment in empl	Name of department and number	Local postal selection	Local postal selection	Period of subscription last	Signature L.T.I
-----------------------	-------------------------------	-------------------------------	------------------------	------------------------	-----------------------------	-----------------

Yours's faithfully (*Principal Secretary*),

FORM XIII

[5M Section 6E(3) and Rule 22(3)]

Register of Protected Workmen

Name and address of establishment*

Name of protected workman with father's name	Department designation or token number	Local union officer	Date of meeting of executive committee union in name w	Reference of Registrar's order by w
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FORM XIV

[5« Section 6E(3) and Rule 31(1)]

Before Presiding Officer, Labour Court/Tribunal, Chairman, Conciliation Board

Application for permission under sub-section (1)/sub-section (3) of
Section 6E of the U. P. Industrial Disputes Act, 1947 (U. P. Act No. XXVIII of 1947) in the
matter of Reference No

A..... Applicant

(Address)

versus

B..... Opposite Party{ies}

(Address(es)].

The abovementioned applicant begs to state as follows:

(Here set out the relevant fact? and circumstances of the case and the grounds on which the permission is sought for.)

The applicant, therefore, prays that express permission may kindly be granted to him to take the following action, namely: *

[Here mention the action specified in clause (a) or clause (6) of subsection (1)/sub-section (3) of Section 6E].

Signature of the applicant.

Dated this.....day of..... 19.

(Space for verification.)

{Signature of other person verifying'}

Date (on which the verification was signed).....

Place (at which the verification was signed).....

FORM XV

[S« Section 6E(2) and Rule 31(2)]

Before Labour Court) Tribunal

Application under sub-section (2) of Section 6E of the U. P. Industrial Disputes Act, 1947 (U. P. Act No. XXVIII of 1947), in the matter of reference No

A..... *Applicant*

(Address)

versus

- B..... *Opposite Party{ies}*.

(Address(es)]

The abovementioned applicant begs to state as follows:

(Here set out the relevant facts and circumstances of the case).

♦The workman/workmen discharged/dismissed under clause (6) of subsection (?) of Section 6E has/have been paid wages for one month.

The applicant prays that the Labour Court/Tribunal may be pleased to approve of the action taken, namely: •

[Here mention the action taken under clause (a) or clause (i) of subsection (2) of Section 6E.]

Signature of the applicant.

Dated this..... day of 19

Space of verification

(Signature of the person verifying)

Date (on which the verification was signed).....

Place (at which the verification was signed).....

* *Delete*, if not applicable.

FORM XVI

[Srt Section 6F and Rule 32]
Before the Labour Court/Tribunal.....

Complaint under Section 6F of the U. P. Industrial Disputes Act, 1947.

A..... *Complainant(s)*, (Address)

versus

B..... *Opposite Party(ies)*.

[Address(es)]

In the matter of reference No.....

The petitioner(s) begs/beg to complain that the opposite party (ies) has/ have been guilty of a contravention of the provisions of Section 6F of the U. P. Industrial Disputes Act, 1947 (U. P. Act No. XXVIII of 1947), as shown below:

(Here set out briefly the particulars showing the manner in which the alleged contravention has taken place and the grounds on which the order or act of the Management is challenged.)

The complainant(s) accordingly prays/pray that the Labour Court/ Tribunal may be pleased to decide the complaint set out above and pass such order or orders thereon, as it may deem fit and proper.

Copies of the complaint and its annexures as required under Rule 32 of the U. P. Industrial Disputes Rules, 1957, are submitted herewith.

Signature of the Complainant (s).

Dated this..... day of..... 19 .

Verification

I do solemnly declare that what is stated in paragraphs above is true to my knowledge and that what is stated in paragraphs above is based upon information received and believed by me to be true. This verification is signed by me at on..... day of..... 19 .

(Signature/thumb-impression of the

• *person verifying)*

FORM XVII

[See Section 6H(1) and Rule 33]

Application under Section 6H(1) of the U. P. Industrial Disputes Act, 1947

To

The Secretary to Government,
Uttar Pradesh,
Labour (A) Department, Lucknow.

Dated..... 19

Sir,

I/We.....am/are
entitled to receive a sum of Rs..... (in figures and words)

from.....

(Name and full address of the employer) under an award of the Labour
Court/Tribunal/Arbitration award in case no.... of 19.....

/under a settlement, dated..... /under Section 6K/6N

of the U. P. Industrial Disputes Act, 1947. Details of the money due are given below—

(Here indicate details and particulars of the amount due.)

It is, therefore, requested that the above amount may kindly be recovered from the
employer(s) under Section 6H(1) of the Act and paid to me/us.

Yours faithfully

Signature or thumb-impression of the applicants').

Full address.....

FORM XVIII

[S« Section 6L and Rule 41]

Muster Roll of workmen required to be maintained by the employer

Name of the Factory
or Department.....

*There should be one or more separate pages for one particular establishment.

[FORM XVIII-A
(See Rule 41-A) .

To

The Regional Additional/Dy./Asstt. Labour Commissioner,

Sir,

Under Rule 41-A of the U.P. Industrial Disputes Rules, 1957, I/we hereby inform that I/we have laid off out of a total of workmen employed in the establishment with effect from . for the reasons explained in the Annexure.

(2) Such of the workmen concerned as are entitled to compensation under Section 6-K of the U.P. Industrial Disputes Act, 1947, will be paid compensation due to them.

Dated..... Yours faithfully,

Copy forwarded to the Regional Conciliation Officer. (Here specify the address of the Regional Conciliation Officer of the local area concerned.)

FORM XVIII-B
(See Rule 41-A)

To

The Regional Additional/Dy./Asstt. Labour Commissioner,

Sir,

1957 and in continuation of my/our notice dated",.....,^, in Form XVIII-A, I/we hereby inform you that the lay off in my/our establishment has ended on

Dated..... Yours faithfully,

As required by Rule 41-A of the U.P. Industrial Disputes Rules;

Copy forwarded to the Regional Conciliation Officer. (Here specify the address of the Regional Conciliation Officer of the local area concerned.)]

FORM XIX
Section 6-N and Rule 42]

Form of notice of retrenchment to be given by the employer under clause («) •>/ Section 6-N of the U.P. Industrial Disputes Act, 1947

Name of the employer

Address

Dated.....19

16a. Forms XVIII-A and XVIII-B *vu.* by Nod. No. 7145 (STJ/XXXVI/693 (ST) 79, dated 30-12-1980.

To

The Secretary to Government,
Uttar Pradesh, Labour (A) Department, Lucknow.

Sir,

Under clause (a) of Section 6-N of the U.P. Industrial Disputes Act, 1947 (U.P. Act No. XXVIII of 1947), I/We hereby inform you that I/We have decided to retrench*

..... workmenwith effect from

“[FORM XXIV
[&« Rule 46(1)]

*Form of application for Permission of Closure to be given by an Employer
under sub-section (I) of Section 6- W of the U.P. Industrial
Disputes Act, 1917 (Act No. 28 of 1947)*

To, Date.....

**SACHIV,
UTTAR PRADESH SHASAN,
SHRAM VIBHAG,
LUCKNOW,**

Sir,

Under Section 6-W of the U.P. Industrial Disputes Act, 1947 (Act No. 28 of 1947), I/we, hereby inform you that I/we, propose to close down the undertaking specified below (name of the industrial establishment).

(Give details of the undertaking)

with effect from..... for the reasons explained in the Annexure.

A copy of this application has been served on the representatives of the workmen on by

2. The number of workmen whose services will be terminated on account of the closure of the undertaking is... ..(number of workmen).

3. Permission is solicited for the proposed closure.

Yours faithfully,
(Signature)

Verification:

Verified that the information furnished herewith is correct to my/our knowledge and belief.

Signature.

ANNEXURE

(Please give replies against each item)

Item No.

1. Name of the industrial establishment with complete postal address including telegraphic addresses and telephone number.
2. The total number and categories of workmen affected by the proposed closure along with the addresses of the workmen and the details of wages drawn by them.
 3. Product/products of the undertaking.
4. Details relating to licensed capacity/installed capacity and the utilised capacity.
 5. (i) Annual production itemwise for preceding three years.
(ii) Production figures monthwise for the preceding twelve months.

6. Work in progress—itemwise and value-wise.
7. Any arrangement regarding off-loading or sub-contracting of products or any component thereof.
8. Details of persons or the organisations to whom the job(s) is (are) being entrusted relationship/interest of the persons/organisations with the director(s) or the officer(s) of the company.
9. Position of the order book—itemwise and valuewise for a period of six months and one year next following and for the period after the expiry of the said one year.
10. Number of working days in a week with the number of shifts per day and the strength of workmen per each shift.
11. Balance-sheet and profit and loss account and audit reports for the last three years.
 12. Financial position of the company.
 13. (») Names of any inter-connected company or companies under the same management.
- (ii) Details about inter-corporate investments and changes during the last one year.
- (Hi) Interest of any of the directors/officers of the undertaking producing same or similar type of product.
 14. Percentage of wages of workmen to the total cost of production.
15. Administrative general and selling cost in absolute terms per year for the last three years and percentage thereof to the total cost.
16. Inventory position—itemwise and valuewise for the preceding twelve months (Inventories to be shown in respect of finished products components and raw materials to be shown separately itemwise and valuewise).
17. Selling arrangement for the last three years and any change in the selling arrangement in preceding twelve months.
18. Full details of the interests of the directors and officers of the company in the organisations/persons involved in selling products of the undertaking.
- 19. Buying arrangements for raw materials and components.
20. Interests of the directors and officers with the organisations/persons involved in buying raw materials and components for the undertaking.
21. Annual sales figures for the last three years and monthwise sales figures for the preceding twelve months both itemwise and valuewise.
22. Reasons for the proposed closure.
 23. Any specific attempts made so far to avoid the closure.
 24. Any other relevant factors with details thereof.

FORM XXV
Rule 47]

*Form of application for reference of the matter to the Tribunal -
for Adjudication*

To,

**THE PRESIDING OFFICER,
INDUSTRIAL TRIBUNAL,**

Sir,

Whereas, the industrial establishment known as M/s.....
(here give the name of the industrial establishment) had been closed down with effect from
..... ;

And, whereas, in exercise of the powers under sub-section (1) of Section 6-X of
the U.P. Industrial Disputes Act, 1947

(Act No. XXVIII of 1947), the State Government have passed orders, dated
(True copy enclosed) directing that establishment shall be restarted by
..day of 198..... ;

And, whereas, I/we, being the employer of the industrial establishment am/are
aggrieved from the said order of the State Government on the following grounds* :—

- 1.
- 2.
- 3.
- etc.

Now, therefore, it is prayed that the Tribunal may kindly entertain the above matter for
adjudication under sub-section (2) of Section 6-X of the U.P. Industrial Disputes Act, 1947.