

## **The Bombay Industrial Relations Act, 1946**

### **Introduction:**

This act regulate the relation of employer and employees to make provision of settlement of industrial dispute: This Act extends to the whole of the State of Maharashtra. It shall come into force on such date as the State Government may by notification in the *Official Gazette* specify.

### **Objectives:**

- 1.To regulate and promote harmonious relations between employers and employees
- 2.To provide machinery for settlement of dispute by adjudication or arbitration on consideration of equity, justice and good service
- 3.to promote collective bargaining

1 For Statement or Objects and Reasons, see Bombay Government Gazette, 1946, Pt. V, p.209; and for Proceedings in Assembly, see Bombay Legislative Assembly Debates, 1946, Vol.IX; and for Proceedings in Council, see Bombay Legislative Council, Debates, 1946, Vol. XI <sup>2</sup> This Act is extended to the rest of the State of Maharashtra (vide Mah. 22 of 1965, S.2) <sup>3</sup> Subs. by Mah. 22 of 1965 <sup>4</sup> Subs. by the Adaptation of Laws Order, 1950.<sup>5</sup> Added by Mah. 22 of 1965.<sup>6</sup> Added by Bom. 55 of 1949, Addition of the said proviso shall not affect any proceedings, the other than a proceeding in respect of a reference made by the State Government or any officer or authority subordinate to it, pending before the Industrial Court or a Labour Court or the Registrar on the date on which Bom.55 of 1949 comes into force and to which the Imperial Bank of India or a banking company referred to in the said proviso is a party, and such proceeding shall be continued and disposed of as if Bom. 55 of 1949 had not been passed (vide S.20 of Bom.55 of 1949). <sup>7</sup>

Subs. by the Adaptation of Laws Order, 1950.

### **3. Definitions.-**

In this Act unless there is anything repugnant in the subject or context -

(3)"**arbitration proceeding**" means-

- (a) any proceeding under this Act before an arbitrator,
- (b) any proceeding before a Labour Court, a Wage Board or the Industrial Court in arbitration;

(4) "**arbitrator**" means

an arbitration to whom a dispute is referred for arbitration under the provisions of this Act and includes an umpire;

(5) "**association of employers**" means

any combination of employers recognised by the State Government under section 27;

(6) "**award**" means

any interim, final or supplementary] determination in an arbitration proceeding of any industrial dispute or of any question relating thereto;

(8A) "**closure**" means

the closing of any place or part of a place of employment or the total or partial suspension of work by an employer or the total or partial refusal by an employer to continue to employ persons employed by him, whether such closing, suspension or refusal is or is not in consequence of a industrial dispute;

(9) "**Commissioner of Labour**" means

an officer appointed by the State Government for the time being to be the Commissioner of the Labour; and in respect of any of the powers and duties of the

(11) "**Conciliator**" means

any Conciliator appointed under this Act and includes the Chief Conciliator and Additional Chief Conciliator] or a Special Conciliator;

(13) "**employee**" means

any person employed to do any skilled or unskilled work for hire or reward in any industry, and includes - (a) a person employed by a contractor to do any work for him in the execution of a contract with an employer within the meaning of sub-clause (e) of clause (14); (b) a person who has been, <sup>5</sup>[dismissed, discharged or retrenched or whose services have been terminated,] from employment on account of any dispute relating to change in respect of which a notice is given or an application made under section 42 whether before or after his dismissal, dismissal, discharge, retrenchment or, as the case may be, termination from employment]; but does not include -

- (i) a person employed primarily in a managerial, administrative, supervisory or technical capacity drawing

basic pay (excluding allowances) exceeding **six thousand five hundred rupees per month**;

- (ii) any other person or class of persons employed in the same capacity as those specified in clause (i) above irrespective of the amount of the pay drawn by such persons which the State Government may, by notification in the *Official Gazette*, specify in this behalf

(14) "**employer**" includes -

- (a) an association or a group of employers;
- (b) any agent of an employers;
- (c) where an industry is conducted or carried on by a department of the State Government, the authority prescribed in that behalf, and where no such authority has been prescribed, the head of the department;
- (d) where an industry is conducted or carried on by or on behalf of a local

authority, the chief executive officer of the authority;

- (e) where the owner of any undertaking in the course of or for the purpose of conducting the undertaking contracts with any person for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the undertaking, the owner of the undertaking;

(15) "**illegal change**" means

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

(16) "**industrial Court**" means

the Court of Industrial Arbitration constituted under section 10;

(17) "**industrial dispute**" means

any dispute or difference between an employer and employee or between employers and employees or between employees and employees and which is connected with any industrial matter;

(18) "**Industrial matter**" means

any matter relating to employment, work, wages, hours of work, privileges, rights or duties of employers or employees, or the mode, terms

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

(b) all matters pertaining to the demarcation of functions of any employee

or classes of employees;

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

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

(19) "**industry**" means -

(a) any business, trade, manufacture or undertaking or calling of employers; (b) any calling, service, employment, handicraft, or industrial occupation or avocation of employees; and includes -

(i) agriculture and agricultural operations;

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

(22) "**Labour Officer**" means

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

(23) "**local area**" means

any area (including the entire State) notified as a local area for the purposes of this Act <sup>3</sup>[or for different industries;

(24) "**lock-out**" means

the closing of a place or part of a place of employment or the total or partial suspension of work by an employer or the total or partial refusal by an employer to continue to employ persons employed by him, where such closing, suspension or refusal occurs in consequence of an industrial dispute and is intended for the

purpose of –

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

(b) aiding any other employer in compelling persons employed by him, to accept any term or condition of or affecting employment;

(25) "**member**" means

a person who is an ordinary member of a union and who has paid a subscription of not less than twenty- five paise per calendar month Provided that no person shall at any time be deemed to be a member if his subscription is in arrears for a period of more than three calendar months during the period of six months immediately preceding such time

(31) "**Registrar**" means

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

(32) "**representative of employees**" means a representative of employees entitled to appear or act as such under section 30;

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

35A "**stoppage**" means

a total or partial cessation of work by the employees in an industry acting in combination or a concerted refusal or a refusal under a common understanding of employees to continue to work or to accept work, whether such cessation or refusal is or is not in consequence of an industrial dispute;

(36) "**strike**" means

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

(39) "**wages**" means

remuneration of all kinds capable of being expressed in terms of money and

payable to an employee in respect of his employment or work done in such employment and includes –

- (i) any bonus, allowances (including dearness allowances), reward or additional remuneration;
- (ii) the value of any house accommodation, light, water, medical attendance or other amenity or service;
- (iii) any contribution by the employer to any person or provident fund; (iv) any travelling allowance or the value of any travelling concession; (v) any sum paid or payable to or on behalf of an employee to defray special expenses entailed on him by the nature of his employment;
- (iv) gratuity payable, if any.

#### **Authorities to be constituted or appointed under this Act**

##### **4. Commissioner of Labour. –**

(1) State Government shall, by notification in the *Official Gazette*, appoint a person to be Commissioner of Labour.

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

##### **5. Registrar Additional Registrars and Assistant Registrars –**

.The State Government shall, by notification in the *Official Gazette*, appoint a person to be the Registrar of Unions for the whole of the State of Maharashtra

(1A) The State Government may, by similar notification, appoint one or more more Additional Registrars of Unions for the whole State or for any local area thereof. An Additional Registrar of Unions shall exercise such powers and perform such duties of the Registrar under the provisions of this Act, as the State Government may, by notification in the *Official Gazette*, specify in this behalf.

(1B) An Additional Registrar shall not be subordinate to the Registrar except as respect such matters as the State Government may, by general or special order, specify in this behalf.]

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

of the Registrar of Unions under this Act.

#### **6. Conciliators.-**

(1) The State Government shall appoint a person to be the Chief Conciliator. His jurisdiction shall extend throughout the State of Maharashtra

(1A) The State Government may appoint one or more Additional Chief Conciliators for the whole State or for any local area thereof. An Additional Chief Conciliator shall exercise such powers and perform such duties of the Chief Conciliators under the provisions of this Act as the State Government may, by notification in the Official Gazette, specify in this behalf.

(1B) An Additional Chief Conciliator shall not be subordinate to the Chief Conciliator, except as respects, such matters as the State Government may, by general or special order, specify in this behalf.

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

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

#### **7. Board of Conciliation –**

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

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

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

#### **8. Labour Officers and Assistant Labour Officers.-**

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

#### **9. Labour Courts.-**

The State Government shall, by notification in the Official Gazette, constitute one or more Labour Courts having jurisdiction in such local areas as may be specified in such notification and shall appoint persons having the following qualifications to preside over such Courts:

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

- (a) he has held any judicial office in India for not less than five years; or
- (b) he has practised as an Advocate or Attorney for not less than seven years in the High Court or any Court subordinate thereto, or in any Industrial Court, Tribunal or Labour Court constituted under any law for the time being in force; or
- (c) he holds a degree in law of a University established by law in any part of India and is holding or has held an office not lower in rank than that of Deputy Registrar of any such Industrial Court or Tribunal, or of Assistant Commissioner of Labour under the State Government, in both cases for not less than five years.

#### **10. Industrial Court –**

- (1) The State Government shall constitute a Court of Industrial Arbitration.
- (2) The Industrial Court shall consist of three or more members, one of whom shall be its President.
- (3) Every member of the Industrial Court shall be a person who is not connected with the industrial dispute referred to such court or with any industry directly affected by such dispute:

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



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

(a) a person who has been a Judge not lower in rank than that of Assistant Judge, for not less than three years; or

(b) a person who has been the presiding officer of a Labour Court constituted under any law for the time being in force, for not less than five years; or

(c) a person who holds a degree in law of a University established by law in any part of India and is holding or has held an office not lower in rank than that of Assistant Commissioner of Labour under the State Government, for not less than ten years, shall also be eligible for appointment as a member of the Industrial Court: *Provided further* that, one member of the Industrial Court may be a person not so eligible, if in the opinion of the State Government he possesses expert knowledge of Industrial matters.

## **Registration of Unions**

### **11. Recognition of undertakings and occupations.-**

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

- (1) any concern in an industry to be an undertaking
- (2) any section of an undertaking to be an occupation.

### **12. Maintenance of registers and approved list. –**

It shall be the duty of the Registrar to maintain in such forms as may be prescribed-

- (a) registers of unions registered by him under the provisions of this Act,  
and
- (b) a list of approved unions.

### **13. Application for registration.-**

(1) Any union which has for the whole of the period of three calendar months immediately preceding the calendar month in which it so applies] under this section a membership of not less than twenty- five per cent of the total number of employees employed in any industry in any local area may apply in the prescribed form to the Registrar for registration as a Representative Union for such industry in such local area.

(2) If in any local area no Representative Union has been registered in respect of an industry a union which has for the whole of the period of three calendar months immediately preceding the calendar month in which it so applies under this section a membership of not less than five per cent of the total number of employees employed in such industry in the said area may apply in the prescribed form to the Registrar for registration as a Qualified Union for such industry in such local area.

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

(4) Notwithstanding anything contained in this section, if a union makes a fresh application for registration as a Representative Union, Qualified Union, or as the case may be, Primary Union, before a previous application for such registration has been finally disposed of by the Registrar, the Registrar shall not entertain such application.

#### **14. Registration of union.-**

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

#### **15. Cancellation of registration-**

The Registrar shall cancel the registration of a union --

- (a) if the Industrial Court directs that the registration of such union shall be cancelled;
- (b) if after giving notice to such union to show cause why its registration should not be cancelled and] after holding such inquiry, if any, as he deems fit, he is satisfied-
  - (i) that it was registered under mistake, misrepresentation or fraud; or
  - (ii) that the membership of the union has for a continuous period of three calendar months fallen below the minimum required under section 13 for its registration:

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

Provided further that the registration of a union shall not be cancelled under the provisions of this sub-clause unless its membership <sup>1</sup>[for the calendar month in which show cause notice under this section was issued] was less than such minimum; or

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

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

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

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

**16. Registration of another union in place of existing registered union.-**

(1) If at any time any makes an application to the Registrar for being registered in place of the union already registered for an industry, in a local area, on the ground that it has a larger membership of employees employed in such industry the Registrar shall <sup>3</sup>[if a period of two years has elapsed since the date of registration of the registered union, call upon the registered union by a notice in writing to show cause within thirty days of the receipt of such notice why the applicant union should not be registered in its place. An application made under this sub-section shall be accompanied by such fee as may be prescribed:

Provided that, the Registrar shall not entertain any application for registration of a union, unless a period of one year has elapsed since the date of disposal of the previous application of the union.

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

(3) If, on the expiry of the period of notice under sub-section (1), after holding such inquiry as he deems fit, the Registrar comes to the conclusion that the applicant union complies with the conditions necessary for registration specified in section 13, and that its membership was during the whole of the period of three calendar months immediately preceding the calendar month in which it made the application] under this section larger than the membership of the registered union, he shall subject to the provisions of section 14 register the applicant union in place of the registered union <sup>1</sup>[and issue a certificate of registration in such form as may be prescribed.

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

**17. Application for re-registration.-**

- (1) Any union the registration of which has been cancelled on the ground that it was registered under a mistake or on the ground specified in sub- clause (ii) of clause (b) of section 15 may, at any time after three months from the date of such cancellation and on payment of such fees as may be prescribed, apply for re-registration. The provisions of sections 13 and 14 shall apply in respect of such application.
- (2) A union the registration of which has been cancelled on any other ground shall not, save with the permission of the State Government, be entitled to apply for re-registration.

**18. Liability of union or members not relieved by cancellation.-**

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

**19. Periodical returns to be submitted to Registrar.-**

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

**20. Appeal to Industrial Court from order of Registrar**

- (1) Any party to a proceeding before the Registrar may within 30 days from the date of an order passed by the Registrar under this Chapter, appeal against such order to the Industrial Court:
- (2) The Industrial Court may admit an appeal under sub-section (1) if on a perusal of the memorandum of appeal and the decision appealed against it finds that the decision is contrary to law or otherwise erroneous.
- (3) The Industrial Court in appeal may confirm, modify or rescind any order passed by the Registrar and may pass such consequential orders as it may deem fit. A copy of the orders passed by the Industrial Court shall be sent to the Registrar.

**21. Publication of order.-**

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

**22. Registration of union for more than one local area.-**

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

## Approved Unions

### 23. Approved list: maintenance of: conditions for being entered in. –

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

- (i) its membership subscription shall be not less than <sup>1</sup>[fifty paise] per month;
- (ii) its executive committee shall meet at intervals of not more than threemonths;
- (iii) all resolutions passed, whether by the executive committee or the general body of the union, shall be recorded in a minute book kept for the purpose;
- (iv) an auditor appointed by Government may audit its accounts at least once in each financial year;
- (v) every industrial dispute in which a settlement is not reached by conciliation shall be offered to be submitted to arbitration, and that arbitration under Chapter XI shall not be refused by it in any dispute;
- (vi) no strike shall be sanctioned, resorted to or supported] by it unless all the methods provided by or under this Act for the settlement of an industrial dispute have been exhausted or unless the circumstances mentioned in the proviso to clause (h) of sub- section (1) of section 97 obtain] and the majority of its members vote by ballot in favour of such
- (vii) no stoppage which is illegal under this Act shall be sanctioned resorted to, OR supported by it;

(vii) no 'go slow' shall be sanctioned, resorted to, or supported by it: Provided that the Registrar shall not enter a union in the approved list if he is satisfied that it is not being conducted bona fide in the interest of its members but to their prejudice.

Provided further that,-

- (a) the Registrar shall not entertain any fresh application by any union unless its previous application for being entered in the approved list is finally disposed of by him;

(b) when two or more unions fulfilling the conditions necessary for being entered in the approved list apply in respect of the same industry in any local area in the same calendar month, the union having the largest membership of employees in the industry in the calendar month immediately preceding the calendar month in which they apply, shall be entered in the approved list;

(c) where after receipt of any application from any union under sub-section (1) any other union or unions apply for being entered in the approved list, for the same industry in the same local area in any subsequent calendar month, such application or applications shall not be considered unless the application received first is disposed of by the Registrar

- (2) The State Government may by notification in the Official Gazette direct that in the case of any union or class of unions specified in the notification the membership subscription may, subject to a minimum of twenty-five paise per month, be less than fifty paise.
- (3) Notwithstanding anything contained in sub-section (1) there shall not at any time be more than one approved union in respect of any industry in a local area.
- (4) Any union complying with the conditions specified in sub-section (1) and having a larger membership in an industry in a local area than an approved union for such industry <sup>4</sup>[in that local area] shall on application in that behalf be entered in the approved list in place of such approved union by the Registrar <sup>6</sup>[if after holding such inquiry as he deems fit, he is satisfied that the applicant union has got the larger membership in such industry in that local area than the approved union in the calendar month preceding the calendar month in which such application is made;

Provided that, the Registrar shall not entertain-

- (a) any such application unless a period of two years has elapsed since the approved union was entered in the approved list;
- (b) any fresh application by the same union, unless a period of one year has elapsed from the date of disposal of its previous application by the Registrar.

**23A. Approved union to continue to be so for altered local area for some time.-** Notwithstanding anything contained in section 23, if there is any alteration in the local area or areas,-

- (a) an approved union in an industry in the altered local area or areas,

or

(b) where two or more approved unions exist in an industry in the altered local area or areas the union having the largest membership, whether by agreement of the other approved unions or as determined by the Registrar after such inquiry as he deems fit, shall be deemed to be the approved union for the altered local area or areas, as the case may be, for a period of twelve months from the date on which such alteration is effected, or where such approved union or any other union in the altered local area or areas makes an application under section 23 within such period until the disposal of such application by the Registrar

**23-B. Recognised union under C.P. an Berar XXIII of 1947 to be approved union for purposes of this Act.-**

Notwithstanding anything contained in sub-section (1) of section 23, any union registered as a recognised union in any local area in respect of any industry under the Central Provinces and Berar Industrial Disputes Settlement Act, 1947, shall, on the commencement of the Bombay Industrial Relations (Extension and Amendment) Act, 1964, be deemed to be an union entered in the approved list as an approved union for that local area in respect of that industry.

**24. Removal from approved list.-**

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

- (i) was entered in the list under mistake, misrepresentation or fraud; or
- (ii) (ii) has, since being included in the approved list, failed to observe the

conditions specified in section 23: Provided that, the Registrar shall not, for a period of six months from the commencement of the Bombay Industrial Relations (Extension and Amendment) Act, 1964, remove any union entered in the approved list before such commencement, on the ground that such union has failed to observe any additional conditions introduced in section 23 by the Act, aforesaid.

**24A. Appeal to Industrial Court from order of Registrar under Chapter IV-**

(1) Any party to a proceeding before the Registrar may, within 30 days from the



date of an order passed by the Registrar under this Chapter, appeal against such order to the Industrial Court :

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

(3) The Industrial Court in appeal may confirm, modify or rescind any order passed by the Registrar and may pass such consequential orders as it may deem fit. A copy of the order passed by the Industrial Court shall be sent to the Registrar].

**25. Right of Officers of approved unions. –**

Such officers members of the the office staff] and members of an approved union as may be authorised by or under rules made in this behalf by the <sup>1</sup>[State] Government shall, in such manner and subject to such conditions as may be prescribed, have a right, and shall be permitted by the employed concerned-

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

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

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

(i) to hold discussions on the premises of the undertaking with the

employees concerned who are the members of the union;

(ii) to meet and discuss with an employer or any person appointed by him

for the purpose of the grievances of its members employed in his undertaking;

(iii) to inspect, if necessary, in any undertaking any place where any

member of the union is employed.

**26. Legal aid to approved unions at Government expense in important proceedings -**

- (1) An approved union is entitled to appear-
- (a) before a Labour Court in a proceeding for determining whether a strike, lock-out, closure, stoppage] or change is illegal, or
  - (b) before the Industrial Court in a proceeding involving in the opinion of the Court an important question of law or fact, may apply to the Court for the grant of legal aid at the expense of the State Government.
- (2) A copy of every application made under sub-section (1) shall be sent to the Registrar with the least practicable delay.
- (3) The Court to which an application is made under sub-section (1) may fix for the hearing of the application a day of which at least three days' clear notice shall be given to the Registrar.
- (4) On the day fixed or as soon thereafter as may be convenient, the Court shall examine the witnesses, if any, produced by the union, and the Registrar, and may also examine the officers of the union, and shall make a memorandum of the substance of such evidence.
- (5) The Court may after considering the evidence adduced under sub-section (4) either grant or refuse the application.
- (6) The State Government may in consultation with the Industrial Court prescribe the fees for legal advice to, and appearance on behalf of a union before a Court.
- (7) For the purpose of this section, legal aid includes advice to the union and the appearance before a Court of a legal practitioner on behalf of the union.

## **Representatives of Employers and Employees, and Appearance on their behalf**

### **27. Recognition of combination of employers as association of employers.- (1)**

The State Government may from time to time by notification in the Official Gazette.

(a) recognise any combination of employers in an industry in any local area whether incorporated or not as an association of employers for the purposes of this Act, provided that one of the objects of such combination is the regulation of conditions of employment in the industry<sup>3</sup>[in that local area];

(b) withdraw any recognition granted under clause (a): Provided that no recognition shall be withdrawn unless an opportunity has been given to such association of employers to be heard.

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

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

(b) any employer connected with the same industry not being a member of the association, who has intimated in writing to the prescribed authority that he has agreed to be represented by the association in such proceeding; and any notice or intimation given by or to such association shall be deemed to have been given by or to every employer it is entitled to represent.

(3) Where more employers than one are affected, or under any of the provisions of this Act deemed to be affected, and no association of employers is under sub-section (2) entitled to represent all of them, the representative determined in the prescribed manner shall be entitled to act as their representative.

### **27AA. Recognised association of employers to continue to be so for altered local areas.-**

Notwithstanding anything contained in this Act, if there is any alteration in any local area or areas notified for purposes of this Act-

(a) the recognised association of employers entitled under this Act to represent under sub-section (2) of section 27 in any industry immediately before the alteration in the local area or areas concerned;

or

(b) where more than one recognised association of employers are

entitled to represent under sub-section (2) of section 27, the association having the largest membership of employers connected with the same industry, shall be entitled to represent for the altered local area or areas, as the case may be for a period of twelve months from the date on which such alteration is effected or if an application under section 27 is made within such period by such association or by any other association in the altered local area or areas, until the disposal of such application by the State Government.

**1[27A. Appearance on behalf of employees.-**

Save as provided in section 32, 33 and 33A no employee shall be allowed to appear or act in any proceeding under this Act except through the representative of employees.]

**28. Election of representatives of employees.-**

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

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

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

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

Provided that any person may be re-elected at any such election. (4)  
The employees may in the prescribed manner recall any or all of the person elected under sub-section (1) or (3).

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

**29. Act or decision of majority to be deemed to be act or decision of all.-**

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

### **30. Representative of employees.-**

Subject to the provisions of section 33A, the following shall be entitled] to appear or act] in the order of preference specified as the representative of employees in an industry in any local area-

- (i) a Representative Union for such industry; (ii) a Qualified or Primary Union of which the majority of employees directly affected by the change concerned are members; (iii) any Qualified or Primary Union in respect of such industry authorised in the prescribed manner in that behalf by the employees concerned;
- (iv) the Labour Officer if authorised by the employees concerned; (v) the persons elected by the employees in accordance with the provisions of Section 28 or where the proviso to sub-section (1) thereof applies, the employees themselves;
- (vi) the Labour Officer: Provided-

**31. Registered or representative union to continue to be so for altered local area for some time.-** Notwithstanding anything contained in this Act, if there is any alteration in any local area or areas notified for the purposes of this Act,-

(a) a registered or representative union entitled under this Act to appear or act as a representative of employees in an industry immediately before the alteration in the local area or areas concerned, or

(b) where more than one registered or representative union are entitled to appear or act as representative of employees in an industry under this section, the union having the largest membership of employees employed in the industry, where by agreement of the other registered or representative unions or as determined by the Registrar after such inquiry as he thinks fit, shall be entitled to appear or act for the altered local area or areas, as the case may be, for a period of twelve months from the date on which such alteration is effected or if an application under section 13 is made within such period by such union or, any other union in the altered local area or areas, until the disposal of such application by the Registrar

### **32. Persons who may appear in proceedings.-**

A Conciliator, a Board, an an Arbitrator, a Wage Board, a Labour Court and the Industrial Court may, if he or it considers it expedient for the ends of justice, permit an individual, whether an employee or not, to appear in any proceeding before him or it:

Provided that <sup>5</sup>[subject to the provisions of section 33A no such individual shall be permitted to appear in any proceedings <sup>5</sup>[not being a proceeding before a Labour Court or the Industrial Court in which the legality or propriety of an order of dismissal, discharge, removal, retrenchment, termination of service or suspension of an employee is under consideration)] in which a Representative Union has appeared

as the representative of employees

**33. Appearance for] employee.-**

Notwithstanding anything contained in any any other provision of this Act an employee <sup>7</sup>[or a representative union] shall be entitled to appear through any person,

- (a) in all proceedings before the Industrial Court;
- (aa) in all proceedings before a Wage Board;
- (b) in proceedings before a Labour Court for deciding whether a strike, lock-out <sup>2</sup>[closure or stoppage] or change or an order passed by an employer under the standing orders is illegal
- (c) in such other proceedings as the Industrial Court may, on application

made in that behalf, permit: Provided that a legal practitioner shall not be permitted under clause (c) to appear in any proceeding under this Act except before a Labour Court as provided in section 83A] or the Industrial Court:

Provided further that subject to the provisions of section 33A, no employee ~~employee~~ shall be entitled to appear through any person in any proceeding under this Act (not being a proceeding before a Labour Court or the Industrial Court in which the legality or propriety of an order of dismissal, discharge, removal, retrenchment, termination of service or suspension of an employee is under consideration)] in which a Representative Union has appeared as the representative of employees.

Provided also that save as aforesaid, any person (other than the Representative Union or legal practitioner) shall not be permitted to appear on behalf of an employee in any proceeding before any Court under this Act, save with the permission of the Court].

**33A. Persons who may appear in proceeding in which there is dispute between employees and employees.-**

(1) In any dispute between the employees and employees referred to arbitration of a Labour Court or the Industrial Court under section 72, all persons, who are parties to the dispute, shall be entitled to appear and act in the proceedings before such Court:

Provided that, where the number of employees on either side exceeds five, then such employees shall elect, in the manner prescribed, two persons from amongst themselves to appear and act for them.

- (2) If a Representative Union desires to be heard in respect of such dispute, it may, on application made to the Court, also be heard by such Court.

**Powers and duties of Labour Officers 34. Powers and duties of Labour**

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

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

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

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

(c) any premises provided by an employer for the residence of his employees, and shall be entitled to call for and inspect all relevant documents which he may deem necessary for the due discharge of his duties and powers under this Act.

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

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

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

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

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

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

(b) investigate the grievances of employees and represent to

employers such grievances and make recommendations to them in consultation with the employees concerned for their redress;

(c) report to the State Government the existence of any industrial dispute of which no notice of change has been given, together with the names of the parties thereto: Provided that the Labour Officer shall not-

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

(b) where there is an approved union for an industry in a local area, except after consultation with the union], act under clause (b) of sub- section

(6) in respect of the employees.

## **I Standing Orders**

### **35. Settlement of Standing Orders by Commissioner of Labour.-**

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

Provided that where an undertaking in an industry is started after the application of this Act to such industry, the draft standing orders shall be submitted within six months of the starting of the undertaking.

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

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

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

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

### **36. Appeal to Industrial Court.-**



(1) Any person aggrieved by any decision of the Commissioner of Labour under this Chapter] may within thirty days from the date of their coming into operation appeal to the Industrial Court:

Provided that the Industrial Court may for sufficient cause, admit any appeal after the expiry of the period of thirty days.

(2) On an appeal being filed, the Industrial Court may on the application of any party to such appeal and on such conditions as it may think fit stay the operation of all or any of such standing orders until the appeal is decided.

(3) The Industrial Court in appeal may confirm, modify, add to or rescind all or any of such standing orders.

(4) The Industrial Court shall fix the date on which all or any of the standing orders settled by it under sub-section (3) shall come into operation.

(5) A copy of the orders passed by the Industrial Court under sub-sections (3) shall be sent to the Registrar who shall record them in the register referred to in sub-section (3) of section 35.

**37. Review.-**

(1) Any person aggrieved by a decision of the Industrial Court under section 36 may within thirty days from the date of the decision apply to the Industrial Court for a review of the said decision:

Provided that the Industrial Court may for sufficient cause admit any such application after the expiry of the said period of thirty days.

(2) The Industrial Court shall not grant such application unless it is satisfied that there has been a discovery of new and important matter or evidence which after the exercise of due diligence was not within the knowledge of the party making the application or could not be produced by him at the time when it decision was made, or that there has been some mistake or error apparent on the face of the record or that there is any other sufficient reason for granting such application.

(3) The provisions of sub-section (2), (3), (4) and (5) of section 36 shall, so far as may be, apply to proceedings under sub-section (1) in the same manner as they apply to an appeal against standing orders settled by the Commissioner of Labour under sub-section (2) of section 35.

**38. No alteration in Standing Orders for one year.-**

(1) No alteration shall be made for a period of one year from the date of its coming into operation, in any standing order settled under any of the foregoing provisions of this Chapter except by the Industrial Court in

appeal or review where such appeal or review lies.

(2) Any employer or employee may apply to the Commissioner of Labour for a change in-

(a) any standing order settled under sub-section (2) of section 35, which has

not been appealed against, or (b) any standing order settled in appeal under sub-section (3) of section 36,

in respect of which no application for review has been made, or (c) any standing order settled in review under section 37, after the expiry of one year from the date of such standing order coming into operation.

### **39. Alteration in standing orders.-**

(1) On receipt of an application under sub-section (2) of section 38 the Commissioner of Labour shall, after giving the other party an opportunity of being heard and after consulting such other interests in the industry as in his opinion are affected, pass such order as he deems fit, and, if the order effects an alteration in any standing order, forward a copy of the standing order as so altered to the Registrar who shall, within fifteen days of its receipt record it in the register referred to in sub-section (3) of section 35. The standing order as so altered shall come into operation from the date of its record in the register.

(2) The provisions of sections 36, 37 and 38 shall, so far as may be, apply to an order passed by the Commissioner of Labour under sub-section (1) in the same manner as they apply to standing orders settled under sub-section (2) of section 35.

### **40. Standing orders to be determinative.-**

(1) Standing orders in respect of an employer and his employees settled under this Chapter and in operation, or where there are no such standing orders, model standing orders, if any, applicable under the provisions of sub-section (5) of section 35 shall be determinative of the relations between the employer and his employees in regard to all industrial matters specified in Schedule I.

(2) Notwithstanding anything contained in sub-section (1) the State Government may refer, or an employee <sup>2</sup>[or a representative union] may apply in respect of any dispute of the nature referred to in clause (a) of paragraph A of section 78, to a Labour Court.

**40A. Model standing orders in respect of additional or altered matters to apply to certain workmen, if they are not less advantageous.-**

Notwithstanding anything contained in the foregoing provisions of this Chapter, any model standing orders made and notified in this Official Gazette by the State Government from time to time, in respect of any additional matters included in Schedule I, or any alteration made in that Schedule, on or after the date of commencement of the Bombay Industrial Relations (Amendment) Act, 1977, shall unless such model standing orders are held by the Commissioner of Labour, to be less advantageous to the employee than the corresponding standing orders applicable to them, also apply in relation to such employees in the undertaking in respect of which standing orders have already been settled under section 35.

**41. Act XX of 1946 not to apply to certain industries.-**

The provisions of the Industrial Employment (Standing Orders) Act, 1946, shall not apply to any industry to which the provisions of this Chapter are applied.

#### **Changes 42. Notice of change.-**

(1) Any employer intending to effect any change in respect of an industrial matter specified in Schedule II shall give notice of such intention in the prescribed form to the representative of employees. He shall send a copy of such notice to the Chief Conciliator, the Conciliator for the industry concerned for the local area, the Registrar, the Labour Officer and such other person as may be prescribed. He shall also affix copy of such notice at a conspicuous place on the premises where the employees affected by the change are employed for work and at such other place as may be directed by the Chief Conciliator in any particular case.

(2) Any employee desiring a change in respect of an industrial matter not specified in Schedule I or III give a notice in the prescribed form to the employer through the representative of employees, who shall forward a copy of the notice to the Chief Conciliator, the Conciliator for the industry concerned for the local area, the Registrar, the Labour Officer and such other person as may be prescribed.

(3) When no settlement is arrived at in any conciliation proceeding in regard to any industrial dispute which has arisen in consequence of a notice relating to any change given under sub-section (1) or sub-section (2), no fresh notice with regard to the same change or a change similar in all material particulars shall be given before the expiry of two months from the date of the completion of the proceeding within the meaning of section 63. If at any time after the expiry of the said period of two months, any employer or employee again desires the same change or a change similar in all material particulars, they shall give fresh notice in the manner provided in sub- section (1) or (2), as the case may be.

(4) Any employee or a representative union] desiring a change in respect of (i) any order passed by the employer under standing orders, or (ii) any industrial matter arising out of the application or interpretation of standing orders, or (iii) an industrial matter specified in Schedule III, except item (5) thereof] shall make an application to the Labour Court <sup>1</sup>[and as respects change desired in any industrial matter specified in item 5 of Schedule III, to the Industrial Court Provided that no such application shall lie unless the employee or a representative union] has in the prescribed manner approached the employer with a request for the change and no agreement has been arrived at in respect of the change within the prescribed period.

#### **43. Notice of change when to be deemed general notice.-**

(1) Where an employer gives notice of a proposed change under sub- section (1) of section 42 affecting some of the employees in an industry in a local area, any other employer or an association of employers or the representative of any employees engaged in the industry in the local area may, within seven days from the date of service of such notice, intimate in writing to such employer that other employers, or

as the case may be, other employees, engaged in the industry in the area and mentioned in such intimation are affected by the change. The employer or employers concerned, shall affix a copy of such intimation at a conspicuous place on every premises where the employees concerned are employed for work.

(2) Where an employee gives notice of a proposed change under sub-section (2) of section 42 affecting one or some of the employers in an industry in a local area the representative of employees or any employer or an association of employers engaged in the industry in the local area may, <sup>5</sup>[within thirty days] from the date of service of such notice, give a special notice in writing to the employee and his employer, or as the case may be, the representative of employees, that other employees or as the case may be, other employer, engaged in the industry in the area and mentioned in such special notice, are affected by the change. The employer or employers concerned shall affix a copy of such special notice at a conspicuous place on every premises where the employees concerned are employed for work.

(3) A copy of every intimation under sub section (1) and special notice under sub-section (2) shall be sent to the Commissioner of Labour, the Chief Conciliator, the Conciliator for the industry concerned for the local area, the Registrar, the Labour Officer and such other person as may be prescribed.

(4) On an intimation being given under sub-section (1) or a special notice being given under sub-section (2) and the provisions of sub-section (3) being complied with, the employees mentioned in the intimation or employers mentioned in the special notice, as the case may be, shall also, for the purposes of this Act, be deemed to be, affected by such change, and to have been given notice under sub-section (1) or (2), as the case may be, of section 42.

(5) Where an employer or an employee gives a notice of a proposed change under sub-section (1) or sub-section (2), as the case may be, of section 42, and such change, in the opinion of the <sup>6</sup>[State] Government affects the majority of employers or employees engaged in an industry or occupation in the local area, the <sup>5</sup>[State] Government may by notification in the *Official Gazette*, declare that the whole of such industry or occupation, as the case may be, is affected by such change and thereupon it shall be deemed to be so affected.

#### **44. Agreement regarding change.-**

(1) If within seven days from the date of service of a notice under section 42 or an intimation or special notice under section 43 or the date of publication of a

notification under sub-section (5) of section 43, or within such further period as may be mutually fixed by the employers affected and the representative of the employees affected an agreement is arrived at in regard to the proposed change, a memorandum of such agreement signed by the employer or employers as well as by the representative of employees shall be forwarded in the prescribed manner to the Chief Conciliator, the Registrar and the Labour Officer :

Provided that where the employees deemed to be affected under sub-section (4) of section 43 are in the opinion of the State Government the majority of the employees in the industry, or the whole industry is deemed to be affected under sub-section (5) thereof, the Labour Officer shall not enter into any agreement under this sub section.

(2) On receipt of such memorandum of agreement the Registrar shall enter the same in a register maintained for the purpose unless on inquiry he is satisfied that the agreement was in contravention of any of the provisions of this Act or was the result, of mistake, misrepresentation, fraud, undue influence, coercion or threat.

(3) An appeal shall lie to the Industrial Court against an order of the Registrar refusing to register an agreement under sub- section (2). The provisions of section 20 shall apply to such appeal.

**44.A Registration of agreements under section 42(4).**-Where an agreement referred to in the proviso to sub-section (4) of section 42 is arrived at, a memorandum of such agreement may be forwarded by either party to the Registrar by registered post. The provisions of sub-sections (2) and (3) of section 44 shall then apply for registration of such agreement.

**44B. Certain settlements deemed to be agreement.**-Where a settlement is arrived at within two months from the date of the completion of any conciliation proceedings, such settlement shall be deemed to be an agreement for the purposes of section 44 and the provisions of the said section 44 shall apply for registration of such agreement.]

**45. Agreement to come into force.**- An agreement registered under section 44 shall come into operation on the date specified therein or if no date is so specified on its being recorded by the Registrar.

**46. Illegal change.**-(1) No employer shall make any change in any standing order settled under Chapter VII without following the procedure prescribed therefore in this Act.

(2) No employer shall make any change in any industrial matter mentioned in Schedule II -

2[(ai) before giving notice of the change as required by the provisions of sub-

section (1) of section  
42

(i) within the period provided for in sub-section (1) of section 44  
unless an

agreement is arrived at;

- (iii) where no agreement is arrived at before the completion of the conciliation proceedings and during the period of ten days thereafter;]
- (iv) where no settlement is arrived at, before the date on which the award of the arbitrator or the Industrial Court, or as the case may be, decision of the Wage Board, comes into operation.

(3) No employer shall make any such change in contravention of the terms of a settlement, <sup>3</sup>[effective award, registered agreement or effective order or decision of a Wage Board

(4) Any change made in contravention of the provisions of sub- section (1), (2) or (3) shall be illegal.

(5) Failure to carry out the terms of any settlement, award, registered agreement or effective order or decision of a Wage Board], a Labour Court or the Industrial Court affecting Industrial matters] shall be deemed to be an illegal change.

**47. Employer to make change etc, within certain time.-**

An employer required under the terms of any <sup>3</sup>[effective decision or order of a Wage BoardLabour Court or the Industrial Court to carry out a change or withdraw an illegal change, shall comply with such requirement within such limit as the Wage Board orCourt giving or making the decision or order prescribes and where no time is prescribed by it within forty-eight hours of the giving or making of the decision or order <sup>7</sup>[or as the case may be, of the declaration referred to in section 76-A or 86-F.

**Joint Committees 48. Constitution of Joint Committees.-**

(1) A Joint Committee may be constituted for an undertaking or occupation with the consent of the employer and the registered union for the industry for the local area [and shall be constituted irrespective of such consent, if the State Government on an application made to to it in this behalf by the registered union so directs

Provided that no Joint Committee shall be so constituted in respect of an undertaking or occupation where there is no representative union, unless not less than fifteen per cent, of the employees are members of a registered union.

(2) On application made in this behalf by the employer or the Union to the Registrar, a Joint Committee shall be entered in a list of Joint Committees maintained by him, and thereupon all the provisions of this Act shall apply to the Joint Committee.

(3) Every Joint Committee shall stand dissolved whenever the condition specified in the proviso to sub-section (1) ceases to be complied with; and a Joint Committee constituted with the consent of the employer and the registered union shall also stand dissolved on the expiry of the period of a three months' notice in that behalf being given by the employer to the union, or by the union to the employer.

#### **49. Composition of Joint Committee.-**

(1) A Joint Committee shall consist of such number of members as may be prescribed; half the number shall in the prescribed manner be nominated by the union from among employees in the undertaking or occupation concerned], and the other half appointed by the employer concerned.

Where the Joint Committee is to be constituted in pursuance of a direction of of the State Government on an application made by the registered union, the union and the employer shall nominate and appoint the members within such period as the 4[State] Government may by order specify. A copy of such order shall, as soon as may be, be given to the union and the employer in the manner prescribed.

(2) A chairman shall be appointed in accordance with rules made in this behalf. He shall perform his duties in the prescribed manner.

#### **50. Proceedings of Joint Committee.-**



(1) A representative of the registered union may attend any meeting of the Joint Committee, to advise the members representing the employees.

(2) The proceedings of the Joint Committee shall be conducted in the manner prescribed.

(3) The proceedings shall be recorded in a minute book in a language understood by a majority of the employees.

**51. Proposal for change.-** (1) Any member of a Joint Committee may move a proposal regarding any change other than a change in any standing order or regarding any other matter affecting the relations between the employer and the employees in the undertaking or occupation, as the case may be, for which the Committee is constituted:

Provided that no such proposal shall be moved for a change in respect of any industrial matter if such change could not for the time being be made under this Act.

(2) The decision of the Joint Committee regarding very change proposed under the provisions of sub-section (1) together with all necessary particulars regarding such change shall within forty-eight hours be communicated to the registered union and the employer, as well as the Labour Officer and the Commissioner of Labour.

**52. Special intimation for change and special application to Labour Court.-**

(1) Where an agreement is arrived at between the employer and the union regarding any change proposed in the Joint Committee under sub-section (1) of

section 51, a memorandum of such agreement signed by them shall be forwarded by the employer in the prescribed manner to the Registrar and the Labour Officer and all the provisions of this Act shall apply to such agreement as they would apply in respect of an agreement under sub-section (1) of section 44.

(2) If within seven days from the receipt of a decision under sub-section (2) of section 51, the employer or the union sends an intimation (hereinafter called special intimation) in the prescribed form to the Conciliator for the industry for the local area stating that the change proposed in the Joint Committee, being, a change in respect of a matter not specified in Schedule I or III, or such change with specified alterations, should be made, and that no agreement in respect thereof has been arrived at between the union and the employer, the Conciliator shall forthwith enter the case as an industrial dispute in the register kept under section 55, and the provisions of this Act shall apply to it as if a statement is submitted under section 54.

(3) If within seven days from the receipt of a decision under sub-section (2) of section 51 regarding a matter specified in clause (a) of paragraph A of sub-section (1) of section 78 the employer or union sends a special application in respect of such matter to the Labour Court having jurisdiction, the Labour Court shall forthwith proceed to decide the dispute under the provisions of Chapter XII.

(4) A copy of every special intimation sent under sub-section (2) shall be forwarded to the Chief Conciliator, the Conciliator for the industry for the local area concerned, the Registrar, the Labour Officer and such other person as may be prescribed.

### **53. Decision of respective representatives binding on union and employer.-**

(1) The union may authorise such proportion (hereinafter called the authorised proportion), not being less than three-fourths of the members representing the employees on the Joint Committee, to accept or reject on its behalf any proposal or class of proposals moved in the Committee.

(2) The employer may authorise a proportion of the members representing him on the Committee to accept or reject on his behalf any proposal or class of proposals moved in the Committee.

(3) For a period of two months after a decision of the Committee, no notice of change under section 42, or special intimation or application under section 52 shall be given or made-

(a) where the union acts under sub-section (1), by the employees concerned or the union, contrary to the decision of the authorised proportion accepting a proposal in respect of which it is authorised; and (b) Where the employer acts under sub-section (2), by the employer, contrary to the decision of the authorised proportion of his representatives.

(4) The union whenever it acts under sub-section (1), and the employer whenever he acts under sub-section (2), shall communicate the fact to the Chief Conciliator, the Conciliator for the industry for the local area concerned and the Registrar.

### **Conciliation Proceedings**

#### **54. Report of dispute to be sent to Registrar, Chief Conciliator and**

**Conciliator.-** (1) If any proposed change in respect of which notice is given under section 42, or an

intimation or special notice is given under section 43 is objected to by the employer

or the employee, as the case may be, the party who gave such notice, intimation or special notice shall, if he still desires that the change should be effected, forward to the Registrar, the Chief Conciliator and the Conciliator for the local area for the industry concerned a full statement of the case in the prescribed form within fifteen days from the date of service of such notice, intimation or special notice on the other party or within one week of the expiry of the period fixed by both the parties under sub-section (1) of section 44 for arriving at an agreement.

(2) When a notification is issued under sub-section (5) of section 43 in respect of such change, any employer or employee in the industry may within seven days from the date of publication of such notification forward such statement to the said officers.

#### **55. Commencement of conciliation proceedings.-**

On receipt of the statement of the case under section 54 of the Conciliator shall, except in a case in which by reason of the provisions of section 64 a conciliation proceeding can not be commenced, within a week enter the industrial dispute in the register kept for the purpose and thereupon the conciliation proceeding shall be deemed to have commenced from the date of such entry in the register, which date shall be communicated by him to the parties concerned

#### **56. Conciliation proceeding.**

-(1) The Conciliator shall hold the conciliation proceeding in the prescribed manner.

(2) It shall be the duty of the Conciliator to endeavour to bring about the settlement of the industrial dispute and for this purpose the Conciliator shall enquire into the dispute and all matters affecting the merits thereof and may do all such thing as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute may adjourn the conciliation proceeding for any period sufficient in his opinion to allow the parties to arrive at a settlement or for any other reason.

#### **57. Power of Chief Conciliator to intervene.-**

(1) It shall be lawful for the Chief Conciliator to intervene or to direct any Conciliator to intervene at any stage in any conciliation proceeding held by another Conciliator, and thereafter the Chief Conciliator or the Conciliator so directed shall hold the conciliation proceeding with or without the assistance of the Conciliator.

(2) The Chief Conciliator may from time to time issue such directions as he deems fit to any Conciliator at any stage of a conciliation proceeding.

#### **58. Settlement and report.-**

(1) If a settlement of an industrial dispute is arrived at in a conciliation proceeding, a memorandum of such settlement shall be drawn up in the prescribed form by the Conciliator and signed by the employer and the representatives of employees. The Conciliator shall send a report of the proceeding along with a copy of the memorandum of settlement to the Registrar and the Chief Conciliator. The Registrar shall record such settlement in the register of agreements and shall then publish it in the prescribed manner. The change, if any, agreed to by such settlement shall come into operation from the date agreed upon in such settlement where no such date is agreed upon from the date on which it is recorded in the register.

(2) If no such settlement is arrived at, the Conciliator shall, as soon as possible after the close of the proceeding before him, send a full report to the Chief Conciliator stating the steps taken by him for ascertaining the facts and circumstances relating to the dispute and the reasons on account of which, in his opinion, settlement could not be arrived at:

Provided that where such Conciliator is the Chief Conciliator such report shall be forwarded by him to the State Government.

(3) The Chief Conciliator shall forward the report submitted to him under sub-section (2) to the State Government with such remarks as he deems fit.

(4) The State Government shall publish the report of the Conciliator or Chief Conciliator forwarded to it under the proviso to sub-section (2) or under sub-section (3) except in cases in which the dispute is referred to a Board or the parties to the dispute enter into a submission in respect of it.

(4A) Notwithstanding anything contained in this section where an industrial dispute is settled in regard to some of the industrial matters included therein and has not been settled in regard to others and the parties agree in writing that the settlement shall take place in regard to the industrial matters so settled, the settlement of the said industrial matter shall be registered and a report of the industrial matters not settled shall be sent in accordance with the provisions of this section].

(5) Before the close of the proceeding before him the Conciliator shall ascertain from the parties whether they are willing to submit the dispute to arbitration.

(6)

(a) Notwithstanding anything contained in the foregoing sub-sections, if at any stage of a conciliation proceeding the parties agree in writing to submit the dispute to arbitration, the agreement shall be deemed to be a submission within the meaning of section 66.

(b) Where the agreement provides for arbitration either by a Labour Court or by the Industrial Court, the Conciliator shall forthwith refer the dispute to the Labour Court or the Industrial Court, as the case may be.

**59. Reference to Board.**-(1) The State Government may at any time, and where either prior to the commencement of a proceeding before the Conciliator or after his failure to bring about a settlement, the parties agree, shall refer the dispute to a Board and thereupon conciliation proceedings before the Board shall be deemed to have commenced from the date of such reference.

(2) On such reference being made, the Board shall give notice in the prescribed manner to the parties to the dispute to appear before it at such time and place as may be specified in this notice. A copy of such notice shall be sent to the Labour Officer.

(3) On the date specified in the notice or on such other date as may be fixed by the Board, the Board shall hold the conciliation proceeding. It shall be the duty of the Board to endeavour to bring about a settlement of the industrial dispute and the provisions of sections 55, 56 and 58 shall, so far as may be, apply to the proceeding before the Board.

**60. Procedure and powers of Conciliator and Board.-**

(1) A Conciliator or a Board, as the case may be, shall subject to the provisions to this Act, follow in a conciliation proceeding such procedure as may be prescribed.

(2) The proceedings before a Conciliator shall be held in Camera and any proceedings before a Board may be held in public or in *Camera* as the Board may decide.

(3) If a party to an industrial dispute or a witness or any other person giving any information or producing any document in a conciliation proceeding, makes a request in writing to the Conciliator or the Board, as the case may be, that such information or the contents of such document be treated as confidential, the Conciliator or the Board shall direct that such information or document be treated as confidential:

(4) Save as provided in sub-section (3) a Conciliator or any member of a Board or any person present at or concerned in the conciliation proceeding shall not disclose any information or the contents of any document in respect of which a request has been made under sub-section (3) without the consent in writing of the party making the request under the said sub-section.

(5) Nothing in this section shall apply to the disclosure of any information or the contents of any document for the purpose of a prosecution under this Act or under any other law for the time being in force.

**61. Reference to Industrial Court by Conciliator or Board.-**

A Conciliator or a Board may refer any question of law arising before him

or it in any conciliation proceeding, to the Industrial Court for decision. Any order passed by the Conciliator or the Board in such proceeding shall be in accordance with such decision.

**62. Time limit for stages of conciliation proceeding.-**

(1) The State Government shall by general or special order notified in the Official Gazette fix a time limit for the completion of each stage of the conciliation proceedings provided for under this Chapter:

Provided that the total period fixed for the completion of all stages of conciliation proceeding shall not exceed one month from the date on which the dispute is entered by the Conciliator in the register under section 55 or is referred to a Board under section 59:

Provided further that the State Governments may extend as the said period of one month by a further period of a fortnight at a time but not exceeding in any case two months in the aggregate.

(2) Notwithstanding anything contained in sub-section (1), the parties to any industrial dispute may in any case agree to extend the period fixed for the completion of any stage of a conciliation proceeding by any further period and such further period shall be excluded in computing the period of time limit referred to in the said sub-section.

Provided that, the total period for the completion of a conciliation proceeding including the period of extension mutually agreed to by the parties shall not exceed one year:

Provided further that, the State Government may extend the said period of one year by a further period of a month at a time but not exceeding in any case two months in aggregate].

(3) Where a Conciliator or a Board refers under section 61 a question of law to the Industrial Court for its decision, the period commencing from the date of such reference to the date of communication of the decision of the Industrial Court to the Conciliator or the Board, as the case may be, shall be excluded in computing the time-limit referred to in sub-section (1).

**63. Completion of conciliation proceeding.-**

A conciliation proceeding shall be deemed to have been completed-

- (i) when a memorandum of the settlement arrived at in such proceeding is signed by the parties under sub-section (1) of section 58, or
- (ii) when the parties agree in writing to submit the dispute to arbitration, or
- (iii) if no settlement is arrived at when the report of the Conciliator

or the  
Board is published by the State Government, or  
(iv) when the time limit fixed for the completion of such  
proceeding under  
section 62 has expired

**64. Conciliation proceedings not to be commenced or continued in certain cases.-**No conciliation proceeding in respect of an industrial disputes shall--

(a) be commenced  
if --

(i) the representative of employees directly affected by the dispute is a registered union which is a party to a submission relating to such dispute or a dispute relating to an industrial matter similar to that regarding which the dispute has arisen;

(ii) it has been referred to arbitration under the provisions of section 72 or

(iii) by reason of a direction issued under sub-section (2) of section 114 or by reason of any of the other provisions of this Act] the employers and employees concerned are in respect of the dispute bound by a registered agreement, settlement, submission or award;

(b) be continued after the date on which --

(i) a submission relating to such dispute is entered into by the employer and employees concerned under section 58 of 66;

(ii) the dispute is referred to arbitration under section 72 73 or 73A or to a Wage Board under section 86C or 86CC]; or

(iii) the direction referred to in sub-clause (iii) of clause (a) is issued.

**65. Conciliation proceeding discontinued deemed to be completed.-**

A conciliation proceeding which is discontinued under clause (b) of section 64 shall be deemed to have been completed on the date referred to in the said clause, and the provisions of section 58 with regard to the submission, forwarding and publication of reports shall apply to such conciliation proceeding.

**Arbitration**

**66. Submission.-**

(1) Any employer and a Representative Union or any other registered union which is a representative of employees may, by a written agreement, agree to submit any present or future industrial dispute or class of such disputes to the arbitration of any person whether such arbitrator is named in such agreement or not. Such agreement shall be called a submission.

(2) Such submission may provide that the dispute shall be referred to the arbitration of Labour Court or the Industrial Court;

Provided that no such submission shall provide for reference to any such dispute to the arbitration of the Industrial Court where under any provision of this Act it is required to be referred to the Labour Court for its decision.

(3) A copy of every such submission shall be sent to the Registrar who shall register it in the register to be maintained for the purpose and shall publish it in such manner as may be prescribed.

#### **67. Submission when revocable.-**

Every submission shall in the absence of any provision to the contrary contained therein be irrevocable:

Provided that a submission to refer future disputes to arbitration may at any time be revoked by any of the parties to such submission by giving the other party six months' notice in writing:

Provided further that before the expiry of the said period of six months the parties may agree to continue the submission for such further period as may be agreed upon between them.

#### **68. Proceedings in arbitration.-**

The proceedings in arbitration under this Chapter shall be in accordance with the provisions of the Arbitration Act, 1940, 10 of 1940 in so far as they are applicable and the powers which are exercisable by a Civil Court under the said provisions, shall be exercisable by a Labour Court and the Industrial Court.

#### **69. Special case to be stated to Industrial Court.-**

The arbitrator may refer any question of law arising before him in any proceeding under this Act to the Industrial Court for its decision. Any award made by the arbitrator shall be in accordance with such decision.

#### **70. Award by arbitrator.-**

The arbitrator shall, after hearing the parties concerned, make an award which shall be signed by him.

#### **71. Dispute to be referred to Labour Court and Industrial Court if no**



### **arbitrator appointed.-**

Notwithstanding anything contained in this Chapter, if no provision has been made in any submission for the appointment of an arbitrator or where by reason of any circumstance no arbitrator is appointed, such dispute shall be referred to the arbitration or a Labour Court or the Industrial Court, as the State Government may determine.

### **72. Disputes between employees and employees may be referred by State Government to arbitration of Labour Court or Industrial Court.-**

- (1) Notwithstanding anything hereinbefore contained the <sup>1</sup>[State] Government may, at any time on the report of the Labour Officer or on its own motion, refer any industrial dispute between employers and employees to the arbitration of a Labour Court or the Industrial Court.
- (2) The provisions of this Chapter with such modifications as may be prescribed shall apply to such arbitration.
- (3) The employers of such employees shall in the prescribed manner be made parties to such arbitration.

### **73. State Government may refer Industrial dispute to Industrial Court for arbitration.-** Notwithstanding anything contained in this Act, the State Government may, at any time, refer an Industrial dispute to the arbitration of the Industrial Court, if on a report made by the Labour Officer or otherwise it is satisfied that-

- (1) by reason of the continuance of the dispute -
  - (a) a serious outbreak of disorder or a breach of the public peace is likely to occur; or
  - (b) serious or prolonged hardship to a large section of the community is likely to be caused; or
  - (c) the industry concerned is likely to be seriously affected or the prospects and scope for employment therein curtailed; or
- (2) the dispute is not likely to be settled by other means; or
- (3) it is necessary in the public interest to do so.

### **73AA. Power of State Government to include other undertakings in references to Labour or Industrial Court.-**

Where an industrial dispute concerning any undertaking in an industry or section thereof has been or is to be referred to a Labour Court or Industrial Court under section 72 or 73, and the State Government is of opinion, whether an application made to it in this behalf or otherwise, that the dispute is of such a nature that any other undertaking, group or class of undertakings of a similar nature in that industry

or any section thereof is likely to be interested in or affected by such dispute, the State Government may, at the time of making such reference or at any time thereafter, but before the submission of the award, included in that reference such undertaking, group or class of undertakings or any section thereof, whether or not at the time of such inclusion any dispute exists or is apprehended in that establishment, group or class of undertakings or section thereof

**73A. Reference to arbitration by unions.-**

Notwithstanding anything contained in this Act an employer or a registered union which is a representative of employees and which is also an approved union may refer any industrial dispute for arbitration to the Industrial Court:

Provided that no such dispute shall be referred to the Industrial Court,- (i) after two months from the date of the completion of the proceedings before the Conciliator;

(ii) where the registered union or the employer, as the case may be, has offered in writing before the Conciliator to submit the dispute to arbitration under this Act and the employer or the union, as the case may be, has not agreed to do so;

(iii) unless the dispute is first submitted to the Conciliator and the conciliation proceedings are completed or the Conciliator certifies that the dispute is not capable of being settled by conciliation: Provided further that no such dispute shall be referred to the Industrial Court where under any provision of this Act it is required to be referred to the Labour Court for its decision.

**74. Notice of award to parties.-**

- (1) The arbitrator, Labour Court or Industrial Court, as the case may be, shall forward copies of the award made by him or it to the parties, the Commissioner of Labour and the Registrar.
- (2) On receipt of such award, the Registrar shall enter it in the register kept for the purpose and shall publish it in such manner as may be prescribed.

**75. Date on which award shall come into operation.-**

Except as provided in section 118B, the award shall] come into operation on the date specified in the award or where no such date is specified therein on the date on which it is published under section 74

**76. Completion of arbitration proceeding.-**The arbitration proceeding shall be deemed to have completed when the award is published under section 74.

**76A. Procedure to give effect to awards affecting State Government.-**

- (1) Notwithstanding anything contained in sections 74 to 76 (both inclusive)

where the award affects an industry conducted or carried on by a department of the <sup>6</sup>[State] Government, the award shall not be effective except in accordance with the procedure set out in sub-sections (2) and (3).

- (2) The arbitrator, Labour Court or Industrial Court, shall, as soon as practicable on the conclusion of its proceedings, submit its award to the State Government, and the State Government shall, by order in writing, declare the <sup>award to be binding</sup>: Provided that where in the opinion of the State Government, it would be inexpedient on public grounds to give effect to the whole or any part of the award, the State Government shall, on the first available opportunity, lay the <sup>3</sup>[award] together with the statement of its reasons for not making a declaration as aforesaid before the Legislative Assembly by the State and shall, as soon as may be, caused to be moved herein a resolution for the consideration of the award; and the Legislative Assembly may by its resolution confirm, modify or reject the award.
- (3) On the passing of a resolution under the proviso to sub-section (2), unless the award is rejected thereby, the <sup>1</sup>[State] Government shall, by order in writing, declare award as confirmed or modified by the resolution, as the case may be, to be binding.

### **Labour Courts**

#### **77. Territorial jurisdiction.-**

The territorial jurisdiction of Labour Courts shall extend to the local areas for which they are constituted.

## 78. Powers of Labour Court.-

(1) A Labour Court shall have power to - A. decide -

(a) disputes  
regarding -

- (i) the propriety or legality of an order passed by an employer acting or purporting to act under the standing order;
- (ii) the application and interpretation of standing orders;
- (iii) any change made by an employer or desired by an employee in respect of an industrial matter specified in Schedule III except item (5) thereof)] thereof)] and matters arising out of such change;

(b) industrial disputes --

- (i) referred to it under section 71 or 72;
- (ii) in respect of which it is appointed as the arbitrator by a submission;

(c) whether a strike, lock-out, closure, stoppage] or any change is illegal

under this Act; B. Try offences punishable under this Act and where the payment of compensation on conviction for an offence is provided for, determine the compensation and order its payment; C. require any employer to—

(a) withdraw any change which is held by it to be illegal, or  
<sup>1</sup>[withdraw temporarily any change the legality of which is a matter of issue in any proceeding pending final decision, or

(b) carry out any change provided such change is a matter in issue in any

proceeding before it under this Act. D. require an employer, where it finds that orders of dismissal, discharge, removal, retrenchment, termination of service or suspension of an employee made by the employer,-

- (i) was for fault or misconduct committed by the employee which came to the notice of the employer more than six months prior to the date of such order; or (ii) was in contravention of any of the provisions of any law, or of any standing order in force applicable to such employee, or
- (iii) was otherwise improper or illegal-

(a) to reinstate the employee forthwith or by a date specified by it in this behalf and pay him wages for the period beginning on the date of such order of dismissal, discharge, removal, retrenchment, termination of service or suspension, as the case may be, and ending on the date of his reinstatement, whichever is later, or

(b) to pay to the employee in addition to wages (being wages for the period commencing on the date of his dismissal, discharge, removal, retrenchment or termination of service and ending on the date on which the Labour Court orders such payment), such sum not exceeding four thousand rupees by way of compensation, regard being had to loss of employment and possibility of getting suitable employment thereafter.

(2) Every offence punishable under this Act shall be tried by the Labour Court within the local limits of whose jurisdiction it was committed.

#### **79. Commencement of proceedings.-**

(1) Proceedings before a Labour Court in respect of disputes falling under clause (a) of paragraph A of sub-section (1) of section 78 shall be commenced on an application made by any of the parties to the dispute, a special application under sub-section (3) of section 52 or an application by the Labour Officer <sup>3</sup>[or a representative union] and proceedings in respect of a matter falling under clause (c) of the said paragraph A on an application made by any employer or employee directly affected or the Labour Officer <sup>1</sup>[or a representative union.]

(2) Every application under sub-section (1) shall be made in the prescribed form and manner.

(3) An application in respect of a dispute falling under clause (a) of paragraph A of sub-section (1) of section 78 shall be made --

(a) if it is a dispute falling under sub-clause (i) or (ii) of the said clause,

within three months of the arising of the dispute;

(b) if it is a dispute falling under sub-clause (iii) of the said clause within three months of the employee concerned having last approached the employer under the proviso to sub-section (4) of section 42: Provided that, the Labour Court may, for sufficient reasons, admit any application in respect of any dispute made to it under this sub-section after the expiry of the period of three months specified thereof under sub-clause (a) or (b), as the case may be.]

(4) An application in respect of a matter falling under clause (c) of paragraph A of sub-section (1) of section 78 shall be made within three months of the commencement of the strike, lock- out, closure or stoppage] or of the making of the illegal change, as the case may be:

Provided that the Labour Court may, for sufficient reasons, admit any application for a declaration that a change is illegal under this Act, after the expiry of three months from the date on which such change was made :

Provided further that when an application is admitted after the expiry of three months under the preceding proviso the employer who made the change shall not be liable to the penalty provided under section 106

**80. Labour Court to give notice to parties affected and permit appearance of parties.-**On receipt of an application under section 79 the Labour Court shall issue a notice to all parties affected by the dispute, in the manner provided by rules under section 85. Subject to the provisions of Chapter V, the Labour Court may permit the parties so affected to appear in the manner provided by the provisions of section 80A to 80C. The Labour Court shall then hold an inquiry.

**80-A. Procedure to be followed in an application under section 79 by an employer when employees affected are numerous.-**

(1) Where an application is filed under section 79 by an employer or the Labour Officer for the decision of the Labour Court and the employees affected are numerous persons having the same interest, the Court may permit one or more of such employees to appear and to defend the application on behalf of all the employees so interested.

(2) In such case the Labour Court shall also direct notice of the filing of the application to be given to all such employees at the applicant's expense either by personal service or where from the number of employees or any other cause such service is not reasonably practicable, by public advertisement and by causing the notice with its translation in a regional language to be affixed by the applicant at the entrance through which the majority of the employees enter the premises for their work. The person affixing the notice and publishing the advertisement shall file an affidavit in the Court of his having done so.

**80-B. When an employee, who is not permitted to appear may be allowed to join as party.-**Any employee, who is not permitted to appear under section 80A but on whose behalf the application is defended may apply to the Court to make him a party to such application. The Court may grant such application, if it is satisfied that the interest of the employee

will be severally and materially affected to his prejudice if he is not joined as party to the application.

**80-C. Procedure to be followed in an application under section 79 by employee when employees affected are numerous.-**

- (1) Where there are numerous employees having the same interest, one or more of such employees, or the Labour Officer, may, with the permission of the Court, file an application under section 79. Such application may be made on behalf of and for the benefit of all the employees. The Court shall, in such cases, direct the notice of the filing of the application to be given to such employees at the applicant's expense, either by personal service or where from the number of employees or any other cause, such service is not practicable, by public advertisement. The person publishing the advertisement shall file an affidavit in the Court of his having done so.
- (2) An employee on whose behalf an application is filed under sub-section (i) may apply to the Court to make him a party to such application. The Court may grant such application if it is satisfied that his interest will be severally and materially affected to his prejudice if he is not joined as a party to the application.

**80-D. Judge of Labour Court to record minutes of proceedings averment, etc.-**

In an inquiry under sections 80 and 80A to 80C, the Judge presiding over the Labour Court shall himself, as such inquiry proceeds, record a minute of the proceedings in his own hand, embracing the material averment made by the parties affected and the material parts of the evidence. The decision shall be signed by him and shall set forth the grounds on which it is based.]

**81. Reference to Industrial Court by Labour Court.-**

A Labour Court may refer any question of law arising in any proceeding before it to the Industrial Court for decision. Any order passed by the Labour Court in such proceeding shall be in accordance with such decision.

**82. Cognizance of offences.-**

No Labour Court shall take cognizance of any offence except on a complaint<sup>1</sup>[of facts constituting such offence made by the person affected thereby<sup>2</sup>[or a representative union] or on a report in writing by the Labour Officer.

**83. Powers and procedure of Labour Courts in trials.-**

In respect of offence punishable under this Act, a Labour Court shall have all the powers <sup>3</sup>[under the Code of Criminal Procedure, 1973, 2 of 1974 of a Metropolitan Magistrate in a metropolitan area and a Judicial Magistrate of the first class elsewhere,] and in the trial of every such offence shall follow the procedure laid down in <sup>4</sup>[Chapter XXI] of the said Code for a summary trial ; and the rest of the provisions of the said Code shall, so far as may be, apply to such trial.

**83-A. Legal practitioners excluded from appearance in certain proceedings in Labour Courts.-**

Except in a proceeding in connection with an offence under this Act, a legal practitioner shall not be entitled to appear before a Labour Court on behalf of any party in any other proceeding under this Act, save with the permission of such Court].

**83-B. Power of Labour Court to award costs <sup>3</sup>[and execution of order as to costs.]**-The Labour Court shall have power to direct by whom the whole or any part of costs in any proceeding before it shall be paid:

Provided that, no such costs shall be directed to be paid for the services of any legal adviser engaged by any party.]

(2) The provisions of section 93 shall also apply to the execution of any order order as to costs made by the Industrial Court, as they apply to any such order made by the Industrial Court, with the substitution of the reference to the Labour Court for the reference therein to the Industrial Court.

**84. Appeals.-**

(1) Notwithstanding anything contained in section 83 an appeal shall lie to the Industrial Court --

(a) against a decision of a Labour Court in respect of a matter falling under clause (a) or (c) of paragraph A of sub- section (1) of section 78 except to the extent to which it determines whether a strike Subs. by Bom.74 of 1948.<sup>6</sup>[lock-out, closure or stoppage] was illegal or not, or a decision of such Court under paragraph C of sub-section (1) of the said section;

(b) against a conviction by a Labour Court by the person convicted;

(c) against an acquittal by a Labour Court in its special jurisdiction, by the <sup>7</sup>[State] Government;

(d) For enhancement of a sentence awarded by a Labour Court in its special



jurisdiction, by the State Government;

(2) Every appeal shall be made within thirty days from the date of the decision, conviction, acquittal or sentence, as the case may be:

Provided that the Industrial Court may for sufficient reasons allow an appeal after the expiry of the said period.

**85. Industrial Court to exercise superintendence over Labour Courts.-**

The Industrial Court shall have superintendence over all Labour Courts and may

(a) call for returns;

(b) make and issue general rules and prescribe forms for regulating the practice and procedure of such Courts in matters not expressly provided for by this Act and, in particular, for securing the expeditious disposal of cases;

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such Courts;

(d) settle a table of fees payable for process issued by a Labour Court or the Industrial Court.

**85-A. Power of Industrial Court to transfer proceedings.-**

The Industrial Court may, by order in writing and for reasons to be stated therein, withdraw any proceeding under this Act pending before a Labour Court and transfer the same to another Labour Court for the disposal of the proceeding; and the Labour Court to which the proceeding is so transferred may dispose of the proceeding but subject to any special directions in the order of transfer, proceed either de novo or from the stage at which it was so transferred.]

**86. Decision, etc., of Labour Court not to be called in question.-**

Except as otherwise provided by this Act, no decision, award or order of a Labour Court shall be called in question in any proceeding in any Civil or Criminal Court.

**Wage Boards**

**86-A. Wage Boards.-**

The State Government may, by notification in the *Official Gazette*, constitute for one or more industries a Wage Board for the State.

**86-B. Constitution of Wage Board.-**

The Wage Board shall consist of an equal number of persons nominated by the <sup>3</sup>[State] Government to represent employers and employees and such number of independent persons as the State Government nominates. The Chairman shall be appointed by the State Government.

#### **86-C. Reference to Wage Boards.-**

- (1) Notwithstanding anything contained in any other provision of this Act, the State Government may, by an order notified in the *Official Gazette*, refer to a Wage Board for decision on any industrial matter or industrial dispute regarding items numbered, 1, 2, 4, 9 and 10 in Schedule II, and such other industrial matters or disputes as may be prescribed.
- (2) The order of reference under sub-section (1) shall specify which employers and employees (including representative of employees if any, and association of employers, if any) shall be parties to the proceedings before the Wage Board.

#### **86-CC. Reference to Wage Board by certain registered unions.**

- otwithstanding anything contained in any other provision of this Act, an employer employer or a registered union which is a representative of employees and which is also an approved union may refer any industrial dispute of the nature mentioned in sub- section (1) of section 86C other than a dispute in respect of bonus, to a Wage Board for decisions: Provided that no such dispute shall be referred to the Wage Board by the union,-

(i) after two months from the date of the completion of the proceedings

before the Conciliator;

(ii) where the registered union or the employer, as the case may be, has offered in writing before the Conciliator to submit the dispute to arbitration under this Act and the employer or the Union, as the case may be, has not agreed to do so;]

(iii) unless the dispute is first submitted to the Conciliator and the conciliation proceedings are completed or the Conciliator certifies that the dispute is not capable of being settled by conciliation

#### **86-D. Proceedings not to be commenced or continued before Conciliator, Board, etc.-**

Notwithstanding anything contained in any other provision of this Act, where an industrial matter or industrial dispute is referred for decision to a Wage Board under section 86C, <sup>2</sup>[or 86CC] no proceedings regarding the same shall be commenced before a Conciliator, Board, Labour Court or the Industrial Court or a Court of Enquiry; and any such proceedings already commenced shall be forthwith stayed on the making of the reference.

#### **86-E. Procedure before Wage Boards.-**

A Wage Board shall, in respect of an industrial matter or industrial dispute referred to it for decision, subject to any rules of procedure which may be prescribed, follow the same procedure as the Industrial Court in respect of arbitration proceedings before it.

In particular the rules of procedure which may be prescribed in this behalf may provide for the formation of committees for local areas from amongst members of the Wage Board with co-option of such other persons from the local areas as the Wage Board would for the purpose of any reference think fit to appoint to the committees and the exercise by each such committee of the jurisdiction and powers vested in the Wage Board in respect of such Industrial matters or industrial disputes as are referred by the Wage Board to the Committee.

**3[86-EE.Coming into operation of decision of Wage Board.-**

Save as provided in section 86-F, a decision of the Wage Board shall come into operation on the date specified in the decision and where no such date is specified therein on the date on which it is published in the prescribed manner.] **86-F. Procedure to give effect to decision of Wage Board affecting State Government.-**

- (1) Where the decision of a Wage Board affects an industry industry con- ducted or carried on by a department of the <sup>4</sup>[State] Government, the decision shall not be effective except in accordance with the procedure set out in sub-sections (2) and (3).
- (2) The Wage Board shall, as soon as practicable on the conclusion of its proceedings, submit its decision to the State Government, and the State Government shall by order in writing declare the decision to be binding;

Provided that where in the opinion of the State Government it would be inexpedient on public grounds to give effect to the whole or any part of the decision the <sup>1</sup>[State] Government shall on the first available opportunity lay the decision together with the statement of its reasons for not making a declaration as aforesaid before the Legislative Assembly of the <sup>1</sup>[State] and shall, as soon as may be, cause to be moved therein a resolution for the consideration of the decision; and the Legislative Assembly may by its resolution confirm, modify or reject the decision.

- (3) On the passing of a resolution under the proviso to sub- section (2), unless the decision is rejected thereby, the State Government shall, by order in writing, declare the decision as confirmed or modified by the resolution, as the case may be, to be binding.

(4) A decision declared to be binding under sub-section (2) or (3) shall come into operation on such date as may be specified in the order of declaration made by the State Government

**86-G. Appeals.-**

(1) An appeal shall lie to the Industrial Court against an order or decision of a Wage Board (including reviewed order or decision), save in cases where the order is made or decision is given by the Board unanimously and in cases referred to in section 86F.

(2) Such appeal shall be made within six weeks from the date of the order of decision.

**86-H. Parties on whom order or decision of Wage Board is binding.-**

Subject to the provisions of section 86F and 86G, an order or decision of a Wage Board shall be binding on –

(a) all parties to the industrial dispute;

(b) all parties who were summoned to appear as parties to the proceeding whether they appeared or not;

(d) all the employers and employees in the concern or occupation or industry in the local area according as the order or reference under sub-section (1) of section 86C directs irrespective of whether they were such employers or employees at the time of the making or giving of such order or decision, or whether they became such afterwards.

**86-I. Review of order or decision by Wage Board.-**

(1) An employer or an employee or an association or a group of employers or a registered union or body of employees may apply to a Wage Board for review of an order or decision of the Wage Board and the Wage Board may for any sufficient reason and upon hearing all the parties review the order or decision:

Provided that no such application shall lie until a period of one year has elapsed from the date of the making or giving of the order or decision or the last review thereof, as the case may be:

Provided further that no such application by an employer or an association or a group of employers shall lie unless the employer, association or group, as the case may be, employs not less than fifteen per cent of the employees whom the order or decision binds: Provided also that no such application by an employee or a body of employees, shall lie unless the employee or body of employees represents not less than fifteen per cent of the employees whom the order or decision binds.

(2) Where the State Government makes an application in this behalf, the Wage Board may at any time review its order or decision for any sufficient reason and upon hearing all the parties.

**86-J. Superintendence by Industrial Court.-**

The Industrial Court shall have superintendence over all Wage Boards and may-

- (a) call for returns from such Boards;
- (b) make and issue general rules, and lay down forms for regulating the practice and procedure of such Boards in matters not expressly provided for by or under this Act, and in particular, for securing expeditious disposal of cases;
- (c) lay down the forms in which books, entries and accounts shall be kept by officers of Wage Boards;
- (e) settle fees for processes issued by Wage Boards.

**86-K. Order or decision of Wage Boards not to be called in question.-** (1) Save as otherwise provided by this Act, no order or decision of a Wage Board shall be called in question in any proceeding in any civil or criminal court.

- (2) The appellate order or decision of the Industrial Court under section 86G shall have the same force as the original order or decision of the Wage Board which it replaces except that there shall be no further appeal against it.

**86-KK. Transfer of certain disputes to Wage Boards.-**The State Government may, on the recommendation of the Industrial Court, by an order notified in the Official Gazette, direct that any industrial matter, or industrial dispute of the nature mentioned in section 86C which has been referred to the Industrial Court under sub-section 6 of section 58 or sections 66, 72, 73 or 73A] and is pending before it at any time shall be transferred to a Wage Board for disposal or for further disposal from the stage reached before the Industrial Court and thereupon all the provisions of this Act shall apply to that dispute as if it were referred to the Wage Board for decision under section 86C

State Wage Board

**86-L. State Wage Board.-** (1) The State Government may by notification in the Official Gazette, constitute for all the industries together to which this Act applies a

<sup>1</sup>[State] Wage Board for the State.

(2) In relation to the <sup>1</sup>[State] Wage Board the provisions of sections 33, 46, 47, 86B to 86K (both inclusive), 87, 90, 97, 98, 115, 118, 119, 119A and 123 shall be read as if the reference therein to a Wage Board were references to the State Wage Board.

### **Court of Industrial Arbitration**

#### **87. Duties of Industrial Court. –**

It shall be the duty of the Industrial Court-

(a) (i) to decide appeals under section 20 24A or 44 from orders passed by

the Registrar;

(ii) to decide appeals from the decision of the Commissioner of Labour under section 36 or 39 and revision applications under section 37 regarding standing orders;

(iii) to decide disputes regarding any change desired by any employee or representative union in respect of any industrial matter specified in item (5) or Schedule III; (iii) to decide disputes referred to it under sub-section (6) of section 58;

(v) to decide all matters which may be referred to it by a Conciliator or a Board under section 61 or by an arbitrator under section 69;

(vi) to decide industrial disputes referred to it in accordance with submissions registered under section 66 which provide for such reference to the Industrial Court;

(vii) to decide industrial disputes referred to it under sections 71, 72, 73 or 73A

(viii) to decide matters referred to it under section 90; (viii) to decide questions relating to the interpretation of this Act or rules made thereunder and standing orders referred to it under section 91;

(ix) to decide references made to it under section 99; 4<sub>[(ix-a)]</sub> to modify an award under section 116A

(x) to decide such other matters as may be referred to it under this Act or the rules made thereunder or under any law for the time being in force

(b) to decide appeals made under section 84 from a decision of a Labour Court;

(c) to decide appeals made under section 86G from an order or decision of a Wage Board.] **88. Powers of**

**Industrial Court.**-(1) The Industrial Court in appeal may confirm, modify, add to or rescind any decision or order appealed against and may pass such orders therein as it may deem fit.

(2) In respect of offences punishable under this Act, the Industrial Court shall have all the powers of the High Court of Judicature at Bombay under the Code of Criminal Procedure, 1973

(3) A copy of the orders passed by the Industrial Court shall be sent to the

Labour Court.

**89. Cancellation of registration of union.-**

If in any proceeding the Industrial Court finds that any union was registered by reason of a mistake misrepresentation or fraud, or that a registered union has contravened any of the provisions of this Act, the Industrial Court may direct that the registration of such union shall be cancelled.

**90. Reference on point of law.-**

(1) A Wage Board may refer to the Industrial Court any point of law arising in any proceedings before it under this Act. Any order or decision made or given by the Wage Board in such proceedings shall be in accordance with the decision of the Industrial Court.

(2) A civil or criminal court may refer any matter or any issue in any suit, criminal prosecution or other legal proceeding before it relating to an industrial dispute to the Industrial Court for its decision. Any order passed by such Court in such suit, prosecution or legal proceeding shall be in accordance with such decision.

(3) The State Government may refer to the Industrial Court any point of law arising in any proceedings held under this Act. The Industrial Court shall not decide any such reference save in open Court and with the concurrence of a majority of the members of the Court present at the hearing of the reference.

**91. Reference regarding interpretation of Act and Rules.-**

The Commissioner of Labour may refer any question relating to the interpretation of this Act or the rules made under this Act to the Industrial Court for its decision.

**92. Procedure before Industrial Court.-**

(1) The Industrial Court shall make regulations consistent with the provisions of this Act and rules made thereunder regulating its procedure.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for the formation of Benches consisting of one or more of its members and the exercise by each such Bench of the jurisdiction and powers vested in it:

Provided that no Bench shall consist only of a member who has not been and at the time of his appointment was not eligible for appointment as a Judge of a High Court.

(3) Every regulation made under sub-section (1) or (2) shall be published in the



Official Gazette.

(4) Every proceeding before the Industrial Court shall be deemed to be a judicial proceeding within the meaning of sections 192, 193 and 228 of the Indian Penal Code.

(5) The Industrial Court shall have power to direct by whom the whole or any part of the costs of any proceeding before it shall be paid:

Provided that no such costs shall be directed to be paid for the services of any legal adviser engaged by any party.

**93. Execution of order as to costs.-**

An order made by the Industrial Court regarding the costs of a proceeding may be produced before the Court of the Civil Judge within the local limits of whose jurisdiction any person directed by such order to pay any sum of money has a place of residence or business or where such place is within the local limit of the ordinary civil jurisdiction of the High Court before the Court of Small Causes of Bombay, and such Court shall execute such order in the same manner and by the same procedure as if it were a decree for the payment of money made by itself in a suit.

**94. Parties on whom orders of Industrial Court binding.-**

An order, decision or award of the Industrial Court shall be binding on --

(a) all parties to the industrial dispute;

(b) all parties who were summoned to appear as parties to the dispute whether they appeared or not unless the Industrial Court is of opinion that they were improperly made parties;

(c) in the case of an employer who is a party to the proceeding before such Court in respect of the undertaking to which the dispute relates, his successors, heirs or assigns in respect of the undertaking to which the dispute relates; and

(d) in the case of a registered union which is a party to the proceeding before such Court, all persons represented by the union at the date of the award, as well as thereafter.

**95. Order of Industrial Court to be final except on review.-**

(1) An employer or an association or a group of employers or a representative of employees] may at any time apply to the Industrial Court for review of a decision or award of the Industrial Court and the Industrial Court may, for any sufficient reason and upon hearing the parties, review the decision or award.

(2) No order, decision or award of the Industrial Court shall be called in question in any civil or criminal Court.

**95-A. Law declared by Industrial Court to be binding.-**

The determination determination of any question of law in any order, decision, award or declaration passed or made, by the Full Bench of the Industrial Court, constituted under the regulations made under section 92 shall be recognised as binding and shall be followed in all proceedings under this Act.

**96. Officer to appear in proceeding before Industrial Court.-**

The State Government may direct any officer to appear in any proceeding before the Industrial Court by giving notice to such Court and on such notice being given such officer shall be entitled to appear in such proceeding.

**Illegal Strikes and Lock-outs**

**97. Illegal strikes.-**

(1) A strike shall be illegal if it is commenced or continued-

- (a) in cases where it relates to an industrial matter specified in Schedule III or regulated by any standing order for the time being in force;
- (b) without giving notice in accordance with the provisions of section 42;
- (c) only for the reason that the employer has not carried out the provisions of any standing order or has made an illegal change;
- (d) in case where notice of the change is given in accordance with the provisions of section 42 and where no agreement in regard to such change is arrived at before the statement of the case referred to in section 54 is received by the Conciliator for the industry concerned for the local area;
- (e) in cases where conciliation proceeding in regard to the industrial dispute to which the strike relates have commenced, before the completion of such proceedings <sup>1</sup>[and during the period of ten days thereafter];
- (f) in cases where special intimation has been sent under sub-section (2) of section 52 to the Conciliator, before the receipt of the intimation by the person to whom it is to be given;
- (g) in cases where a submission relating to such dispute or such type of disputes is registered under section 66, before such submission is lawfully revoked; (h) in cases where an industrial dispute has been referred to the arbitration of a Labour Court or the Industrial Court under sub-section (6) of section 58 or under section 71, or of the Industrial Court under section 72 73 or 73A] before the date on which the arbitration proceedings are completed, or the date on which the award of the Labour or Industrial Court, as the case may be, comes into operation, whichever is later : Provided that, nothing in this clause shall apply to any strike, where the Union has offered in writing to submit the industrial dispute to arbitration under sub-section (6) of section 58, and
- a) the employer does not accept the offer, or (b) the employer accepts the offer but disagreeing on the choice of the arbitrator, does not agree to submit the dispute to arbitration without naming an arbitrator, and thereafter, the dispute has been referred to arbitration of the Industrial Court under section 73A.] (i) In contravention of the terms of a registered agreement, or a settlement or effective award; (j) where an industrial matter or industrial dispute is referred to a Wage Board for decision, before the date on which the decision comes into operation; (k) in contravention of the terms of an effective decision of a Wage Board.

(2) In cases where a conciliation proceeding in regard to any industrial dispute has been completed, a strike relating to such dispute shall be illegal if it is commenced at any time after the expiry of two months after the completion of such proceeding.

(3) Notwithstanding anything contained in sub-sections (1) and (2), if fourteen

clear days notice of a strike not falling under clauses (a), (g), (h) or (i) of sub-section (1) was given to the employer and the Labour Officer, and the strike was not commenced either before the expiry of the period of notice or after six weeks from the date of expiry, the employees who resume work within forty-eight hours of a Labour Court or the Industrial Court declaring such strike to be illegal shall incur no penalty under this Act in respect of such strike:

Provided that nothing in sub-section (3) shall apply to any strike which has within the period of notice been declared under section 99 to be illegal.

**97A. Stoppage of work by employees in certain circumstances illegal.**-A stoppage shall be illegal, if it is commenced or continued,-

(a) with the object of compelling the Central or State Government] or any public servant to take or abstain from taking any particular course of action in regard to an industrial matter, where the Central or State Government] is not an employer in the industry concerned, or

(b) if such stoppage is in support of, or in sympathy with, a strike which is illegal under this Act or the Industrial Disputes Act, 1947, 14 of 1947 or any other law for the time being in force, whether or not in the same industry, occupation or undertaking.

**98. Illegal lock-outs.**-(1) A lock-out shall be illegal if it is commenced or continued-

(a) in cases where it relates to any industrial matter specified in Schedule III

or regulated by any standing order for the time being in force;

(b) without giving notice in accordance with the provisions of section 42;

(c) in cases where notice of the change is given in accordance with the provisions of section 42 and where no agreement in regard to such change is arrived at, before the statement of the case referred to in section 54 is received by the Conciliator for the industry concerned for the local area;

(d) in cases where conciliation proceedings in respect of an industrial dispute to which a lock-out relates have commenced, before the completion of such proceedings <sup>4</sup>[and during the period of ten days thereafter]; (e) in cases where a special intimation has been sent under sub-section

(2) of section 52 to the Conciliator, before the receipt of the intimation by the person to

whom it is to be given; (f) in cases where a submission relating to such dispute or such type of dispute is registered under section 66, before such submission is lawfully revoked; (g) in cases where an industrial dispute has been referred to the arbitration of a Labour Court or the Industrial Court under sub-section (6) of section 58 or under section 71, or of the Industrial Court under section 71<sup>5</sup>[73 or 73A], before the date on which the arbitration proceeding is completed or the date on which the award of the Industrial Court comes into operation, whichever is later: Provided that, nothing in this clause shall apply to any lock-out when the employer has offered in writing to submit the industrial dispute to arbitration under sub-section (b) of section 58, and

(a) the Union does not accept the offer; or

(b) the Union accepts the offer, but disagreeing on the choice of the arbitrator, does not agree to submit the dispute to arbitration without naming an arbitrator, and thereafter, the dispute has been referred to arbitration of the Industrial Court under section 73A

(h) in contravention of the terms of a registered agreement, or a settlement or effective award; (i) where an industrial matter or industrial dispute is referred to a Wage Board for decision before, the date on which the decision comes into operation;

(j) in contravention of the terms of an effective decision of a Wage Board.

(2) In cases where a conciliation proceeding in regard to any industrial dispute has been completed, a lock-out relating to such dispute shall be illegal if it is commenced at any time after the expiry of two months from the completion of such proceeding.

(3) Notwithstanding anything contained in sub-sections (1) and (2), if fourteen clear days' notice of a lock-out not falling under clauses (a), (g), (h) or (i) of sub-section (1) was given to the employees and the Labour Officer, and the lock-out was not commence either before the expiry of the period of notice of after six weeks from the date of its expiry and the employer discontinues the lock-out within forty-eight hours of a Labour Court or the Industrial Court declaring such lock-out to be illegal, the employer shall incur no penalty under this Act in respect of such lock-out:

**98-A. Closure of work by employer in certain circumstances illegal.-**

A closure shall be illegal, if it is commenced or continued with the object of compelling the Central or State Government] or any public servant to take or abstain from taking any particular course of action in regard to any industrial matter.

**99. Reference to Industrial Court for declaration whether strike, lock-out, closure or stoppage] is illegal.-**

- (1) The State Government may make a reference to the Industrial Court for a declaration whether any proposed strike, lock-out, closure or stoppage will be illegal.
- (2) No declaration shall be made under this section save in open Court.
- (3) The declaration made under sub- section (1) shall be recognised as binding and shall be followed in all proceedings under this Act.

**100. Court of Enquiry; constitution, duties and powers of.-**

- (1) The State Government may constitute one or more Courts of Enquiry consisting of such number of persons as the State Government may think fit.
- (2) A Court of Enquiry shall inquire into such industrial matters, as may be referred to it by the State Government, including any matter pertaining to conditions of work or relations between employers and employees in any industry, and aspect of any industrial dispute.
- (3) Every proceeding before a Court of Enquiry shall be deemed to be a judicial proceeding within the meaning of sections 192, 193 and 228 of the Indian Penal Code.
- (4) A Court of Enquiry may refer to the Industrial Court any point of law arising in any proceeding before it under this Act. Any finding of the Court of Enquiry in such proceedings shall be in accordance with the decision of the Industrial Court.

**101. Employer not to dismiss, reduce or punish an employee.-**

(1) No employer shall dismiss, discharge or reduce any employee or punish him in any other manner by reason of the circumstances that the employee,-

- (a) is an officer or member of a registered union or a union which has applied for being registered under this Act; or
- (b) is entitled to the benefit of a registered agreement or a settlement, submission or award; or
- (c) evidence or intends to give evidence in a proceeding under this Act or any other law for the time being in force or takes part in any capacity in, or in connection with] a proceeding under this Act; or
- (d) is an officer or member of an organisation the object of which is to secure better industrial conditions; or
- (e) is an officer or member of an organisation which is not declared unlawful;
- or
- (f) is representative of employees; or
- (g) has gone on or joined or instigated a strike which has not been held by a Labour Court or the Industrial Court to be illegal under the provisions of this Act.

(2) No employer shall prevent any employee from returning to work after a strike, arising out of an industrial dispute which has not been held by a Labour Court or the Industrial Court to be illegal unless,-

- (i) the employer has offered to refer the issues on which the employee has struck work to arbitration under this Act, and the employee has refused arbitration; or
- (ii) the employee not having refused arbitration, has failed to offer to resume work within one month of a declaration by the State Government that the strike has ended.

(2A) No employer shall dismiss, discharge or reduce any protected employee save with the express permission in writing of the Labour Court.

(2-B) In every industry in any local area, the number of officers of any union to be recognised as "protected employee" for the purposes of sub-section (2A) shall be one per cent of the total number of employees employed therein, subject to a minimum number of five protected employees and a maximum number of one hundred protected employees; and for the aforesaid purpose, the State Government may make rules providing for



the manner in which the employees may be chosen and recognised as protected employees.

(3) Whoever contravenes the provisions of sub-section (1) (2) or (2A) shall, on conviction, be punishable with fine which may extend to Rs.5,000.

(4) The Court trying an offence under this section may direct that out of the fine recovered, such amount as it deems fit shall be paid to the employee concerned as compensation.

(5) In any prosecution under this section the burden of proving that the dismissal, discharge, reduction or punishment of an employee by an employer was not in contravention of the provisions of this section shall lie on the employer.

**102. Penalty for declaring illegal lock-out or illegal closure-**Any employer who has commenced a lock-out or a closure] which a Labour Court holds or the Industrial Court has declared to be illegal shall, on conviction, be punishable with fine which may extend to Rs.2,500 and, in the case of the Lock- out <sup>5</sup>[or the closure, as the case may be,] being continued after the lapse of forty-eight hours after it has been held or declared to be illegal, with an additional fine which may extend to Rs.5,000 for every day during which such lock-out, <sup>5</sup>[or closure] continues after such conviction.

**103. Penalty for declaring or commencing illegal strike or illegal stoppage.-**

Subject to the provisions of sub-section (3) of section 97, any employee who has gone on strike <sup>5</sup>[or stoppage] or who joins a strike or a stoppage which a Labour Court holds or the Industrial Court has declared to be illegal shall, on conviction, be punishable with fine, which may extend to Rs.10 and in the case of his continuing on strike <sup>1</sup>[or on stoppage, as the case may be, after the lapse of forty-eight hours after it is held or declared to be illegal, with an additional fine which may extend to Re.1 per day for every day during which such strike or stoppage continues after such conviction subject to a maximum of Rs.50.

**104. Penalty for investigating, etc., illegal strikes, locks-outs, closures and stoppages.-**

Any person who instigates or incites others to take part in, or otherwise acts in furtherance of a lock-out <sup>1</sup>[or a closure] for which an employer is punishable under section 102 or a strike <sup>1</sup>[or a stoppage] for which any employee is punishable under section 103, shall on conviction be punishable with imprisonment of either description for a term which may extend to three months, or with fine or with both:

Provided that no person shall be punished under this section where the Court trying the offence is of opinion that in the circumstances of the case a reasonable doubt existed at the time of the commission of the offence about the legality of the strike, lock-out, closure or stoppage, as the case may be.*Explanation I.*-For the purpose of this section, a person who contributes, collects or solicits funds for the purposes of any such strike, lock-out, closure or stoppage] shall be deemed to act in furtherance thereof.

**105. Penalty for disclosing confidential information.-**

If a Conciliator, a member of a Board or a Labour Officer or any person present at or concerned in any conciliation proceeding wilfully discloses any information or the contents of any document in contravention of the provisions of this Act, he shall, on conviction on a complaint made by the party who gave the information or produced the document in such proceeding be punishable, with fine which may extend to Rs.1,000.

**106. Penalty for illegal change.-**

- (1) Any employer who makes a change which is held or declared by a Labour Court or Industrial Court to be illegal,] shall, on conviction, be punishable with fine which may extend to Rs.5,000.
- (2) Any employer who contravenes the provisions of section 47 shall, on conviction, be punishable with imprisonment which may extend to three months, or for every day on which the contravention continues with fine which may extend to Rs.5,000, or with both.
- (3) The Court convicting any person under sub-section (1) or (2) may direct such person to pay such compensation as it may determine to any employee directly and adversely affected by the change in issue.

**106-A. Penalty for failure to appoint members on Joint Committee.-**

Any employer who fails to appoint members of a Joint Committee to be constituted on an application made by the union within the period specified in the order made under sub-section (1) of section 49 shall, on conviction, be punishable with fine which may extend to fifty rupees and in the case of a continuing failure with an additional fine which may extend to fifty rupees for every day during which such failure continues.

**107. Penalty for contravention of a standing order.-**

Any employer who Acts in contravention of a model standing order applicable under section 35 or section 40-A or a standing order settled under Chapter VII shall, on conviction, be punishable with fine which may extend to Rs. 500 and in the case of a continuing contravention of such standing order, with an additional fine which extend to Rs.125 per day for every day during which such contravention continues.

**108. Penalty for obstructing person from carrying out duties.-**

Any person who wilfully refuses entry to a Labour Officer or such officer of an approved union as is authorised under section 25 to any place which he is entitled to enter, or fails to produce any document which he is required to produce, or fails to comply with any requisition or order issued to him by or under the provisions of this Act or the rules made thereunder shall, on conviction, be punishable with fine which may extend to Rs.500.

**109. Penalties for offences not provided for elsewhere.-**

Whoever contravenes any of the provisions of this Act or of any rules made thereunder shall on conviction, if no other penalty is elsewhere provided by or under this Act for such contravention, be punishable with fine which may extend to Rs.100 and, in the event of such person having been previously convicted of an offence under this Act or any rule made thereunder with fine which may extend to Rs.200.

**110. Recovery of fines and compensation.-**

The amount of any fine imposed and any compensation directed by any Court to be paid under this Act shall be recoverable as arrears of land revenue.

### **Record of Industrial Conditions**

**111. Record of industrial matters, etc.-** The State Government may in respect of any industry. -

- (a) maintain in the prescribed manner a record of industrial matters covered by Schedules;
- (b) require any employer or employers generally to maintain and submit copies of a record in such form as may be prescribed of-
  - (i) data relating to plant, premises and manufacture,
  - (ii) other industrial transactions and dealings, which in the opinion of the State Government are likely to affect the matters specified in clause (a).

**112. Inquiry for verification of records.-**

- (1) For the purpose of verifying the accuracy of any records maintained by an employer under the provisions of section 111, an officer authorised by the State Government may, subject to the prescribed conditions hold an inquiry and may require any person to, and such person thereupon shall, produce any relevant record or document in his possession and may after reasonable notice, at any reasonable time enter any premises wherein he believes such record or document to be, and may ask any question necessary for verifying such records:

Provided that where such premises are not the usual business premises of a person, such officer shall not without the previous permission of the State Government enter them under this sub- section.

- (2) Any proceeding held by him for the purpose of obtaining information for such record shall be deemed to be a judicial proceeding within the meaning of section 192 of the Indian Penal Code.

**113. Modifications in Schedules.**-The State Government may, by notification in the *Official Gazette* at any time, make any additions to or alterations in the industrial matters specified in Schedule I, II or III or may delete therefrom any such matter:

Provided that before making any such addition, alteration or deletion a draft of such addition, alteration or deletion shall be published for the information of all persons likely to be affected thereby and the <sup>1</sup>[State] Government shall consider any objection or suggestion that may be received by it from any person with respect thereto.

**113-A. Dismissal of certain applications for want to prosecution.**-The Registrar may, after giving fifteen days notice, dismiss any application made under sections 13, 16, 17 or 23, if he is satisfied that the applicant union has failed to pursue or prosecute the application, without any sufficient cause.

**114. Agreement etc., on whom binding.**-(1) A registered agreement, or a settlement, submission or award shall be binding upon all persons who are parties thereto:

Provided that- (a) in the case of an employer, who is a party to such agreement, settlement, submission or award, his successors in interest, heirs or assigns in respect of the undertaking as regards which the agreement, settlement, submission or award is made, and (b) in the case of a registered union which is a party to such agreement, settlement, submission or award, <sup>3</sup>[all employees in the industry in the local area whose representative, the said union is] shall be bound by such agreement, settlement, submission or award.

(2) In cases in which a Representative Union is a party to registered agreement or a settlement, submission or award, the <sup>1</sup>[State] Government may, after giving the parties affected an opportunity of being heard, by notification in the *Official Gazette*, direct that such agreement, settlement, submission or award shall be binding upon such other employers and employees in such industry or occupation in that local area as may be specified in the notification:

Provided that before giving a direction under this section the <sup>1</sup>[State] Government may, in such cases as it deems fit, make reference to the Industrial Court for its opinion.

(3) A registered agreement entered into the representatives of the majority of the employees affected or deemed to be affected under section 43 by a change shall bind all the employees so affected or deemed to be affected.

**115. Order or decision of Wage Board or Labour Court] on whom binding.-**

An order or decision of a Wage Board or Labour Court] against an employer shall bind his successors in interest, heirs and assigns in respect of the undertaking as regards which it is made or given and such order or decision against a registered union shall bind all employees in the industry in the local area whose representative, the said union is

**115A. Order, decisions or awards to be in terms of agreement between employer and Representative Union.-**

If any agreement is arrived at between an employer and a Representative Union who are parties to any industrial dispute pending before an Arbitrator, Wage Board, Labour Court or Industrial Court,

the order, decision or award in such proceeding shall be made in terms of such agreement, unless the Arbitrator, Wage Board, Labour Court or Industrial Court is satisfied that the agreement was in contravention of any of the provisions of this Act or the consent of either party to it was caused by mistake, misrepresentation, fraud, undue influence, coercion or threat.

**116. Agreement, etc., when to cease to have effect.-**

(1) A registered agreement, or a settlement or award shall cease to have effect on the date specified therein, or if no such date is specified therein on the expiry of the period of two months from the date on which notice in writing to terminate such agreement, settlement or award, as the case may be, is given in the prescribed manner by any of the parties thereto to the other party:

Provided that no such notice shall be given till the expiry of three months after the agreement, settlement or award comes into operation.

(2) Nothing in this section shall prevent the terms of a registered agreement or a settlement <sup>6</sup>[or an award in terms of an agreement] being changed or modified by mutual consent of the parties affected thereby <sup>7</sup>[and the registered agreement, settlement or award shall be deemed to be changed or modified accordingly.

(3) Notwithstanding anything contained in sub-section (1) or (2), if a registered agreement, or a settlement, or award provides that it shall remain in force for a period exceeding one year, it may after the expiry of one year from the date of its commencement be terminated by either party thereto giving two months' notice in the prescribed manner to the other party.

(4) The party giving notice under sub-section (1) or (3) shall send a copy of it to the Registrar and the Labour Office of the local area concerned.

(5) If a registered agreement, or a settlement or award is terminated under sub-section (1) or (3) or if the terms of a registered agreement or a settlement <sup>1</sup>[or an award] are changed or modified by mutual consent, notice of such termination, change or modification shall be given by the parties concerned to the Registrar and the Labour Officer. The Registrar shall enter the notice of such termination, change or modification in a register kept for the purpose.

**116-A. Modification of award.-**

(1) Any party who under the provisions of section 116 is entitled to give notice of the termination of an award may instead of giving such notice, apply after the expiry of the period specified in sub-section

(2), to the Industrial Court, the Labour Court or the Wage Board making the award, for its modification.

(2) Such application in the case of an award-

(a) which does not specify a date on which it shall cease to have effect shall not be made until the expiry of the period of two months from the date on which notice can be given to terminate the award under section 116

(b) which provides that it shall remain in force for a period exceeding one year, shall not be made until the expiry of one year from the date of its commencement.

(3) On such application being made, the Industrial Court, the Labour Court or the Wage Board, as the case may be, may, after hearing the parties and taking such evidence as it thinks fit, modify, the award whether prospectively or retrospectively, so however that the modification with retrospective effect, if any, does not operate earlier than the date of a application under sub-section (1)

(4) Where an application for the modification of an award under sub-section (1) is made, such application shall not in any way affect the binding effect of such award in regard to the matters determined therein until it is modified.

(5) Nothing in this section shall affect the right of any party to terminate such award in accordance with the provisions of section 116.

**117. Liability of the executive of a union.-**Where anything is required to be done by any union under this Act, the person authorised in this behalf by the executive of the union, and where no person is so authorised every member of the executive of the union, shall be bound to do the same and shall be personally liable if default is made in the doing of any such thing.

**118. Powers of certain authorities to summon witnesses, etc.-**

(1) For the purpose of holding an inquiry or proceeding under this Act, the Registrar, a Conciliator a Wage Board], Board, Labour Court in its ordinary jurisdiction, a Court of Enquiry and the Industrial Court shall have the same powers as are vested in Courts in respect of-

(a) proof of facts by affidavits;

(b) summoning and enforcing the attendance of any person and examining him on oath;

(c) compelling the production of documents; and

(d) issuing commissions for the examinations of witnesses.

(2) The Registrar, a Conciliator, a Wage Board] or Board shall also have such further powers as may be prescribed.

(3) For the purpose of obtaining the information necessary for compiling and maintaining the record under Chapter XVII the officer authorised under section 112 shall have the powers specified in clauses (b) and (c)

of sub-section (1) and in sub-section (2).

- (4) A Wage Board, a Labour Court and the Industrial Court shall also have powers to call upon any of the parties to proceedings before it to furnish in writing and in such form as it may think proper any information which it considers relevant for the purposes of any proceedings before it and the party so called upon shall thereupon furnish the information to the best of his knowledge and belief, and if so required by the Board or the Court to do so, verify the same in such manner as may be prescribed.

**118-A. Offences under sec. 104 cognizable.-**

The offence under section 104 shall be cognizable

**118-B. Consequences of non-appearance of parties.-**

- (1) Where in any proceeding before the Industrial Court, or a Labour Court, if either party in spite of notice of hearing having been duly served on it, does not appear when the matter is called on for hearing, the Court may either adjourn the hearing of the matter to a subsequent date or proceed *ex-parte* and make such award, order or decision as it thinks fit.

- (1A) Where in any proceeding, before the Industrial Court, or a Labour Court, if neither party, in spite of notice of hearing having been duly served on him, appears when the matter is called on for hearing, the Court may make an order that the application, appeal, reference or other proceeding be dismissed.]

- (2) Where any award, order or decision is made *ex-parte* under sub-section (1) or an order of dismissal of any proceedings is made under sub-section (1-A)

A),] the aggrieved party may, within thirty days of the receipt of a copy thereof, make an application to the Court, to set aside such award, order or decision <sup>1</sup>[or such order of dismissal]. If the Industrial Court or Labour Court is satisfied that there was sufficient cause for non-appearance of the aggrieved party, it may set aside the award, order or decision or the order of dismissal so made and shall appoint a date for proceeding with the matter:

Provided that, no award, order or decision or the order of dismissal as the case may be,] shall be set aside on any such application as aforesaid unless notice thereof has been served on the opposite party.

**119. Certain officers to be public servants.-**

The Registrar, an Assistant Registrar, a Conciliator, a Labour Officer, an Assistant Labour Officer, an arbitrator a member of a Wage Board, a member of a Board, an officer authorised under section 112, a Judge of a Labour Court, a member of the Industrial Court or a Court of Enquiry and a member of the staff of any of the said Courts shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

**119-A. Contempt of Industrial Court, Labour Courts and Wage Board relating to omission to produce documents.etc.-**



(1) If any person,-

(a) when ordered by the Industrial Court or a Labour Court or a Wage Board to produce or deliver up any document, or to furnish any information, being legally bound intentionally omits to do so; or

(b) when required by the Industrial Court or a Labour Court or a Wage Board to bind himself by an oath or affirmation to state the truth refuses to do so;

(c) being legally bound to state the truth on any subject to the Industrial Court or a Labour Court or a Wage Board refuses to answer any question demanded of him touching such subject by such Court or Board; or

(d) intentionally offers any insult or causes any interruption to the Industrial Court or a Labour Court or a Wage Board at any stage of its judicial proceedings, he shall, on conviction be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.

(2) If any person refuses to sign any statement made by him when required to do so by the Industrial Court or a Labour Court or a Wage Board, he shall, on conviction, be punishable with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.

(3) If any offence under sub-section (1) or (2) is committed in the view or presence of the Industrial Court or a Labour Court or a Wage Board, as the case may be, such Court or Wage Board may, after recording the facts constituting the offence and the statement of the accused as provided in <sup>7</sup>[the Code of Criminal Procedure, 1973,] forward the case to a magistrate having jurisdiction to try the same and may require security to be given for the appearance of the accused

person before such magistrate or, if sufficient security is not given shall forward such person in custody to such magistrate. The magistrate to whom any case is so forwarded shall proceed to hear the complaint against the accused person in the manner provided in the said Code of Criminal Procedure.

#### **119-B. Other kinds of contempts of Industrial Court, Labour Courts and Wage Boards.**

-(1) If any person commits any act or publishes any writing which is calculated to improperly influence the Industrial Court, or a Labour Court or a Wage Board or to bring such Court, Board or, a member or a Judge thereof into disrepute or contempt or to lower its or his authority, or to interfere with the lawful process of any such Court or Board, such person shall be deemed to be guilty of contempt of such Court or Board, as the case may be.

(2) In the case of contempt of itself the Industrial Court shall record the facts constituting such contempt and make a report in that behalf to the High Court.

(3) In the case of contempt of a Wage Board or a Labour Court, such Board or Court shall record the facts constituting such contempt and make a report in that behalf to the Industrial Court, and thereupon the Industrial Court may, if it considers it expedient to do so, forward the report to the High Court.

(4) When any intimation or report in respect of any contempt is received by the High Court under sub-section (2) or (3), the High Court shall deal with such contempt as if it were contempt of itself and shall have and exercise in respect of it the same jurisdiction, powers and authority in accordance with the same procedure and practice as it has and exercises in respect of contempt of itself.

**119-C. Power of Industrial Court. etc., to decide all connected matters.-**

Notwithstanding anything contained in this Act, the Industrial Court, a Labour Court, or a Wage Board, as the case may be, shall have the power to decide all matters arising out of the industrial matter or dispute referred to it for decision under any of the provisions of this Act.

**119-D. Power of Industrial Court, etc., to pass interim orders.-**

If any proceeding before it under this Act, the Industrial Court, a Labour Court, or a Wage Board may pass such interim orders as it may consider just and proper.]

**119-E. Protection of action taken under this Act.-**

No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or purported to be done under this Act.]

**120. Provisions of Act VII of 1929 not to be affected.-**

Nothing in this Act shall affect any of the provisions of the Trade Disputes Act, 1929, and no conciliation or arbitration proceeding shall be held under this Act relating to any matter or trade dispute which has been referred to and is pending before a Court of Enquiry or Board of Conciliation under the said Act.

**122A. 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 it as may be specified in the notification.

## **THE INDUSTRIAL DISPUTES ACT, 1947**

### **Introduction:-**

The industrial dispute act 1947 extends to the whole of India. It came into force April 1,1947 to bring about peace in the industry and healthy relationship between the employer and employee. This act replaced the Trade dispute act imposed certain restraints on the right of strike and lockout in public utility services. Butbut no provision was existing for the settlements of industrial disputes ,either by reference to the Board of conciliation or to the Court of Inquiry. In order to remove this deficiency ,the industrial dispute Act 1947 was passed

### **Objectives of Act:-**

1. To provide suitable machinery for just, equitable and peaceful settlement of industrial dispute
2. To promote measures for securing and preserving Amity and good relations between employers and employees
3. To prevent illegal strike and lockout.
4. To provide relief to workers against layoffs,retrenchment ,wrongful dismissal, and victimization .
5. To promote collective bargaining
6. To ameliorate the condition of workers
7. To avoid unfair labour practice .

### **2. Definitions.-**

(a) “appropriate Government” means-

(i) in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government or by a railway company or concerning any such controlled industry as may be specified in this behalf by the Central Government or in relation to an industrial dispute concerning a Dock Labour Board Or the Industrial Finance Corporation of India Limited formed and registered under the Companies Act, or the Employees State Insurance Corporation established under Section 3 of the Employees State Insurance Act, 1948 or the Board of Trustees constituted under Section 3-A of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948, or the Central Board of Trustees and the State Boards of Trustees constituted under Section 5A and Section 5B, respectively, of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 or the Life Insurance Corporation of India established under section 3 of the Life Insurance Corporation Act, or the Oil and Natural Gas Corporation Limited registered under the Companies Act, 1956 or the Deposit Insurance and Credit Guarantee Corporation established under Section 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 or the Central Warehousing Corporation established under Section 3 of the Warehousing Corporations Act, 1962 or the Unit Trust of India established under Section 3 of the Unit Trust of India Act, 1963 or the Food Corporation of India established under Section 3 or a Board of Management established for two or more contiguous States under Section 16 of the Food

Corporations Act, 1964 or the Airports Authority of India constituted under Section 3 of the Airports Authority of India Act, 1994 or a Regional Rural Bank established under Section 3 of the Regional Rural Banks Act, 1976 or the Export Credit and Guarantee Corporation Limited or the Industrial Reconstruction Bank of India Limited], <sup>4</sup>[the National Housing Bank established under section 4 of the National Housing Bank Act, 1987 or an air transport service, or a banking or an insurance company], a mine, an oil-field], a Cantonment Board], or a major port, the the Central Government, and]] (ii) in relation to any other industrial dispute, the State Government (aa) “arbitrator” includes an umpire;(aaa)“average pay” means the average of the wages payable to a workman-

(i) in the case of monthly paid workman, in the three complete calendar months,  
(ii) in the case of weekly paid workman, in the four complete weeks,  
(iii) in the case of daily paid workman, in the twelve full working days, preceding the date on which the average pay becomes payable if the workman had worked for three complete calendar months or four complete weeks or twelve full working days, as the case may be, and where such calculation cannot be made, the average pay shall be calculated as the average of the wages payable to a workman during the period he actually worked;(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10- A;

(bb) “**banking company**” means a banking company as defined in Section 5 of the Banking Companies Act, 1949 having branches or other establishments in more than one State, and includes the Export-Import Bank of India, the Industrial Industrial Reconstruction Bank of India, the Small Industries Development Bank of India established under section 3 of the Small Industries Development Bank of India Act, 1989 [the Reserve Bank of India, the State Bank of Indiaa corresponding new bank constituted under Section 3 of the Banking CompaniesAct, a corresponding new bank constituted under Section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 and any subsidiary bank], as defined in the State Bank of Act, (cc) “**closure**” means the permanent closing down of a place of employment or part thereof;

(d) “**conciliation officer**”-

means a conciliation officer appointed under this Act;

(e) “**conciliation proceeding**” means

any proceeding held by a

conciliation officer or Board under this Act;

(ee) “**controlled industry**” means

any industry the control of which by the Union has been declared by any Central Act to be expedient in the public interest;]

(f) “**Court**” means a Court of Inquiry constituted under this Act;

(g) “**employer**” means-

(i) in relation to an industry carried on by or under the authority of any department of <sup>3</sup>[the Central Government Government or a State Government] the authority prescribed in this behalf, or where no authority is prescribed, the head of the department; (ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;

(gg) “**executive**”, in relation to a trade union, means the body by whatever name called, to which the management of the affairs of the trade union is entrusted;(i) a person shall be deemed to be “independent” for the purpose of his appointment as the chairman or other member of a Board, Court or Tribunal, if he is unconnected with the industrial dispute referred to such Board, Court or Tribunal or with any industry directly affected by such dispute. Provided that no person shall cease to be independent by reason only of the fact that he is a shareholder of an incorporated company which is connected with, or likely to be affected by, such industrial dispute; but in such a case, he shall disclose to the appropriate Government the nature and extent of the shares held by him in such company((J) “**INDUSTRY**” MEANS ANY BUSINESS, TRADE, UNDERTAKING,

**MANUFACTURE OR CALLING OF EMPLOYERS AND INCLUDES ANY CALLING, SERVICE, EMPLOYMENT, HANDICRAFT, OR INDUSTRIAL OCCUPATION OR AVOCATION OF WORKMEN;**

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

(l)“**industrial establishment or undertaking**” means

an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking; (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;

(kk) “**insurance company**” means

an insurance company as defined in section 2 of the Insurance Act, 1938 , having branches or other establishments in more than one State;

(kka)“**lay-off**” (with its grammatical variations and cognate expressions) means

the failure, refusal or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the breakdown of machinery 6[or

natural calamity or for any other connected reason] to give employment to a workman whose name is borne on the muster rolls of his industrial establishment and who has not been retrenched; the purpose during normal working hours on any day and is not given employment by the employer within two hours of his so presenting himself shall be deemed to have been laid-off for that day within the meaning of this clause: Provided that if the workman, instead of being given employment at the commencement of any shift for any day is asked to present himself for the purpose during the second half of the shift for the day and is given employment then, he shall be deemed to have been laid-off only for one-half of that day: Provided further that if he is not given any such employment even after so presenting himself, he shall not be deemed to have been laid-off for the second half of the shift for the day and shall be entitled to full basic wages and dearness allowance for that part of the day;

(l) “**lock-out**” means

the temporary closing of a place of employment] or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him;

(p) “**settlement**” means

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

(q) “**strike**” means-

a cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal, or a refusal under a common understanding, of any number of persons who are or have been so employed to continue to work or to accept employment;

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(rr) “**wages**” means

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

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

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

foodgrains or other articles;

(iii) any travelling concession;

(iv) any commission payable on the promotion of sales or

business or both but does not include-

(a) any bonus;

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

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

(s) “**workman**” means-

any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute,

but does not include any such person-

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

(ii) who is employed in the police service or as an officer or

other employee of a prison, or

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

(iii) who, being employed in a supervisory capacity, draws wages exceeding one thousand six 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.]

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





## **AUTHORITIES UNDER THIS ACT .**

### **3.Works Committee:-**

(1) In the case of any industrial establishment in which one hundred or more workmen are employed or have been employed on any day in the preceding twelve months, the appropriate Government may by general or special order require the employer to constitute in the prescribed manner a Works Committee consisting of representatives of employers and workmen engaged in the establishment, so however that the number of representatives of workmen on the Committee shall not be less than the number of representatives of the employer. The representatives of the workmen shall be chosen in the prescribed manner from among the workmen engaged in the establishment and in consultation with their trade union, if any, registered under the Indian Trade Unions Act, 1926

(2) It shall be the duty of the Works Committee to promote measures for securing and preserving amity and good relations between the employer and workmen and, to that end, to comment upon matters of their common interest or concern and endeavour to compose any material difference of opinion in respect of such matters.

### **4. Conciliation Officers:-**

(1) The appropriate Government may, by notification in the Official Gazette, appoint such number of persons as it thinks fit, to be Conciliation Officers, charged with the duty of mediating in and promoting the settlement of industrial disputes.

(2) A Conciliation Officer may be appointed for a specified area or for specified industries in a specified area or for one or more specified industries and either permanently or for a limited period.

### **5. Board of Conciliation:-**

(1) The appropriate Government may as occasion arises by notification in the Official Gazette, constitute a Board of Conciliation for promoting the settlement of an industrial dispute.

(2) A Board shall consist of a Chairman and two or four other members, as the appropriate Government thinks fit.

(3) The Chairman shall be an independent person and the other members shall be persons appointed in equal numbers to represent the parties to the dispute and any person appointed to represent a party shall be appointed on the recommendation of

that party :

Provided that, if any party fails to make a recommendation as aforesaid within the prescribed time, the appropriate Government shall appoint such persons as it thinks fit to represent that party.

(4) A Board, having the prescribed quorum, may act notwithstanding the absence of the Chairman or any of its members or any vacancy in its number :

Provided that, if the appropriate Government notifies the Board that the services of the Chairman or of any other member have ceased to be available, the Board shall not act until a new chairman or member, as the case may be, has been appointed.

#### **6. Courts of Enquiry:-**

(1) The appropriate Government may as occasion arises by notification in the Official Gazette, constitute a Court of Inquiry for enquiring into any matter appearing to be connected with or relevant to an industrial dispute.

(2) A Court may consist of one independent person or of such number of independent persons as the appropriate Government may think fit and where a Court consists of two or more members, one of them shall be appointed as the Chairman.

(3) A Court, having the prescribed quorum, may act, notwithstanding the absence of the Chairman or any of its members or any vacancy in its number:

Provided that, if the appropriate Government notifies the Court that the services of the Chairman have ceased to be available, the Court shall not act until a new Chairman has been appointed.

#### **7. Labour Courts.-**

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

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

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

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

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

(c) he has held any judicial office in India for not less than seven

years; or

(d) he has been the Presiding Officer of a Labour Court constituted under any Provincial Act or State Act for not less than five years.

#### **7A. Tribunals.-**

- (1) The appropriate Government may, by notification in the Official Gazette, constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter, whether specified in the Second Schedule or the Third Schedule <sup>6</sup>[and for performing such other functions as may be assigned to them under this Act
- (2) A Tribunal shall consist of one person only to be appointed by the appropriate Government.
- (3) A person shall not be qualified for appointment as the presiding officer of a Tribunal unless-
  - (a) he is, or has been, a Judge of High Court ; or
  - (aa) he has, for a period of not less than three years, been a District Judge or an Additional District Judge;
- (4) The appropriate Government may, if it so thinks fit, appoint two persons as assessors to advise the Tribunal in the proceeding before it.

#### **7B. National Tribunals.-**

- (1) The Central Government may, by notification in the Official Gazette, constitute one or more National Industrial Tribunals for the adjudication of industrial disputes which, in the opinion of the Central Government, involve questions of national importance or are of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, such disputes.
- (2) A National Tribunal shall consist of one person only to be appointed by the Central Government.
- (3) A person shall not be qualified for appointment as the Presiding Officer of a National Tribunal unless he is, or has been, a Judge of a High Court.
- (4) The Central Government may, if it so thinks fit, appoint two persons as assessors to advise the National Tribunal in the proceeding before it.

#### **7C. Disqualifications for the presiding officers of Labour Courts, Tribunals and National Tribunals.-**

No person shall be appointed to, or continue in, the office of the Presiding Officer of a Labour Court, Tribunal or National Tribunal, if-

- (a) he is not an independent person; or

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

**8. Filling of vacancies.-**

If, for any reason a vacancy (other than a temporary absence) occurs in the office of the presiding officer of a Labour Court, Tribunal or National Tribunal or in the office of the Chairman or any other member of a Board or Court, then, in the case of a National Tribunal, the Central Government, and in any other case, the Appropriate Government, shall appoint another person in accordance with the provisions of this Act to fill the vacancy, and the proceeding may be continued before the Labour Court, Tribunal, National Tribunal, Board or Court, as the case may be, from the stage at which the vacancy is filled.

**9. Finality of orders constituting Boards, etc.-**

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

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

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

## **A NOTICE OF CHANGE**

### **9A. Notice of change.-**

No employer, who purposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,-

(a) without giving to the workman likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or (b) within twenty-one days of giving such notice: Provided that no notice shall be required for effecting any such change— (a) where the change is effected in pursuance of any settlement or award or

(b) where the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply.

### **9B. Power of Government to exempt.-**

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

**REFERENCE OF CERTAIN INDIVIDUAL DISPUTES TO  
GRIEVANCE SETTLEMENT AUTHORITIES**

**9C. Setting up of Grievance Settlement Authorities and reference of certain individual disputes to such authorities.-**

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

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

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

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

## REFERENCE OF DISPUTES TO BOARDS, COURTS OR TRIBUNALS

### 10. Reference of disputes to Boards, Courts or Tribunals.-

(1) Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing,-

(a) refer the dispute to a Board for promoting a settlement thereof; or

(b) refer any matter appearing to be connected with or relevant to the dispute, to a Court for inquiry; or

(c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or

(d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication: Provided that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under Clause (c)

Provided further that] where the dispute relates to a public utility service and a notice under Section 22 has been given, the appropriate Government shall, unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make reference under this sub-section notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced: Provided also that where the dispute in relation to which the Central Government is the appropriate Government, it shall be competent for the Government to refer the dispute to a Labour Court or an Industrial Tribunal, as the case may be, constituted by the State Government;

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

(2) Where the parties to an industrial dispute apply in the prescribed manner, whether jointly or separately, for a reference of the dispute to a Board, Court, Labour Court, Tribunal, or National Tribunal], the appropriate Government, if satisfied that the persons applying represent the majority of each party, shall make the reference

accordingly.

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

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

Provided further that where the parties to an industrial dispute apply in the prescribed manner, whether jointly or separately, to the Labour Court, Tribunal or National Tribunal for extension of such period or for any other reason, and the presiding officer of such Labour Court, Tribunal or National Tribunal considers it necessary or expedient to extend such period, he may for reasons to be recorded in writing, extend such period by such further period as he may think fit:

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

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

(3) Where an industrial dispute has been referred to a Board, Labour Court, Tribunal or National Tribunal] under this section, the appropriate Government may by order prohibit the continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of the reference.

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

(5) Where a dispute concerning any establishment or establishments has been, or is to be, referred to a Labour Court, Tribunal or National Tribunal] under this section and the appropriate Government is of opinion, whether on an application made to it in this behalf or otherwise, that the dispute is of such a nature that any other establishment, group or class of establishments of a similar nature is likely to be interested in, or affected by, such dispute, the appropriate Government may, at the time of making the reference or at any time thereafter but before the submission of the award, include in



that reference such establishment, group or class of establishments, whether or not at the time of such inclusion any dispute exists or is apprehended in that establishment, group, or class of establishments].

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

(a) if the matter under adjudication before the National Tribunal is pending in a proceeding before a Labour Court or Tribunal, the proceeding before the Labour Court or the Tribunal, as the case may be, in so far as it relates to such matter, shall be deemed to have been quashed on such reference to the National Tribunal; and

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

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

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

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

(1A) Where an arbitration agreement provides for a reference of the dispute to an even number of

arbitrators, the agreement shall provide for the appointment of another person as umpire who shall enter upon the reference, if the arbitrators are equally divided in their opinion, and the award of the umpire shall prevail and shall be deemed to be the arbitration award for the purposes of this Act.

- (2) An arbitration agreement referred to in sub-section (1) shall be in such form and shall be signed by the parties thereto in such manner as may be prescribed.
- (3) A copy of the arbitration agreement shall be forwarded to the appropriate Government and the Conciliation Officer and the appropriate Government shall, within one month from the date of the receipt of such copy, publish the same in the Official Gazette.
- (3A) Where an industrial dispute has been referred to arbitration and the appropriate Government is satisfied that the persons making the reference represent the majority of each party, the appropriate Government may, within the time referred to in sub-section (3), issue a notification in such a manner as may be prescribed; and when any such notification is issued, the employers and workmen who are not parties to the arbitration agreement but are concerned in the dispute, shall be given an opportunity of presenting their case before the arbitrator or arbitrators.
- (4) The arbitrator or arbitrators shall investigate the dispute and submit to the appropriate Government the arbitration award signed by the arbitrator or all the arbitrators, as the case may be.
- (4-A) Where an industrial dispute has been referred to arbitration and a notification has been issued under sub-section (3-A), the appropriate Government may, by order, prohibit the continuance of any strike or lock out in connection with such dispute which may be in existence on the date of reference.

## PROCEDURE, POWERS AND DUTIES OF AUTHORITIES

### 11. Procedure and power of conciliation officers, Boards, Courts and Tribunals:-

(1) Subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think fit

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

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

- (a) Enforcing the attendance of any person and examining him on oath;
- (b) Compelling the production of documents and material objects;
- (c) Issuing commissions for the examination of witnesses;
- (d) In respect of such other matters as may be prescribed; and every inquiry or investigation by a Board, Court, Labour Court, Tribunal or or National Tribunal] shall be deemed to be a judicial proceeding, within the meaning of Sections 193 and 228 of the Indian Penal Code

(4) A Conciliation Officer may enforce the attendance of any person for the purpose of examination of such person or call for] and inspect any document which he has ground for considering to be relevant to the industrial dispute <sup>6</sup>[or to be necessary for the purpose of verifying the implementation of any award or carrying out any other duty imposed on him under this Act, and for the aforesaid purposes, the conciliation officer shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 in respect of enforcing the attendance of any person and examining him or of compelling the production of documents

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

(6) All conciliation officers, members of a Board or Court and the presiding officers

of a Labour Court, Tribunal or National Tribunal shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code

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

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

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

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

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

**12. Duties of conciliation officers:-**

- (1) Where any industrial dispute exists or is apprehended, the conciliation officer may, or where the dispute relates to a public utility service and a notice under Section 22 has been given, shall, hold conciliation proceedings in the prescribed manner.
- (2) The Conciliation Officer shall, for the purpose of bringing about a settlement of the dispute, without delay, investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

- (3) If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings the conciliation officer shall send a report thereof to the appropriate Government <sup>5</sup>[or an officer authorised in this behalf by the appropriate Government] together with a memorandum of the settlement signed by the parties to the dispute.
- (4) If no such settlement is arrived at, the conciliation officer shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about settlement thereof, together with a full statement of such facts and circumstances, and the reasons on account of which, in his opinion, a settlement could not be arrived at.
- (5) If, on a consideration of the report referred to in sub-section (4), the appropriate Government is satisfied that there is a case for reference to a Board, [Labour Court, Tribunal or National Tribunal], it may make such reference. Where the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reasons therefor.
- (6) A report under this section shall be submitted within fourteen days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate Government:

Provided that, subject to the approval of the conciliation officer] the time for the submission of the report may be extended by such period as may be agreed upon in writing by all the parties to the dispute

### **13. Duties of Board:-**

- (1) Where a dispute has been referred to a Board under this Act, it shall be the duty of the Board to endeavour to bring about a settlement of the same and for this purpose the Board shall, in such manner as it thinks fit and without delay, investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all such things as it thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.
- (2) If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings, the Board shall send a report thereof to the appropriate Government together with a memorandum of the settlement signed by the parties to the dispute.
- (3) If no such settlement is arrived at, the Board shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the proceedings and steps taken by the Board for ascertaining the facts and circumstances relating to the dispute and for

bringing about a settlement thereof, together with a full statement of such facts and circumstances, its finding thereon, the reasons on account of which, in its opinion, a settlement could not be arrived at and its recommendations for the determination of the dispute.

(4) If, on the receipt of a report under sub-section (3) in respect of a dispute relating to public utility service, the appropriate Government does not make a reference to a Labour Court, Tribunal or National Tribunal] under Section 10, it shall record and communicate to the parties concerned its reasons therefor.

(5) The Board shall submit its report under this section within two months of the date <sup>5</sup>[on which the dispute was referred to it or within such shorter period as may be fixed by the appropriate Government:

Provided that the appropriate Government may from time to time extend the time for the submission of the report by such further periods not exceeding two months in the aggregate:

#### **14. Duties of Courts:-**

A Court shall inquire into the matters referred to it and report thereon to the appropriate Government ordinarily within a period of six months from the commencement of its inquiry.

#### **15. Duties of Labour Courts, Tribunals and National Tribunals:-**

Where an industrial dispute has been referred to a Labour Court, Tribunal or National Tribunal for adjudication, it shall hold its proceedings expeditiously and shall, within the period specified in the order referring such industrial dispute or the further period extended under the second proviso to sub-section (2-A) of Section 10, submit its award to the appropriate Government.

#### **16. Form of Report or Award:-**

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

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

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

#### **17. Publication of reports and awards:-**

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

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

**17A. Commencement of the award:-**

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

Provided

that-

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

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

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

(3) Where any award as rejected or modified by an order made under sub-section (2) is laid before the Legislature of a State or before Parliament, such award shall become enforceable on the expiry of fifteen days from the date on which it is so laid; and where no order under sub-section (2) is made in pursuance of a declaration under the proviso to sub-section (1), the award shall become enforceable on the expiry of the period of ninety days referred to in sub-section (2).

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

**17B. Payment of full wages to workman pending proceedings in higher Courts.-**

Where in any case, a Labour Court, Tribunal or National Tribunal by its award directs reinstatement of any workman and the employer prefers any proceedings against such award in a High Court or the Supreme Court, the employer shall be liable to pay such workman, during the period of pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period and an affidavit by such workman had been filed to that effect in such Court: Provided that where it is proved to the satisfaction of the High Court or the Supreme Court that such workman had been employed and had been receiving adequate remuneration during any such period or part thereof, the Court shall order that no wages shall be payable under this section for such period or part, as the case may be.

**18. Persons on whom settlements and awards are binding.-**

- (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.
- (2) Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.
- (3) A settlement arrived at in the course of conciliation proceedings under this Act or an arbitration award in a case where a notification has been issued under sub-section (3A) of Section 10A or an award of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on-
- (a) all parties to the industrial dispute;
  - (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, <sup>1</sup>[arbitrator,] Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned



without proper cause;

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

(d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.

### **19. Period of operation of settlements and awards.-**

(1) A settlement shall come into operation on such date as is agreed upon by the parties to the dispute, and if no date is agreed upon, on the date on which the memorandum of the settlement is signed by the parties to the dispute.

(2) Such settlement shall be binding for such period as is agreed upon by the parties, and if no such period is agreed upon, for a period of six months from the date on which the memorandum of settlement is signed by the parties to the dispute], and shall continue to be binding on the parties after the expiry of the period aforesaid, until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement.

(3) An award shall, subject to the provisions of this section, remain in operation for a period of one year<sup>6</sup>[from the date on which the award becomes enforceable under Section 17A

Provided that the appropriate Government may reduce the said period and fix such period as it thinks fit:

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

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

the case may be], on such reference shall be final.

- (5) Nothing contained in sub-section (3) shall apply to any award which by its nature, terms or other circumstances does not impose, after it has been given effect to, any continuing obligation on the parties bound by the award.
- (6) Notwithstanding the expiry of the period of operation under sub-section (3), the award shall continue to be binding on the parties until a period of two months has elapsed from the date on which notice is given by any party bound by the award to the other party or parties intimating its intention to terminate the award.
- (7) No notice given under sub-section (2) or sub-section (6) shall have effect, unless it is given by a party representing the majority of persons bound by the settlement or award, as the case may be.

## **20. Commencement and conclusion of proceedings.-**

- (1) A conciliation proceeding shall be deemed to have commenced on the date on which a notice of strike or lock-out under Section 22 is received by the conciliation officer or on the date of the order referring the dispute to a Board, as the case may be.
- (2) A conciliation proceeding shall be deemed to have concluded-
- (a) where a settlement is arrived at, when a memorandum of the settlement is signed by the parties to the dispute;
  - (b) where no settlement is arrived at, when the report of the conciliation officer is received by the appropriate Government or when the report of the Board is published under Section 17, as the case may be; or
  - (c) when a reference is made to a Court, Labour Court, Tribunal or or National Tribunal] under Section 10 during the pendency of conciliation proceedings.
- (3) Proceedings before an arbitrator under Section 10-A or before a LabourLabour Court, Tribunal or National Tribunal] shall be deemed to have commenced on the date of the reference of the dispute for arbitration or adjudication, as the case may be, and such proceedings shall be deemed to have concluded on the date on which the award becomes enforceable under Section 17-A.

## **21. Certain matters to be kept confidential.-**

There shall not be included in any report or award under this Act any information obtained by a conciliation officer, Board, Court, Labour Court, Tribunal, National Tribunal or an arbitrator], in the course of any investigation or inquiry as to a trade union or as to any individual business (whether carried on by a person, firm or

company) which is not available otherwise than through the evidence given before such officer, Board, Court, Labour Court, Tribunal, National Tribunal or an arbitrator], if the trade union, person, firm or company in question has made a request in writing to the conciliation officer, Board, Court Labour Court, Tribunal, National Tribunal, or arbitrator] as the case may be, that such information shall be treated as confidential; nor shall such conciliation officer or any individual member of the Board, <sup>1</sup>[or Court or the presiding officer of the Labour Court, Tribunal or National Tribunal or the arbitrator] or any person present at or concerned in the proceedings disclose any such information without the consent in writing of the secretary of the trade union or the person, firm or company in question, as the case may be:

Provided that nothing contained in this section shall apply to a disclosure of any such information for the purposes of a prosecution under Section 193 of the Indian Penal Code .

## **STRIKES AND LOCK-OUTS**

### **22. Prohibition of strikes and lock-outs.-**

(1) No person employed in a public utility service shall go on strike in breach of contract-

- (a) without giving to the employer notice of strike, as hereinafter provided, within six weeks before striking; or
- (b) within fourteen days of giving such notice; or
- (c) before the expiry of the date of strike specified in any such notice as aforesaid; or
- (d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

(2) No employer carrying on any public utility service shall lock-out any of his workmen-

- (a) without giving them notice of lock-out as hereinafter provided, within six weeks before locking-out; or
- (b) within fourteen days of giving such notice; or
- (c) before the expiry of the date of lock-out specified in any such notice as aforesaid; or
- (d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

(3) The notice of lock-out or strike under this section shall not be necessary where there is already in existence a strike or, as the case may be, lock-out in the public utility service, but the employer shall send intimation of such lock-out or strike on the day on which it is declared, to such authority as may be specified by the appropriate Government either generally or for a particular area or for a particular class of public utility services.

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

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

(6) If on any day an employer receives from any person employed by him any such notices as are referred to in sub-section (1) or gives to any persons employed by him

any such notices as are referred to in sub-section (2), he shall within five days thereof report to the appropriate Government or to such authority as that Government may prescribe, the number of such notices received or given on that day.

### **23. General prohibition of strikes and lock-outs.-**

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

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

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

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

(c) during any period in which a settlement or award is in operation in respect of any of the matters covered by the settlement or award.

### **24. Illegal strikes and lock-outs.-**

(1) A strike or a lock-out shall be illegal if-

(i) it is commenced or declared in contravention of Section 22 or Section 23; or

(ii) it is continued in contravention of an order made under sub-section (3) of Section 10 or sub-section (4-A) of Section 10-A

(2) Where a strike or lock-out in pursuance of an industrial dispute has already commenced and is in existence at the time of the reference of the dispute to a Board, an arbitrator, a Labour Court, Tribunal or National Tribunal], the continuance of such strike or lock-out shall not be deemed to be illegal, provided that such strike or lock-out was not at its commencement in contravention of the provisions of this Act or the continuance thereof was not prohibited under sub-section (3) of Sec.10 or sub-section 4(A) of Section 10-A

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

### **25. Prohibition of financial aid to illegal strikes and lock-outs.-**

No person shall knowingly expend or apply any money in direct furtherance or

support of any illegal strike or lock-out.

## **LAY-OFF AND RETRENCHMENT**

### **25A. Application of Sections 25-C to 25-E.-**

(1) Sections 25-C to 25-E inclusive shall not apply to industrial establishments to which Chapter V-B applies,] or

(a) to industrial establishments in which less than fifty workmen on an average per working day have been employed in the preceding calendar month; or

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

### **25B. Definition of continuous service.-**

For the purposes of this Chapter,--

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

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

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

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

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

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

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

include the days on which-

- (i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 or under this Act or under any other law applicable to the industrial establishment;
- (ii) he has been on leave with full wages, earned in the previous year;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.

**25C. Right of workmen laid off for compensation.-**

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

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

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

*Explanation.*-”Badli workman” means a workman who is employed in an industrial establishment in the place of another workman whose name is borne on the muster rolls



of the establishment, but shall cease to be regarded as such for the purposes of this section, if he has completed one year of continuous service in the establishment.

**25D. Duty of an employer to maintain muster rolls of workmen.-**

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

**25E. Workmen not entitled to compensation in certain cases.-**

No compensation shall be paid to a workman who has been laid off-

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

**25F. Conditions precedent to retrenchment of workmen.-**

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

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

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of

continuous service] or any part thereof in excess of six months; and

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

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

Where the ownership or management of an undertaking is transferred, whether by agreement or by operation of law, from the employer in relation to that undertaking to a new employer, every workman who has been in continuous service for not less than one year in that undertaking immediately before such transfer shall be entitled to

notice and compensation in accordance with the provisions of Section 25-F, as if the workman had been retrenched:

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

(a) the service of the workman has not been interrupted by such transfer;

(b) the terms and conditions of service applicable to the workman after such transfer are not in any way less favourable to the workman than those applicable to him immediately before the transfer; and

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

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

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

Provided that nothing in this section shall apply to-

(a) an undertaking in which -

(i) less than fifty workmen are employed, or

(ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,

(b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.

(2) Notwithstanding anything contained in sub-section (1), the appropriate

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

**25FFF. Compensation to workmen in case of closing down of undertaking.-**

(1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section

(2), be entitled to notice and compensation in accordance with the provisions of Section 25-F, as if the workman had been retrenched:

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

(i) financial difficulties (including financial losses); or (ii) accumulation of undisposed of stocks; or

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

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

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

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

immediately before the closure;

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

(c) (c) the employer is, under the terms of such alternative employment or otherwise, legally liable to pay to the workman, in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by such alternative employment. (1-B) For the purposes of subsections (1) and (1-A), the expressions “minerals” and “mining operations” shall have the meanings respectively assigned to them in clauses (a) and

(d) (d) of Section 3 of the Mines and Minerals (Regulation and Development) Act, 1957

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

#### **25G. 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.

#### **25H. 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 <sup>2</sup>[to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen] who offer themselves for re-employment shall have preference over other persons.

## **25J. Effect of laws inconsistent with this Chapter.-**

(1) The provisions of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in any other law including standing orders made under the Industrial Employment (Standing Orders) Act, 1946

(2) For the removal of doubts, it is hereby declared that nothing contained in this Chapter shall be deemed to affect the provisions of any other law for the time being in force in any State in so far as that law provides for the settlement of

## **SPECIAL PROVISIONS RELATING TO LAY-OFF, RETRENCHMENT AND CLOSURE IN CERTAIN ESTABLISHMENTS**

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

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

## **25M. Prohibition of lay-off.-**

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

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

(3) Where the workmen (other than badli workmen or casual workmen) of an industrial establishment, being a mine, have been laid-off under sub-section (1) for reasons of fire, flood or excess of inflammable gas or explosion, the employer, in relation to such establishment, shall, within a period of thirty days from the date of

commencement, of such lay-off, apply, in the prescribed manner, to the appropriate Government or the specified authority for permission to continue the lay-off.

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

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

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

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

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

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

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

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

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

**25N. Conditions precedent to retrenchment of workmen.-**

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

(a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of notice; and (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

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

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

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

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

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

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

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

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

**250. Procedure for closing down an undertaking.-**

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



simultaneously on the representatives of the workmen in the prescribed manner:

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

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

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

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

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

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

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

(8) Where an undertaking is permitted to be closed down under sub-section (2) or

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

**25P. Special provisions as to restarting of undertakings closed down before commencement of the Industrial Disputes (Amendment) Act, 1976.-**

If the appropriate Government is of opinion in respect of any undertaking or an industrial establishment to which this Chapter applies and which closed down before the commencement of the Industrial Disputes (Amendment) Act, 1976,-

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

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

of Section 25-N shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to one thousand rupees, or with both.

**25R. Penalty for closure.-**

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

(2) Any employer who contravenes <sup>2</sup>[an order refusing to grant permission to close down an undertaking under sub-section (2) of Section 25-O or a direction given under Section 25-P] shall be punishable with

imprisonment for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both, and where the contravention is a continuing one, with a further fine which may extend to two thousand rupees for every day during which the contravention continues after the conviction.

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

## **UNFAIR LABOUR PRACTICES**

### **25T Prohibition of Unfair Labour Practice.-**

No employer or workman or a trade union, whether registered under the Trade Unions Act, 1926 or not shall commit any unfair labour practice.

### **25U. Penalty for committing unfair labour practices.-**

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

## **PENALTIES**

### **26. Penalty for illegal strikes and lock-outs.-**

(1) Any workman who commences, continues or otherwise acts in furtherance of, a strike which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees, or with both.

(2) Any employer who commences, continues, or otherwise acts in furtherance of a lock-out which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to one thousand rupees, or with both.

### **27. Penalty for instigation etc.-**

Any person who instigates or incites others to take part in, or otherwise acts in furtherance of, a strike or lock-out which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

### **28. Penalty for giving financial aid to illegal strikes and lock-outs.-**

Any person who knowingly expends or applies any money in direct furtherance or support of any illegal strike or lock-out shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

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

**30. Penalty for disclosing confidential information.-**Any person who wilfully discloses any such information as is referred to in Section 21 in contravention of the provisions of that section shall, on complaint made by or on behalf of the trade union or individual business affected, be punishable with imprisonment for a term which may extend to six months, or with fine, which may extend to one thousand rupees, or with both.

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

**31. Penalty for other offences.-**

- (1) Any employer who contravenes the provisions of Section 33 shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.
- (2) Whoever contravenes any of the provisions of this Act or any rule made thereunder shall, if no other penalty is elsewhere provided by or under this Act for such contravention, be punishable with fine which may extend to one hundred rupees.

## MISCELLANEOUS

**32. Offences by companies, etc.-**Where a person committing an offence under this Act is a company or other body corporate, or an association of persons (whether incorporated or not), every director, manager, secretary, agent or other officer or person concerned with the management thereof shall, unless he proves that the offence was committed without his knowledge or consent, be deemed to be guilty of such offence.

**33. Conditions of service, etc. to remain unchanged under certain circumstances during pendency of proceedings.-**

(1) During the pendency of any conciliation proceedings before a conciliation officer or a Board or of any proceeding before an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall,

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

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

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute <sup>3</sup>[or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied between him and the workman]-

(a) alter, in regard to any matter not connected with the dispute, the

conditions of service applicable to that workman immediately before the commencement of such proceeding; or (b) for any misconduct not connected with the dispute, discharge or punish whether by dismissal or otherwise, that workman: Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

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

(a) by altering, to the prejudice of such protected workman, the conditions of service applicable to him immediately before the commencement of such 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 a member of the executive or other office bearer] of a registered trade union connected with the establishment, is recognized as such in accordance with rules made in this behalf.

(4) In every establishment, the number of workmen to be recognized as protected workmen for the purposes of sub-section (3) shall be one per cent of the total number of workmen employed therein subject to a minimum number of five protected workmen and a maximum number of one hundred protected workmen and for this aforesaid purpose, the appropriate Government may make rules providing for the distribution of such protected workmen among various trade unions, if any, connected with the establishment and the manner in which the workmen may be chosen and recognised as protected workmen.

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

**33A. Special provision for adjudication as to whether conditions of service etc. changed during pendency of proceeding.-**Where an employer contravenes the provisions

of Section 33 during the pendency of proceedings before a conciliation officer, Board, an arbitrator, a Labour Court, Tribunal or National Tribunal] any employee aggrieved by such contravention, may make a complaint in writing in the prescribed manner,-

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

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

### **33B. Power to transfer certain proceedings-**

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

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

### **33C. Recovery of money due from an employer.-**

(1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter V-A or Chapter V-B], the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money



is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue:

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

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

- (2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government within a period not exceeding three months:
- (3) For the purposes of computing the money value of a benefit, the Labour Court may, if it so thinks fit, appoint a Commissioner who shall after taking such evidence as may be necessary, submit a report to the Labour Court and the Labour Court shall determine the amount after considering the report of the Commissioner and other circumstances of the case.
- (4) The decision of the Labour Court shall be forwarded by it to the appropriate Government and any amount found due by the Labour Court may be recovered in the manner provided for in sub-section (1).
- (5) Where workmen employed under the same employer are entitled to receive from him any money or any benefit capable of being computed in terms of money, then, subject to such rules as may be made in this behalf, a single application for the recovery of the amount due may be made on behalf of or in respect of any number of such workmen.

#### **34. Cognizance of offences-**

- (1) No Court shall take cognizance of any offence punishable under this Act, or of the abetment of any such offence, save on complaint made by or under the authority of the appropriate Government.
- (2) No Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class] shall try any offence punishable under this Act.

#### **35. Protection of persons.-**

- (1) No person refusing to take part or to continue to take part in any strike or lock-out which is illegal under this Act shall, by reason of such refusal or by reason of any action taken by him under this section, be subject to expulsion from any trade union or society, or to any fine or penalty, or to deprivation of any right or benefit to which he or his legal representatives would otherwise be entitled, or be liable to be placed in any respect, either directly or indirectly, under any disability or at any disadvantage as compared with other members of the union or society anything to the contrary in the rules of a trade union or society notwithstanding.
- (2) Nothing in the rules of a trade union or society requiring the settlement of disputes in any manner shall apply to any proceeding for enforcing any right or exemption secured by this section, and in any such proceeding the Civil Court may, in lieu of ordering a person who has been expelled from membership of a trade union or society to be restored to membership, order that he be paid out of the funds of the trade union or society such sum by way of compensation or damages as that Court thinks just.

### **36. Representation of parties.-**

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

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

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

(c) where the worker is not a member of any trade union, by <sup>5</sup>[any member of the executive or other office bearer] of any trade union connected with, or by any other workman employed in the industry in which the worker is employed and authorized in such manner as may be prescribed.

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

(a) an officer of an association of employers of which he is a member;

(b) an officer of a federation of associations of employers to which the association referred to in Clause (a) is affiliated;

(d) where the employer is not a member of any association of employers, by an officer of any association of employers connected with, or by any other employer engaged in, the industry in which the employer is engaged and authorised in such manner as may be prescribed.

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

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

### **36A. Power to remove difficulties.-**

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

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

### **36B. Power to exempt.-**

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

### **37. Protection of action taken under the Act.-**

No suit, prosecution or other legal proceeding shall lie against any person

for anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.

**38. Power to make rules.-**

(1) The appropriate Government may, subject to the condition of previous publication, make rules for the purpose of giving effect to the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

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

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

(aaa) the appointment of assessors in proceedings under this Act<sup>(ab)</sup> the constitution of Grievance Settlement Authorities referred to in Section 9C, the manner in which industrial disputes may be referred to such authorities for settlement, the procedure to be followed by such authorities in the proceedings in relation to disputes referred to them and the period within which such proceedings shall be completed:

(b) the constitution and functions of and the filling of vacancies in Works Committees, and the procedure to be followed by such Committees in the discharge of their duties;

(c) the allowances admissible to members of Court <sup>4</sup>[and Boards and presiding officers of Labour Courts, Tribunals and National Tribunals] and to assessors and witnesses;

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

(e) the manner in which and the persons by and to whom notice of strike or lock-out may be given and the manner in which such notices shall be communicated

(f) the conditions subject to which parties may be represented by legal practitioners in proceedings under this Act before a Court,  
Labour Court, Tribunal or National Tribunal

(g) any other manner which is to be or may be prescribed.

(3) Rules made under this section may provide that a contravention thereof shall be punishable with fine not exceeding fifty rupees.

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

(5) Every rule made by the Central Government under this section shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in <sup>9</sup>[two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid both Houses agree in making any modifications in the rule, or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]

### **39. Delegation of powers.-**

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

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

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

#### **40. Power to amend Schedules.-**

- (1) The appropriate Government may, if it is of opinion that it is expedient or necessary in the public interest so to do, by notification in the Official Gazette, add to the First Schedule any industry, and on any such notification being issued, the First Schedule shall be deemed to be amended accordingly.
  - (2) The Central Government may, by notification in the Official Gazette, add to or alter or amend the Second Schedule or the Third Schedule and on any such notification being issued, the Second Schedule or the Third Schedule, as the case may be, shall be deemed to be amended accordingly.
  - (3) Every such notification shall, as soon as possible after it is issued, be laid before the Legislature of the State, if the notification has been issued by a State Government, or before Parliament, if the notification has been issued by the Central Government.
- (2) Where there are numerous persons as parties to any proceedings before a Board, Court, Labour Court, Tribunal or National Tribunal or an Arbitrator and such persons are not members of any trade union or association, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator, as the case may be, shall, where 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.
- (3) A notice served in the manner specified in sub-rule (2) shall also be considered as sufficient in the case of such workmen as cannot be ascertained and found.

## THE INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1946

### **Introduction:**

To avoid frictions among employer and workmen employed in an industry is the principle aim of Indian Legislation in India .it was considered that the society had a vital interest in the settlement of terms of employment of industrial labor and also settlement of labor problem. Therefore the steps were taken by the central govt to enact industrial employment (standing orders)act 1946 with a view to afford protection to the workmen with regard to condition of employment.

It applies to every industrial establishment wherein one hundred or more workmen are employed, or were employed on any day of the preceding twelve months: Provided that the appropriate Government may, after giving not less than two months' notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to any industrial establishment employing such number of persons less than one hundred as may be specified in the notification.

### **Objectives:**

- 1.To require employers to define the conditions of work.
- 2.To bring about uniformity in terms and conditions of employment.
- 3.To minimize industry conflict
- 4.To foster harmonious relations between employer and employees
- 5.To provide statutory sanctity and importance to standing orders

### **2. Definitions.—**

(a) "appellate authority" means –

an authority appointed by the appropriate Government by notification in the Official Gazette to exercise in such area as may be specified in the notification the functions of an appellate authority under this Act:

Provided that in relation to an appeal pending before an Industrial Court or other authority immediately before the commencement of the Industrial Employment (Standing Orders) Amendment Act, 1963 (39 of 1963), that court or authority shall be deemed to be the appellate authority;

(b) “**appropriate Government**” means –

in respect of industrial establishments under the control of the Central Government or a Railway administration or in a major port, mine or oil-field, the Central Government, and in all other cases, the State Government:

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

(c) “**Certifying Officer**” means-

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

(d) “**employer**” means-

the owner of an industrial establishment to which this Act for the time being applies, and includes

(i) in a factory, any person named as manager of the factory;

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

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

(g) “standing orders” means rules relating to matters set out in the Schedule;

### **3. Submission of draft standing orders.—**

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

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

(3) The draft standing orders submitted under this section shall be accompanied by a statement



giving prescribed particulars of the workmen employed in the industrial establishment including the name of the trade union, if any, to which they belong.

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

**4. Conditions for certification of standing orders.—**

Standing orders shall be certifiable under this Act if—

(a) provision is made therein for every matter set out in the Schedule which is applicable to the industrial establishment, and

(b) the standing orders are otherwise in conformity with the provisions of this Act;

and it shall be the function] of the Certifying Officer or appellate authority to adjudicate upon the fairness or reasonableness of the provisions of any standing orders.

**5. Certification of standing orders.—**

(1) On receipt of the draft under section 3, the Certifying Officer shall forward a copy thereof to the trade union, if any, of the workmen, or where there is no such trade union, to the workmen in such manner as may be prescribed, together with a notice in the prescribed form requiring objections, if any, which the workmen may desire to make to the draft standing orders to be submitted to him within fifteen days from the receipt of the notice.

(2) After giving the employer and the trade union or such other representatives of the workmen as may be prescribed an opportunity of being heard, the Certifying Officer shall decide whether or not any modification of or addition to the draft submitted by the employer is necessary to render the draft standing orders certifiable under this Act, and shall make an order in writing accordingly.

(3) The Certifying Officer shall thereupon certify the draft standing orders, after making any modifications therein which his order under sub-section (2) may require, and shall within seven days thereafter send copies of the certified standing orders authenticated in the prescribed manner and of his order under sub-section (2) to the employer and to the trade union or other prescribed representatives of the workmen.

**6. Appeals.—**

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

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

**7. Date of operation of standing orders.—**

Standing orders shall, unless an appeal is preferred under section 6, come into operation on the expiry of thirty days from the date on which authenticated copies thereof are sent under sub-section (3) of section 5, or where an appeal as aforesaid is preferred, on the expiry of seven days from the date on which copies of the order of the appellate authority are sent under sub-section (2) of section 6.

**8. Register of standing orders.—**

A copy of all standing orders as finally certified under this Act shall be filed by the Certifying Officer in a register in the prescribed form maintained for the purpose, and the Certifying Officer shall furnish a copy thereof to any person applying therefore on payment of the prescribed fee.

**9. Posting of standing orders.—**

The text of the standing orders as finally certified under this Act shall be prominently posted by the employer in English and in the language understood by the majority of his workmen on special boards to be maintained for the purpose at or near the entrance through which the majority of the workmen enter the industrial establishment and in all departments thereof where the workmen are employed.

**10. Duration and modification of standing orders.—**

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

(2) Subject to the provisions of sub-section (1), an employer or workman or a trade union or other representative body of the workmen] may apply to the Certifying Officer to have the standing orders modified, and such application shall be accompanied by five copies of the modifications proposed to be made, and where such modifications are proposed to be made by agreement between the employer and the workmen or a trade union or other representative body of the workmen, a certified copy of that agreement shall be filed along with the application.

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

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

**10A. Payment of subsistence allowance.—**

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

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

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

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

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

**11. Certifying Officers and appellate authorities to have powers of civil court.—**

(1) Every Certifying Officer and appellate authority shall have all the powers of a Civil Court for the purposes of receiving evidence, administering oaths, enforcing the attendance of witnesses, and compelling the discovery and production of documents, and shall be deemed to be a civil court within the meaning of <sup>2</sup>sections 345 and 346 of the Code of Criminal Procedure, 1973

(2) Clerical or arithmetical mistakes in any order passed by a Certifying Officer or appellate authority, or errors arising therein from any accidental slip or omission may, at any time, be corrected by that Officer or authority or the successor in office of such Officer or authority, as the case may be.

**12. Oral evidence in contradiction of standing orders not admissible.—**

No oral evidence having the effect of adding to or otherwise varying or contradicting standing orders as finally certified under this Act shall be admitted in any Court.

**12A. Temporary application of model standing orders.—**

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

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

**13. Penalties and procedure.—**

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

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

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

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

**13A. Interpretation, etc., of standing orders.—**

If any question arises as to the application or interpretation of a standing order certified under this Act, any employer or workman or a trade union or other representative body of the workmen] may refer the question to any one of the Labour Courts constituted under the Industrial Disputes Act, 1947, and specified for the disposal of such proceeding by the appropriate Government by notification in the Official Gazette, and the Labour Court to which the question is so referred shall, after giving the parties an opportunity of being heard, decide the question and such decision shall be final and binding on the parties.

**13B. Act not to apply to certain industrial establishments.—**

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

**14. Power to exempt.—**

The appropriate Government may by notification in the Official Gazette exempt, conditionally or unconditionally, any industrial establishment or class of industrial establishments from all or any of the provisions of this Act.

**14A. Delegation of powers.—**

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

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

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

**15. Power to make rules.—**

(1) The appropriate Government may, after previous publication, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

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

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

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

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

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

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

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

# THE MAHARASHTRA RECOGNITION OF TRADE UNIONS AND PREVENTION OF UNFAIR LABOUR PRACTICES ACT, 1971.

## Introduction

An Act to provide for the recognition of trade unions for facilitating collective bargaining for certain undertakings, to state their rights, and obligations; to confer certain powers on Unrecognised unions; to provide for declaring certain strikes and lock-outs as illegal strikes and lock-outs; to define and provide for the prevention of certain unfair labour practices; to constitute courts (as independent machinery) for carrying out the purposes of according recognition to trade unions and for enforcing the provisions relating to unfair practices; and to provide for matters connected with the purposes aforesaid.

On 14th February 1968, the Government of Maharashtra appointed a Committee called "the Committee on Unfair Labour Practices" for defining certain activities of employers and workers and their organisations which should be treated as unfair labour practices and for suggesting action which should be taken against employers or workers, or their organisations, for engaging in such unfair labour practices.

After taking into consideration the report of the Committee Government is of opinion that it is expedient to provide for the recognition of trade unions for facilitating collective bargaining for certain undertakings; to state their rights and obligations; to confer certain powers on Unrecognised unions; to provide for declaring certain strikes and lock-outs as illegal strikes and lock-outs; to define and provide for the prevention of certain unfair labour practices; to constitute courts (as independent machinery) for carrying out the purposes of according recognition to trade unions and for enforcing provisions relating to unfair practices; and to provide for matters connected with the purposes aforesaid; It is hereby enacted in the Twenty-second Year of the Republic of India as follows :-

This Act may be called the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. This Act extends to the whole of the State of Maharashtra.

**1. DEFINITIONS.** - In this Act, unless the context requires otherwise, -

- (1) "**Bombay Act**" means the Bombay Industrial Relations Act, 1946, Bom. XI of 1947;
- (2) "**Central Act**" means the Industrial Disputes Act, 1947, XIV of 1947;
- (3) "**concern**" means any premises including the precincts thereof where any industry to which the Central Act applies is carried on;
- (4) "**Court**" for the purposes of Chapters VI and VII means the Industrial Court, or as the case may be, the Labour Court;
- (5) "**employee**" in relation to an industry to which the Bombay Act for the time being applies, means an employee as defined in clause (13) of section 3 of the Bombay Act; and in any other case, means a workman as defined in clause (s) of section 2 of the Central Act;
- (6) "**employer**" in relation to an industry to which the Bombay Act applies, means an employer as defined in clause (14) of section 3 of the Bombay Act; and in any other case, means an employer as defined in clause (s) of section 2 of the Central Act;

(7) "**Industry**" in relation to an industry to which the Bombay Act applies means an industry as defined in clause (19) of section 3 of the Bombay Act, and in any other case, means an industry as defined in clause (j) of section 2 of the Central Act;

(8) "**Industrial Court**" means an Industrial Court constituted under section 4;

(9) "**Investigating Officer**" means an officer appointed under section 8;

(10) "**Labour Court**" means a Labour Court constituted under section 6;

(11) "**member**" means a person who is an ordinary member of a union, and has paid a subscription to the union of not less than 50 paise per calendar month :

Provided that, no person shall at any time be deemed to be a member, if his subscription is in arrears for a period of more than three calendar months during the period of a six months immediately preceding such time, and the expression "**membership**" shall be construed, accordingly.

**Explanation :** A subscription for a calendar month shall, for the purpose of this clause, be deemed to be in arrears, if such subscription is not paid within three months after the end of the calendar months in respect of which it is due;

(12) "**order**" means an order of the Industrial or Labour Court;

(13) "**recognised union**" means a union which has been issued a certificate of recognition under Chapter III;

(14) "**Schedule**" means a Schedule to this Act;

(15) "**undertaking**" for the purposes of Chapter III, means any concern in industry to be one undertaking for the purpose of that Chapter :

Provided that, the State Government may notify a group of concerns owned by the same employer in any industry to be undertaking for the purpose of that Chapter;

(16) "**unfair labour practices**" means unfair labour practice as defined in section 26;

(17) "**union**" means a trade union of employees, which is registered under the Trade Unions Act, 1926;

(18) words and expressions used in this Act and not defined therein, but defined in the Bombay Act, shall, in relation to an industry to which the provisions of the Bombay Act apply, have the meanings assigned to them by the Bombay Act; and in other case, shall have the meanings assigned to them by the Central Act.

## **2 INDUSTRIAL COURT. –**

(1) The State Government shall by notification in the Official Gazette, constitute an Industrial Court.

(2) The Industrial Court, shall consist of not less than three members, one of whom shall be the President.



(3) Every member of the Industrial Court shall be a person who is not connected with the complaint referred to that Court, or with any industry directly affected by such complaint:

Provided that, every member shall be deemed to be connected with a complaint or with an industry by reason of his having shares in a company which is connected with, or likely to be affected by, such complaint, unless he discloses to the State Government the nature and extent of the shares held by him in such company and in the opinion of the State Government recorded in writing, such member is not connected with the complaint, or the industry.

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

Provided that, one member may be a person who is not so eligible, if he possesses in the opinion of the State Government expert knowledge of labour or industrial matters.

### **3. DUTIES OF INDUSTRIAL COURT. –**

It shall be the duty of the Industrial Court –

- (a) to decide an application by a union for grant of recognition to it;
- (b) to decide an application by a union for grant of recognition to it in place of a union which has already been recognised under this Act;
- (c) to decided an application from another union or an employer for withdrawal or cancellation of the recognition of a union;
- (d) to decide complaints relating to unfair labour practices except unfair labour practices falling in item 1 of Schedule IV;
- (e) to assign work, and to give directions, to the Investigating Officers in matters of verification of membership of unions, and investigation of complaints relating to unfair labour practices;
- (f) to decide references made to it on any point of law either by any civil or criminal court; and
- (g) to decide appeals under section 42.

### **4. LABOUR COURT. –**

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

Provided that, no person shall be so appointed, unless he possesses qualifications (other than the qualification of age), prescribed under Article 234 of the Constitution for being eligible to enter the judicial service of the State of Maharashtra; and is not more than sixty years of age.

## **5. DUTIES OF LABOUR COURT. –**

It shall be the duty of the Labour Court to decide complaints relating to unfair labour practices described in item 1 of Schedule IV and to try offences punishable under this Act.

**6. INVESTIGATING OFFICERS.** - The State Government may, by notification in the Official Gazette, appoint such number of Investigating Officers for any area as it may consider necessary, to assist the Industrial Court and Labour Courts in the discharge of their duties.

## **7. DUTIES OF INVESTIGATING OFFICERS. –**

(1) The Investigating Officer shall be under the control of the Industrial Court, and shall exercise powers and perform duties imposed on him by the Industrial Court.

(2) It shall be the duty of an Investigating Officer to assist the Industrial Court in matters of verification of membership of unions, and assist the Industrial and Labour Courts for investigating into complaints relating to unfair labour practices.

(3) It shall also be the duty of an Investigating Officer to report to the Industrial Court, or as the case may be, the Labour Court the existence of any unfair labour practices in any industry or undertaking, and the name and address of the persons said to be engaged in unfair labour practices and any other information which the Investigating Officer may deem fit to report to the Industrial Court, or as the case may be, the Labour Court.

## **8. APPLICATION FOR RECOGNITION OF UNION. –**

(1) Any union (hereinafter referred to as the "applicant-union") which has for the whole of the period of six calendar months immediately preceding the calendar month in which it so applies under this section a membership of not less than thirty per cent. of the number of employees employed in any undertaking may apply in the prescribed form to the Industrial Court for being registered as a recognised union for such undertaking.

(2) Every such application shall be disposed of by the Industrial Court as far as possible within three months from the date of receipt of the application, where a group of concerns in any industry which is notified to be one undertaking for which recognition is applied for is situated in the same local area; and in any other case, within four months.

**Explanation :** 'Local area' for the purposes of this sub-section means the area which the State Government may, by notification in the Official Gazette, specify in the notification.

## **9. RECOGNITION OF UNION. –**

(1) On receipt of an application from a union for recognition under section 11 and on payment of the prescribed fees, not exceeding rupees five the Industrial Court shall, if it finds the application on a preliminary scrutiny to be in order, cause notice to be displayed on the notice board of the undertaking, declaring its intention to consider the said application on the date specified in the notice, and calling upon the other union or unions, if any, having membership of employees in that undertaking and the employers and employees affected by the proposal to show cause, within a prescribed time, as to why recognition should not be granted to the applicant-union.

(2) If, after considering the objections, if any, that may be received under sub-section

(1) from any other union (hereinafter referred to as "other union") or employers or

employees, if any, and if after holding such enquiry in the matter as it deems fit, the Industrial Court comes to the conclusion that the conditions requisite for registration specified in section 11 are satisfied, and the applicant-union also complies with the conditions specified in section 19 of this Act, the Industrial Court shall, subject to the provisions of this section, grant recognition to the applicant-union under this Act, and issue a certificate of such recognition in such form as may be prescribed.

(3) If the Industrial Court comes to the conclusion, that any of the other unions has the largest membership of employees employed in the undertaking, and the said other union has notified to the Industrial Court its claim to be registered as a recognised union for such undertaking, and if it satisfies the conditions requisite for recognition specified in section 11, and also complies with the conditions specified in section 19 of this Act, the Industrial Court shall, subject to the provisions of this section, grant such recognition to the other union, and issue a certificate of such recognition in such form as may be prescribed.

**Explanation :** For the purpose of this sub-section, the other union shall be deemed to have applied for recognition in the same calendar month as the applicant-union.

(4) There shall not, at any time, be more than one recognised union in respect of the same undertaking.

(5) The Industrial Court shall not recognise any union, if it is satisfied that the application for its recognition is not made bona fide in the interest of the employees, but is made in the interest of the employer, to the prejudice of the interest of the employees.

(6) The Industrial Court shall not recognise any union, if, at any time, within six months immediately preceding the date of the application for recognition, the union has instigated, aided or assisted the commencement or continuation of a strike which is deemed to be illegal under this Act.

## **10. CANCELLATION OF RECOGNITION AND SUSPENSION OF RIGHTS. –**

(1) The Industrial Court shall cancel the recognition of a union if after giving notice to such union to show cause why its recognition should not be cancelled, and after holding an inquiry, it is satisfied, -

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

(ii) that the membership of the union has, for a continuous period of six calendar months, fallen below the minimum required under section 11 for its recognition :

Provided that, where a strike (not being an illegal strike under the Central Act) has extended to a period exceeding fourteen days in any calendar month, such month shall be excluded in computing the said period of six months :

Provided further that, the recognition of a union shall not be cancelled under the provisions of this sub-clause, unless its membership for the calendar month in which show cause notice under this section was issued was less than such minimum; or

(iii) that the recognised union has, after its recognition, failed to observe any of the conditions specified in section 19; or

(iv) that the recognised union is not being conducted bona fide in the interest of

employees, but in the interests of employer to the prejudice of the interest of employees; or

(v) that it has instigated, aided or assisted the commencement or continuation of a strike which is deemed to be illegal under this Act; or

(vi) that its registration under the Trade Unions Act, 1926, XVI of 1926 is cancelled;

or

(vii) that another union has been recognised in place of a union recognised under this Chapter.

(2) The Industrial Court may cancel the recognition of a union if, after giving notice to such union to show cause why its recognition should not be cancelled, and after holding an inquiry, it is satisfied, that it has committed any practice which is, or has been declared as, an unfair labour practice under this Act :

Provided that, if having regard to the circumstances in which such practice has been committed, the Industrial Court is of opinion, that instead of cancellation of the recognition of the union, it may suspend all or any of its rights under sub-section (1) of section 20 or under section 23, the Industrial Court may pass an order accordingly, and specify the period for which such suspension may remain in force.

#### **11. RECOGNITION OF OTHER UNION. –**

(1) If any union makes an application to the Industrial Court for being registered as a recognised union in place of a recognised union already registered as such (hereinafter in this section referred to as the "recognised union") for an undertaking, on the ground that it has the largest membership of employees employed in such undertaking, the Industrial Court shall, if a period of two years has elapsed since the date of registration of the recognised union, call upon the recognised union by a notice in writing to show cause, within thirty days of the receipt of such notice, as to why the union now applying should not be recognised in its place.

An application made under this sub-section shall be accompanied by such fee not exceeding rupees five as may be prescribed :

Provided that, the Industrial Court may not entertain any application for registration of a union, unless a period of one year has elapsed since the date of disposal of the previous application of that union.

(2) If, on the expiry of the period of notice under sub-section (1), the Industrial Court finds, on preliminary scrutiny, that the application made is in order, it shall cause notice to be displayed on the notice board of the undertaking, declaring its intention to consider the said application on the date specified in the notice, and calling upon other union or unions, if any, having membership of employees in that undertaking, employer and employees affected by the proposal to show cause within a prescribed time as to why recognition should not be granted.

(3) If, after considering the objections, if any, that may be received under sub-section (2) and if, after holding such enquiry as it deems fit (which may include recording of evidence of witnesses and hearing of parties), the Industrial Court comes to the conclusion that the union applying complies with the conditions necessary for recognition specified in section 11 and that its membership was, during the whole of the period of six calendar

(4) months immediately preceding the calendar months, in which it made the application under this section, larger than the membership of the recognised union, then the Industrial Court shall, subject to the provisions of section 12 and this section, recognise the union applying in place of the recognised union, and issue a certificate of recognition in such form as may be prescribed.

(4) If the Industrial Court comes to the conclusion that any of the other unions has the largest membership of employees in the undertaking, and such other union has notified to the Industrial Court its claim to be registered as a recognised union for such undertaking, and if, such other union satisfies the conditions requisite for recognition under section 11 and complies with the conditions specified in section 19 of this Act, the Industrial Court shall grant such recognition to such other union, and issue a certificate of such recognition in such form as may be prescribed. **Explanation:** For the purpose of this sub-section, the other union shall be deemed to have applied for recognition in the same calendar month as the applicant-union.

(5) Every application under this section shall be disposed of by the Industrial Court as far as possible, within three months, from the date of receipt of the application, where a group of concerns in any industry which is notified to be one undertaking for which recognition is applied for is situated in the same local area; and in any other case, within four months.

**Explanation :** "local area" for the purposes of this sub-section means the area which the State Government may, by notification in the Official Gazette, specify in such notification.

## **12 APPLICATION FOR RE-RECOGNITION. –**

(1) Any union the recognition of which has been cancelled on the ground that it was recognised under a mistake or on the ground specified in clause (ii) section 13, may, at any time after three months from the date of such cancellation and on payment of such fees as may be prescribed apply again to the Industrial Court for recognition; and thereupon the provisions of sections 11 and 12 shall apply in respect of such application as they apply in relation to an application under section 11.

(2) A union, the recognition of which has been cancelled on any other ground, shall not, save with the permission of the industrial Court, be entitled to apply for re- recognition within a period of one year from the date of such cancellation.

**13. LIABILITY OF UNION OR MEMBERS NOT RELIEVED BY CANCELLATION.** - Notwithstanding anything contained in any law for the time being in force, the cancellation of the recognition of a union shall not relieve the union or any member thereof from any penalty or liability incurred under this Act prior to such cancellation.

## **14. PUBLICATION OF ORDER. –**

Every order passed under sections 12, 13, 14 or 15 shall be final, and shall be caused to be published by the Industrial Court in the prescribed manner.

**15. RECOGNITION OF UNION FOR MORE THAN ONE UNDERTAKING. -**  
Subject to the foregoing provisions of this Chapter, a union may be recognised for more than one undertaking.

**16. OBLIGATIONS OF RECOGNISED UNION. -**

The rules of a union seeking recognition under this Act shall provide for the following matters, and the provisions thereof shall be duly observed by the union, namely :-

- (i) the membership subscription shall be not less than fifty paise per month;
- (ii) the Executive Committee shall meet at intervals of not more than three months;
- (iii) all resolutions passed, whether by the Executive Committee or the general body of the union, shall be recorded in a minute book kept for the purpose;
- (iv) an auditor appointed by the State Government may audit its account at least once in each financial year.

**17. RIGHTS OF RECOGNISED UNION. -**

(1) Such officers, members of the office staff and members of a recognised union as may be authorised by or under rules made in this behalf by the State Government shall, in such manner and subject to such conditions as may be prescribed, have a right, -

- (a) to collect sums payable by members to the union on the premises, where wages are paid to them;
- (b) to put up or cause to be put up a notice-board on the premises of the undertaking in which its members are employed and affix or cause to be affixed notice thereon;
- (c) for the purpose of the prevention or settlement of an industrial dispute, -
  - (i) to hold discussions on the premises of the undertaking with the employees concerned, who are the members of the union but so as not to interfere with the due working of the undertaking;
  - (ii) to meet and discuss, with an employer or any person appointed by him in that behalf, the grievances of employees employed in his undertaking;
  - (iii) to inspect, if necessary, in an undertaking any place where any employee of the undertaking is employed;
- (d) to appear on behalf of any employee or employees in any domestic or departmental inquiry held by the employer.

(2) Where there is a recognised union for any undertaking, -

- (a) that union alone shall have the right to appoint its nominees to represent workmen on the Works Committee constituted under section 3 of the Central Act;
- (b) no employee shall be allowed to appear or act or be allowed to be represented in any proceedings under the Central Act (not being a proceeding in which the legality or propriety of an order of dismissal, discharge, removal, retrenchment, termination of

service, or suspension of an employee is under consideration), except through the recognised union; and the decision arrived at, or order made, in such proceeding shall be binding on all the employees in such undertaking; and accordingly, the provisions of the Central Act, that is to say, the Industrial Disputes Act, 1947, XIV of 1947, shall stand amended in the manner and to the extent specified in Schedule I.

### **18. RIGHT TO APPEAR OR ACT IN PROCEEDINGS RELATING OF CERTAIN UNFAIR LABOUR PRACTICES. –**

(1) No employee in an undertaking to which the provisions of the Central Act for the time being apply, shall be allowed to appear or act or allowed to be represented in any proceedings relating to unfair labour practices specified in items 2 and 6 of Schedule IV of this Act except through the recognised union :

Provided that, where there is no recognised union to appear, the employee may himself appear or act in any proceeding relating to any such unfair labour practices.

(2) Notwithstanding anything contained in the Bombay Act, no employee in any industry to which the provisions of the Bombay Act for the time being apply, shall be allowed to appear or act or allowed to be represented in any proceeding relating to unfair labour practices specified in items 2 and 6 of Schedule IV of this Act except through the representative of employees entitled to appear under section 30 of the Bombay Act.

### **19. RIGHTS OR UNRECOGNISED UNIONS. –**

Such officers, members of the office staff and members of any union (other than a recognised union) as may be authorised by or under the rules made in this behalf by the State Government shall, in such manner and subject to such conditions as may be prescribed, have a right –

(i) to meet and discuss with an employer or any person appointed by him in that behalf, the grievances of any individual member relating to his discharge, removal, retrenchment, termination of service and suspension;

(ii) to appear on behalf of any of its members employed in the undertaking in any domestic or departmental inquiry held by the employer.

### **20. EMPLOYEES AUTHORISED BY RECOGNISED UNION TO APPEAR OR IN CERTAIN PROCEEDINGS TO BE CONSIDERED AS ON DUTY. –**

Not more than two members of a recognised union duly authorised by it in writing who appear or act on its behalf in any proceeding under the Central Act or the Bombay Act or under this Act shall be deemed to be on duty on the days on which such proceedings actually take place, and accordingly, such member or members shall, on production of a certificate from the authority or the court before which he or they appeared or acted to the effect that he or they so appeared or acted on the days specified in the certificate, be entitled to be paid by his or their employer his or their salary and allowances which would have been payable for those days as if he or they had attended duty on those days.

**Explanation :** For the purpose of this section "recognised union" includes a representative union under the Bombay Act.

## **21. ILLEGAL STRIKE AND LOCK-OUT. –**

(1) "illegal strike" means a strike which is commenced or continued –

- (a) without giving to the employer notice of strike in the prescribed form, or within fourteen days of the giving of such notice;
- (b) where there is a recognised union, without obtaining the vote of the majority of the members of the union, in favour of the strike before the notice of the strike is given;
- (c) during the pendency of conciliation proceeding under the Bombay Act or the Central Act and seven days after the conclusion of such proceeding in respect of matters covered by the notice of strike;
- (d) where submission in respect of any of the matters covered by the notice of strike is registered under section 66 of the Bombay Act, before such submission, is lawfully revoked;
- (e) where an industrial dispute in respect of any of the matters covered by the notice of strike has been referred to the arbitration of a Labour Court or the Industrial Court voluntarily under sub-section (6) of section 58 or section 71 of the Bombay Act, during the arbitration proceedings or before the date on which the arbitration proceedings are completed or the date on which the award of the arbitrator comes into operation, whichever is later;
- (f) during the pendency of arbitration proceedings before an arbitrator under the Central Act and before the date on which the arbitration proceedings are concluded, if such proceedings are in respect of any of the matters covered by the notice of strike;
- (g) in cases where an industrial dispute has been referred to the arbitration of a Labour Court or the Industrial Court under sections 72, 73 or 73-A of the Bombay Act, during such arbitration proceedings or before the date on which the proceeding is completed or the date on which the award of the Court comes into operation, whichever is later, if such proceedings are in respect of any of the matters covered by the notice of strike;
- (h) in cases where an industrial dispute has been referred to the adjudication of the Industrial Tribunal or Labour Court under the Central Act, during the pendency of such proceeding before such authority and before the conclusion of such proceeding, if such proceeding is in respect of any of the matters covered by notice of strike :

Provided that, nothing in clauses (g) and (h) shall apply to any strike, where the union has offered in writing to submit the industrial dispute to arbitration under sub-section (6) of section 58 of the Bombay Act or section 10-A of the Central Act, and

- (i) the employer does not accept the offer; or
- (ii) the employer accepts the offer but disagreeing on the choice of the arbitrator, does not agree to submit the dispute to arbitration without naming an arbitrator as provided in the Bombay Act, and thereafter, the dispute has been referred for arbitration of the Industrial Court under section 73-A of the Bombay Act, or where the Central Act applies, while disagreeing on the choice of the arbitrator, the employer does not agree to submit the dispute to arbitration of the arbitrator recommended by the State Government in this behalf, and thereafter, the dispute has been referred for adjudication of the Industrial Tribunal or the Labour Court, as the case may be, under the Central Act; or

- (i) during any period in which any settlement or award is in operation, in respect of any of the matters covered by the settlement or award;

(2) "illegal lock-out" means a lock-out which is commenced or continued –



(a) without giving to the employees, a notice of lock-out in the prescribed form or within fourteen days of the giving of such notice;

(b) during the pendency of conciliation proceeding under the Bombay Act or the Central Act and seven days after the conclusion of such proceeding in respect of any of the matters covered by the notice of lock-out;

(c) during the period when a submission in respect of any of the matters covered by the notice of lock-out is registered under section 66 of the Bombay Act, before such submission is lawfully revoked;

(d) where an industrial dispute in respect of matter covered by the notice of lock-out has been referred to the arbitration of a Labour Court or the Industrial Court voluntarily under sub-section (6) of section 58 or section 71 of the Bombay Act, during the arbitration proceeding or before the date on which the arbitration proceeding is completed or the date on which the award of the arbitrator comes into operation, whichever is later;

(e) during the pendency of arbitration proceedings before an arbitrator under the Central Act and before the date on which the arbitration proceedings are concluded, if such proceedings are in respect of any of the matters covered by the notice of lock-out;

(f) in cases where an industrial dispute has been referred to the arbitration of a Labour Court or the Industrial Court compulsorily under sections 72, 73 or 73-A of the Bombay Act, during such arbitration proceeding or before the date on which the proceeding is completed, or the date on which the award of the Court comes into operation, whichever is later, if such proceedings are in respect of any of the matters covered by the notice of lock-out; or

(g) in cases where an industrial dispute has been referred to the adjudication of the Industrial Tribunal or Labour Court under the Central Act, during the pendency of such proceeding before such authority and before the conclusion of such proceeding, if such proceeding is in respect of any of the matters covered by the notice of lock-out :

Provided that, nothing in clauses (f) and (g) shall apply to any lock-out where the employer has offered in writing to submit the industrial dispute to arbitration under sub-section (6) of section 58 of the Bombay Act, or section 10-A of the Central Act; and

(i) the union does not accept the offer;

(ii) the union accepts the offer, but disagreeing on the choice of the arbitrator, does not agree to submit the dispute to arbitration without naming an arbitrator as provided in the Bombay Act, and thereafter, the dispute has been referred for arbitration of the Industrial Court under section 73-A of the Bombay Act; or where the Central Act applies, while disagreeing on the choice of the arbitrator the union does not agree to submit the dispute to arbitration of the arbitrator recommended by the State Government in this behalf and thereafter, the dispute has been referred for adjudication of the Industrial Tribunal or the Labour Court, as the case may be, under the Central Act;

(h) during any period in which any settlement or award is in operation, in respect of any of the matters covered by the settlement or award.

## **22 REFERENCE OF LABOUR COURT FOR DECLARATION WHETHER STRIKE OR LOCK-OUT IS ILLEGAL. –**

(1) Where the employees in any undertaking have proposed to go on strike or have

commenced a strike, the State Government or the employer of the undertaking may make a reference to the Labour Court for a declaration that such strike is illegal.

(2) Where the employer of any undertaking has proposed a lock-out or has commenced a lock-out, the State Government or the recognised union or, where there is or recognised union, any other union of the employees in the undertaking may make a reference to the Labour Court for a declaration whether such lock-out will be illegal.

**Explanation :** For the purposes of this section, recognised union includes a representative union under the Bombay Act.

(3) No declaration shall be made under this section, save in the open Court.

(4) The declaration made under this section, shall be recognised as binding, and shall be followed in all proceedings under this Act.

(5) Where any strike or lock-out declared to be illegal under this section is withdrawn within forty-eight hours of such declaration, such strike or lock-out shall not, for the purposes of this Act, be deemed to be illegal under this Act.

**23.UNFAIR LABOUR PRACTICES.** - In this Act, unless the context requires otherwise, 'unfair labour practices' mean any of the practices listed in Schedule II, III and IV.

**24.PROHIBITION ON ENGAGING IN UNFAIR LABOUR PRACTICES.** - No employer or union and no employees shall engage in any unfair labour practice.

**25.PROCEDURE FOR DEALING WITH COMPLAINTS RELATING TO UNFAIR LABOUR PRACTICES.** –

(1) Where any person has engaged in or is engaging in any unfair labour practice, then any union or any employee or any employer or any Investigating Officer may, within ninety days of the occurrence of such unfair labour practice, file a complaint before the Court competent to deal with such complaint either under section 5, or as the as the case may be, under section 7, of this Act :

Provided that, the Court may entertain a complaint after the period of ninety days from the date of the alleged occurrence, if good and sufficient reasons are shown by the complainant for the late filing of the complaint.

(2) The Court shall take a decision on every such complaint as far as possible within a period of six months from the date of receipt of the complaint.

(3) On receipt of a complaint under sub-section (1), the Court may, if it so considers necessary, first cause an investigation into the said complaint to be made by the Investigating Officer, and direct that a report in the matter may be submitted by him to the Court, within the period specified in the direction.

(4) While investigating into any such complaint, the Investigating Officer may visit the undertaking, where the practice alleged is said to have occurred, and make such enquiries as he considers necessary. He may also make efforts to promote settlement of the complaint.

(5) The Investigating Officer shall, after investigating into the complaint under sub-section (4) submit his report to the Court, within the time specified by it, setting out the full facts and circumstances of the case, and the efforts made by him in settling the complaint. The Court shall, on demand and on payment of such fee as may be prescribed by rules, supply a copy of the report to the complainant and the person complained against.

(6) If, on receipt of the report of the Investigating Officer, the Court finds that the complaint has not been settled satisfactorily, and that facts and circumstances of the case require, that the matter should be further considered by it, the Court shall proceed to consider it, and give its decision.

(7) The decision of the Court, which shall be in writing, shall be in the form of an order. The order of the Court shall be final and shall not be called in question in any civil or criminal court.

(8) The Court shall cause its order to be published in such manner as may be prescribed. The order of the Court shall become enforceable from the date specified in the order.

(9) The Court shall forward a copy of its order to the State Government and such officers of the State Government as may be prescribed.

## **26. PARTIES ON WHOM ORDER OF COURT SHALL BE BINDING. –**

An order of the Court shall be binding on –

(a) all parties to the complaint;

(b) all parties who were summoned to appear as parties to the complaint, whether they appear or not, unless the Court is of opinion that they were improperly made parties;

(c) in the case of an employer who is a party to the complaint before such Court in respect of the undertakings to which the complaint relates, his heirs, successors or assigns in respect of the undertaking to which the complaint relates; and

(d) where the party referred to in clause (a) or clause (b) is composed of employees, all persons, who on the date of the complaint, are employed in the undertaking to which the complaint relates and all persons who may be subsequently employed in the undertaking.

## **27. POWERS OF INDUSTRIAL AND LABOUR COURTS. –**

(1) Where a Court decides that any person named in the complaint has engaged in, or is engaging in, any unfair labour practice, it may in its order -

(a) declare that an unfair practice has been engaged in or is being engaged in by that person, and specify any other person who has engaged in, or is engaging in the unfair labour practice;

(b) direct all such persons to cease and desist from such unfair labour practice, and take such affirmative action (including payment of reasonable compensation to the employee or employees affected by the unfair labour practice, or reinstatement of the employee or employees with or without back wages, or the payment of reasonable compensation), as may in the opinion of the Court be necessary to effectuate the policy of the Act;

(c) where a recognised union has engaged in or is engaging in, any unfair labour practice, direct that its recognition shall be cancelled or that all of any or its rights under sub-section (1) of section 20 or its right under section 23 shall be suspended.

(2) In any proceeding before it under this Act, the Court, may pass such interim order (including any temporary relief or restraining order) as it deems just and proper (including directions to the person to withdraw temporarily the practice complained of, which is an issue in such proceeding), pending final decision :

Provided that, the Court may, on an application in that behalf, review any interim order passed by it.

(3) For the purpose of holding an enquiry or proceeding under this Act, the Court shall have the same powers as are vested in Courts in respect of –

(a) proof of facts by affidavit;

(b) summoning and enforcing the attendance of any person, and examining him on oath;

(c) compelling the production of documents; and

(d) issuing commissions for the examination of witnesses.

(4) The Court shall also have powers to call upon any of the parties to proceedings before it to furnish in writing, and in such forms as it may think proper, any information, which is considered relevant for the purpose of any proceedings before it, and the party so called upon shall thereupon furnish the information to the best of its knowledge and belief, and if so required by the Court to do so, verify the same in such manner as may be prescribed.

## **28. CONSEQUENCES OF NON-APPEARANCE OF PARTIES. –**

(1) Where in any proceeding before the Court, if either party, inspite of notice of hearing having been duly served on it, does not appear, when the matter is called on for hearing the Court may either adjourn the hearing of the matter to a subsequent day, or proceed ex parte, and make such order as it thinks fit.

(2) Where any order is made ex parte under sub-section (1), the aggrieved party may, within thirty days of the receipt of the copy thereof, make an application to the Court to set aside such order.

If the Court is satisfied that there was sufficient cause for non-appearance of the aggrieved party, it may set aside the order so made, and shall appoint a date for proceeding with the matter:

Provided that, no order shall be set aside on any such application as aforesaid, unless notice thereof has been served on the opposite party.

## **29. POWER OF COURT TO DECIDE ALL CONNECTED MATTERS. -**

Notwithstanding anything contained in this Act, the Court shall have the power to decide all matters arising out of any application or a complaint referred to it for the decision under any of the provisions of this Act.

### **30. REGULATION TO BE MADE BY INDUSTRIAL COURT. –**

(1) The Industrial Court may make regulations consistent with the provisions of this Act and rules made thereunder regulating its procedure.

(2) In particular, and without prejudice to the generality of the foregoing power such regulations may provide for the formation of Benches consisting of one or more of its members (including provision for formation of a Full Bench consisting of three or more members) and the exercise by such Bench of the jurisdiction and powers vested in them:

Provided that, no Bench shall consist only of a member, who has not been, and at the time of his appointment, was not eligible for appointment as a Judge of a High Court.

(3) Every regulation made under this section shall be published in the Official Gazette.

(4) Every proceeding before the Court shall be deemed to be a judicial proceeding within the meaning of sections 192, 193 and 228 of the Indian Penal Code, XLV of 1860.

(5) The Court shall have power to direct by whom the whole or any part of the costs of any proceeding before it shall be paid : Provided that, no such costs shall be directed to be paid for the service of any legal adviser engaged by any party.

### **31. EXECUTION OF ORDER AS TO COSTS. –**

An order made by the Court regarding the costs of a proceeding may be produced before the Court of the Civil Judge within the local limits of whose jurisdiction any person directed by such order to pay any sum of money has a place of residence or business, or where such place is within the local limits of the ordinary civil jurisdiction of the High Court, before the Court of small Causes of Bombay, and such Court shall execute such order in the same manner and by the same procedure as if it were a decree for the payment of money made by itself in a suit.

### **32. LAW DECLARED BY INDUSTRIAL COURT TO BE BINDING. –**

The determination of any question of law in any order, decision, or declaration passed or made, by the Full Bench of the Industrial Court constituted under the regulations made under section 33 shall be binding and shall be followed in all proceedings under this Act.

### **33. AUTHORISED OFFICER TO APPEAR IN ANY PROCEEDING BEFORE COURT. –**

The State Government may authorise, and direct any officer of Government to appear in any proceeding before the Court by giving notice to such Court; and on such notice being given, such officer shall be entitled to appear in such proceeding and to be heard by the Court.

### **34. POWERS OF INVESTIGATING OFFICERS. –**

(1) An Investigating Officer shall exercise the powers conferred on him by or under this Act, and shall perform such duties as may be assigned to him, from time to time, by the Court.

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

- (a) any place used for the purpose of any undertaking;
- (b) any place used as the office of any union;
- (c) any premises provided by an employer for the residence of his employees; and shall be entitled to call for and inspect all relevant documents which he may deem necessary for the due discharge of his duties and powers under this Act.

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

(4) An Investigating Officer may, after giving reasonable notice, convene a meeting of employees for any of the purposes of this Act, on the premises where they are employed, and may require the employer to affix a written notice of the meeting at such conspicuous place in such premises as he may order, and may also himself affix or cause to be affixed such notice.

The notice shall specify the date, time and place of the meeting, the employees or class of employees affected, and the purpose for which the meeting is convened :

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

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

(6) An Investigating Officer may call for and inspect any document which he has reasonable ground for considering to be relevant to the complaint or to be necessary for the purpose of verifying the implementation of any order of the Court or carrying

out any other duty imposed on him under this Act, and for the aforesaid purposes the Investigating Officer shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, (V of 1908) in respect of compelling the production of documents.

### **35. POWERS OF LABOUR COURT IN RELATION TO OFFENCES. –**

(1) A Labour Court shall have power to try offences punishable under this Act.

(2) Every offences punishable under this Act shall be tries by a Labour Court within the limits of whose jurisdiction it is committed.

### **36. COGNIZANCE OF OFFENCE. –**

No Labour Court shall take cognizance of any offence except on a complaint of facts constituting such offence made by the person affected thereby or a recognised union or on a report in writing by the Investigating Officer.

### **37. POWERS AND PROCEDURE OF LABOUR COURTS IN TRIALS. –**

In respect of offences punishable under this Act, a Labour Court shall have all the powers under the Code of Criminal Procedure, 1898, V of 1898, of Presidency Magistrate in Greater Bombay and a Magistrate of the First Class elsewhere, and in the trial of every such offence, shall follow the procedure laid down in Chapter XXII of the said Code for a summary trial in which an appeal lies; and the rest of the provisions of the said Code shall, so far as may be, apply to such trial.

**38. POWERS OF LABOUR COURT TO IMPOSE HIGHER PUNISHMENT. -**  
Notwithstanding anything contained in section 32 of the Code of Criminal Procedure, 1898, V of 1898, it shall be lawful for any Labour Court to pass any sentence authorised under this Act in excess of its powers under section 32 of the said Code.

**39. APPEAL. -**

(1) Notwithstanding any thing contained in section 40, an appeal shall lie to the Industrial Court - (a) against a conviction by a Labour Court, by the person convicted;

(b) against an acquittal by a Labour Court in its special jurisdiction, by the complainant;

(c) for enhancement of a sentence awarded by a Labour Court in its special jurisdiction, by the State Government.

(2) Every appeal shall be made within thirty days from the date of the conviction, acquittal or sentence, as the case may be :

Provided that, the Industrial Court may, for sufficient reason, allow an appeal after the expiry of the said period.

**40. POWERS OF INDUSTRIAL COURT. -**

(1) The Industrial Court in an appeal under section 42 may confirm, modify, to, or rescind any order of the Labour Court appealed against; and may pass such order thereon as it may deem fit.

(2) In respect of offences punishable under this Act, the Industrial Courts shall have all the powers of the High Court of Judicature at Bombay under the Code of Criminal Procedure, 1898, V of 1898.

(3) A copy of the order passed by the Industrial Court shall be sent to the Labour Court.

**41. INDUSTRIAL COURT TO EXERCISE SUPERINTENDENCE OVER LABOUR COURTS. -**

The Industrial Court shall have superintendence over all Labour Courts and may, -

(a) call for returns;

(b) make and issue general rules and prescribe forms for regulating the practice and procedure of such Courts in matters not expressly provided for by this Act and in particular, for securing the expeditious disposal of cases;

(c) prescribe form in which books, entries and accounts shall be kept by officers of any such Courts; and

(d) settle a table of fees payable for process issued by a Labour Court or the Industrial Court.

**42. POWER OF INDUSTRIAL COURT TO TRANSFER PROCEEDINGS. -**

The Industrial Court may, by order in writing, and for reasons to be stated therein

withdraw any proceeding under this Act pending before a Labour Court, and transfer the same to another Labour Court for disposal and the Labour Court to which the proceeding is so transferred may dispose of the proceeding, but subject to any special direction in the order of transfer, proceed either de novo or from the stage at which it was so transferred.

**43. ORDERS OF INDUSTRIAL OR LABOUR COURT NOT TO BE CALLED IN QUESTION IN CRIMINAL COURTS. –**

No order of a Labour Court or an order of the Industrial Court in appeal in respect of offences tried by it under this Act shall be called in question in any criminal court.

**44. PENALTY FOR DISCLOSURE OF CONFIDENTIAL INFORMATION. –**

If an Investigating Officer or any person present at, or concerned in, any proceeding under this Act wilfully discloses any information or the contents of any document in contravention of the provisions of this Act, he shall, on conviction, on a complaint made by the party who gave the information or produced the document in such proceeding, be punished with fine which may extend to one thousand rupees.

**45. CONTEMPTS OF INDUSTRIAL OR LABOUR COURTS. –**

(1) Any person who fails to comply with any order of the Court under clause (b) of sub-section (1) or sub-section (2) of section 30 of this Act shall, on conviction, be punished with imprisonment which may extend to three months or with fine which may extend to five thousand rupees.

(2) If any person, - (a) when ordered by the Industrial Court or a Labour Court to produce or deliver up any document or to furnish information being legally bound so to do, intentionally omits to do so; or

(b) when required by the Industrial Court or a Labour Court to bind himself by an oath or affirmation to state the truth refuses to do so;

(c) being legally bound to state the truth on any subject to the Industrial Court or a Labour Court refuses to answer any question demanded of him touching such subject by such Court; or

(d) intentionally offers any insult or causes any interruption to the Industrial Court or a Labour Court at any stage of its judicial proceeding, he shall, on conviction, be punished with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.

(3) If any person refuses to sign any statement made by him, when required to do so, by the Industrial Court or a Labour Court, he shall, on conviction, be punished with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.

(4) If any offence under sub-section (2) or (3), is committed in the view or presence of the Industrial Court or as the case may be, a Labour Court, such Court may, after recording the facts constituting the offence and the statement of the accused as provided in the Code of Criminal Procedure, 1898, V of 1898 forward the case to a Magistrate having jurisdiction to try the same, and may require security to be given for the appearance of the accused person before such Magistrate or, if sufficient security is not given, shall forward such person in custody to such Magistrate.



The Magistrate to whom any case is so forwarded shall proceed to hear the complaint against the accused person in the manner provided in the said Code of Criminal Procedure.

(5) If any person commits any act or publishes any writing which is calculated to improperly influence the Industrial Court, or a Labour Court or to bring such Court or a member or a Judge thereof into disrepute or contempt or to lower its or his authority, or to interfere with the lawful process of any such Court, such person shall be deemed to be guilty of contempt of such Court.

(6) In the case of contempt of itself, the Industrial Court shall record the facts constituting such contempt, and make a report in that behalf to the High Court;

(7) In the case of contempt of a Labour Court, such Court shall record the facts constituting such contempt, and make a report in that behalf to the Industrial Court; and thereupon, the Industrial Court may, if it considers it expedient to do so, forward the report to the High Court.

(8) When any intimation or report in respect of any contempt is received by the High Court under sub-sections (6) or (7), the High Court shall deal with such contempt as if it were contempt of itself, and shall have and exercise in respect of it the same jurisdiction, powers and authority in accordance with the same procedure and practice as it has and exercises in respect of contempt of itself.

**46. PENALTY FOR OBSTRUCTING OFFICERS FROM CARRYING OUT THEIR DUTIES AND FOR FAILURE TO PRODUCE DOCUMENTS OR TO COMPLY WITH REQUISITION OR ORDER. –**

Any person who wilfully, - (i) prevents or obstructs officers, members of the office staff, or members any union from exercising any of their rights conferred by this Act;

(ii) refuses entry to an Investigating Officer to any place which he is entitled to enter;

(iii) fails to produce any document which he is required to produce; or

(iv) fails to comply with any requisition or order issued to him by or under the provisions of this Act or the rules made thereunder; shall, on conviction, be punished with fine which may extend to five hundred rupees.

**47. RECOVERY OF MONEY DUE FROM EMPLOYER. –**

Where any money is due to an employee from an employer under an order passed by the Court under Chapter VI, the employee himself or any other person authorised by him in writing in this behalf, or in the case of death of the employee, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the Court for the recovery of money due to him, and if the Court is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector, who shall, proceed to recover the same in the same manner as an arrear of land revenue :

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

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

**48. RECOVERY OF FINES. –**

The amount of any fine imposed under this Chapter shall be recoverable as arrears of land revenue.

**49. PERIODICAL RETURNS TO BE SUBMITTED TO INDUSTRIAL AND LABOUR COURTS. –**

Every recognised union shall submit to the Industrial Court and Labour Court on such dates and in such manner as may be prescribed periodical returns of its membership.

**50. MODIFICATIONS OF SCHEDULES. –**

(1) The State Government may, after obtaining the opinion of the Industrial Court, by notification in the Official Gazette, at any time make any addition to, or alteration in, any Schedule II, III or IV and may, in the like manner, delete any item therefrom:

Provided that before making any such addition, alteration or deletion, a draft of such addition, alteration or deletion shall be published for the information of all persons likely to be affected thereby, and the State Government shall consider any objections or suggestions that may be received by it from any person with respect thereto.

(2) Every such notification shall, as soon as possible after its issue, be laid by the State Government before the Legislature of the State.

**51. LIABILITY OF EXECUTIVE OF UNION. –**

Where anything is required to be done by any union under this Act, the person authorised in this behalf by the executive of the union, and where no person is so authorised, every member of the executive of the union shall be bound to do the same, and shall be personally liable, if default is made in the doing of any such thing.

**Explanation:** For the purpose of this section, the "executive of a union" means the body whatever name called to which the management of the affairs of the union is entrusted.

**52. OFFENCE UNDER SECTION 48(1) TO BE COGNIZABLE. –**

The offence under sub-section (1) of section 48, shall be cognizable.

**53. CERTAIN OFFICERS TO BE PUBLIC SERVANTS. –**

Investigating Officers, a member of the Industrial or Labour Court and a member of the staff of any such Court shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, XLV of 1860.

**54. PROTECTION OF ACTION TAKEN IN GOOD FAITH. –**

No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or purported to be done by or under this Act.

**55. PENDING PROCEEDINGS. –**

Any proceeding pending before the State Government or before any tribunal or any other authority, or any proceedings relating to the trial of offences punishable under the provisions of the Central Act or Bombay Act before the commencement of this Act shall be continued and completed as if this Act had not been passed and continued in operation, and any penalty imposed in such proceedings shall be recorded under such Central Act as

the case may be, Bombay Act.

**56. BAR OF PROCEEDINGS UNDER BOMBAY OR CENTRAL ACT. –**

If any proceeding in respect of any matter falling within the purview of this Act is instituted under this Act, then no proceeding shall at any time be entertained by any authority in respect of that matter under the Central Act or, as the case may be, the Bombay Act; and if any proceeding in respect of any matter within the purview of this Act is instituted under the Central Act, or as the case may be, the Bombay Act, then no proceedings shall at any time be entertained by the Industrial or Labour Court under this Act.

**57. BAR OF SUITS. –**

No Civil court shall entertain any suit which forms or which may form the subject-matter of a complaint or application to the Industrial Court of Labour Court under this Act; or which has formed the subject of an interim or final order of the Industrial Court or Labour Court under this Act.

**58. RULES. –**

(1) The State Government may, by notification, in the Official Gazette and subject to the condition of previous publication, make rules for carrying out the purposes of this Act.

(2) Every rule made under this section shall be laid as soon as may be after it is made before each House of the State Legislature, while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both House agree that the rule should not be made, and notify such decision in the Official Gazette, the rule shall, from the date of publication of such notification, have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment, shall be without prejudice to the validity of anything previously done or omitted to be done under that rule.

## **THE TRADE UNIONS ACT, 1926**

### **Introduction:**

The trade union act was passed in 1926 under the title of THE INDIAN TRADE UNIONS ACT, and was brought into effect from 1st June 1927 by notification in the official gazette by the central govt. The act was amended in 1947, 1960 and 1962.

1. Subsequently the word Indian was deleted from the amended act of 1964 which came into force from 1<sup>st</sup> April 1965. A comprehensive trade union act was passed in 1982.

Trade union act in 1926 associated with registration and protection of trade union. The act applicable to whole of India except Jammu and Kashmir the trade union means the association of workers in one or more occupation for protection and promotion of interest of working class including workers or labours.

### **Objective of act:**

1. To protect workers against exploitation by employers
2. To represent the grievance of employees on behalf of them to the management
3. To protect and safeguard the right of workers provided them under the employment clause or labour laws
4. To increase participation in management for decision making.
5. To make disciplinary action against workers doing indisciplinary actions

### **2. Definitions.-**

**Appropriate Government'** means-

in relation to Trade Unions whose objects are not confined to one State, the Central Government, and in relation to other Trade Unions, the State Government,

(f) "**Registrar**" means--

(i) a Registrar of Trade Unions appointed by the appropriate Government under section 3, and includes any Additional or Deputy Registrar of Trade Unions; and

(ii) in relation to any Trade Union, the Registrar appointed for the State in which the head or registered office, as the case may be, of the Trade Union is situated

(g) "**trade dispute**" means –

any dispute between employers and workmen or between workmen and workmen, or between employers and employers which is connected with the employment or non-employment, or the terms of employment or the conditions of labour, of any person, and "workmen" means all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises; and

(h) "**Trade Union**" means-

any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more Trade Unions:

Provided that this Act shall not affect--

- (i) any agreement between partners as to their own business;
- (ii) any agreement between an employer and those employed by him as to such employment; or
- (iii) any agreement in consideration of the sale of the good-will of a business or of instruction in any profession, trade or handicraft.

## REGISTRATION OF TRADE UNIONS

### **3. Appointment of Registrars.-**

(1)The appropriate Government] shall appoint a person to be the Registrar of Trade Unions

(2) The appropriate Government may appoint as many Additional and Deputy Registrars of Trade Unions as it thinks fit for the purpose of exercising and discharging, under the superintendence and direction of the Registrar, such powers and functions of the Registrar under this Act as it may, by order, specify and define the local limits within which any such Additional or Deputy Registrar shall exercise and discharge the powers and functions so

specified.

(3) Subject to the provisions of any order under sub-section (2), where an Additional or Deputy Registrar exercises and discharges the powers and functions of a Registrar in an area within which the registered office of a Trade Union is situated, the Additional or Deputy Registrar shall be deemed to be the Registrar in relation to the Trade Union for the purposes of this Act.

#### **4. Mode of registration.**

(1) Any seven or more members of a Trade Union may, by subscribing their names to the rules of the Trade Union and by otherwise complying with the provisions of this Act with respect to registration, apply for registration of the Trade Union under this Act.

(2) Where an application has been made under sub-section (1) for the registration of a Trade Union, such application shall not be deemed to have become invalid merely by reason of the fact that, at any time after the date of the application, but before the registration of the Trade Union, some of the applicants, but not exceeding half of the total number of persons who made the application,

#### **5. Application for registration.**

(1) Every application for registration of a Trade Union shall be made to the Registrar, and shall be accompanied by a copy of the rules of the Trade Union and a statement of the following particulars, namely:--

(a) the names, occupations and addresses of the members making the application;

(b) the name of the Trade Union and the address of its head office; and

(c) the titles, names, ages, addresses and occupations of the Trade Union.

(2) Where a Trade Union has been in existence for more than one year before the making of an application for its registration, there shall be delivered to the Registrar, together with the application, a general statement of the assets and liabilities of the Trade Union prepared in such form and containing such particulars as may be prescribed.

## **6. Provisions to be contained in the rules of a Trade Union.**

A Trade Union shall not be entitled to registration under this Act, unless the executive thereof is constituted in accordance with the provisions of this Act, and the rules thereof provide for the following matters, namely:--

- (a) the name of the Trade Union;
- (b) the whole of the objects for which the Trade Union has been established;
- (c) the whole of the purposes for which the general funds of the Trade Union shall be applicable, all of which purposes shall be purposes to which such funds are lawfully applicable under this Act;
- (d) the maintenance of a list of the members of the Trade Union and adequate facilities for the inspection hereof by the members of the Trade Union;
- (e) the admission of ordinary members who shall be persons actually engaged or employed in an industry with which the Trade Union is connected, and also the admission of the number of honorary or temporary members as required under section 22 to form the executive of the Trade Union;
- (ee) the payment of a subscription by members of the Trade Union which shall be not less than twenty-five naye paise per month per member
- (f) the conditions under which any member shall be entitled to any benefit assured by the rules and under which any fine or forfeiture may be imposed on the members;
- (g) the manner in which the rules shall be amended, varied or rescinded;
- (h) the manner in which the members of the executive and the other of the Trade Union shall be appointed and removed;
- (i) the safe custody of the funds of the Trade Union, an annual audit, in such manner as may be prescribed, of the accounts thereof, and adequate facilities for the inspection of the account books by the 1\*[office- bearers] and members of the Trade Union; and
- (j) the manner in which the Trade Union may be dissolved.

## **7. Power to call for further particulars and to require alteration of name.**

(1) The Registrar may call for further information for the purpose of satisfying himself that any application complies with the provisions of section 5, or that the Trade Union is entitled to registration under section 6, and may refuse to register the Trade Union until such information is supplied.

(2) If the name under which a Trade Union is proposed to be registered is identical with that by which any other existing Trade Union has been registered or, in the opinion of the Registrar, so nearly resembles such name as to be likely to deceive the public or the members of either Trade Union, the Registrar shall require the persons applying for registration to alter the name of the Trade Union stated in the application, and shall refuse to register the Union until such alteration has been made.

## **8. Registration.**

.-The Registrar, on being satisfied that the Trade Union has complied with all the requirements of this Act in regard to registration, shall register the Trade Union by entering in a register, to be maintained in such form as may be prescribed, the particulars relating to the Trade Union contained in the statement accompanying the application for registration.

## **9. Certificate of registration.**

The Registrar, on registering a Trade Union under section 8, shall issue a certificate of registration in the prescribed form which shall be conclusive evidence that the Trade Union has been duly registered under this Act.

## **10. Cancellation of registration.**

.- A certificate of registration of a Trade Union may be withdrawn or cancelled by the Registrar--

(a) on the application of the Trade Union to be verified in such manner as may be prescribed, or

(b) if the Registrar is satisfied that the certificate has been obtained by fraud or mistake, or that the Trade Union has ceased to exist or has wilfully and after notice from the Registrar



contravened any provision of this Act or allowed any rule to continue in force which is inconsistent with any such provision, or has rescinded any rule providing for any matter provision for which is required by section 6: Provided that not less than two months' previous notice in writing specifying the ground on which it is proposed to withdraw or cancel the certificate shall be given by the Registrar to the Trade Union before the certificate is withdrawn or cancelled otherwise than on the application of the Trade Union.

### **11.Appel.**

(1) Any person aggrieved by any refusal of the Registrar to register a Trade Union or by the withdrawal or cancellation of a certificate of registration may, within such period as may be prescribed, appeal,--

(a) where the head office of the Trade Union is situated within the limits of a Presidency-town to the High Court, or

(b) where the head office is situated in any other area, to such Court, not inferior to the Court of an additional or assistant Judge of a principal Civil Court of original jurisdiction, as the appropriate Government may appoint in this behalf for that area.

(2) The appellate Court may dismiss the appeal, or pass an order directing the Registrar to register the Union and to issue a certificate of registration under the provisions of section 9 or setting aside the order for withdrawal or cancellation of the certificate, as the case may be, and the Registrar shall comply with such order.

(3) For the purpose of an appeal under sub-section (1) an appellate Court shall, so far as may be, follow the same procedure and have the same powers as it follows and has when trying a suit under the Code of Civil Procedure, 1908 and may direct by whom the whole or any part of the costs of the appeal shall be paid, and such costs shall be recovered as if they had been awarded in a suit under the said Code.

(4) In the event of the dismissal of an appeal by any Court appointed under clause (b) of sub-section (1), the person aggrieved shall have a right of appeal to the High Court, and the High Court shall, for the purpose of such appeal, have all the powers of an appellate Court under sub-sections (2) and (3), and the provisions of those sub-sections shall apply accordingly.

### **12. Registered office.**

All communications Union may be addressed to its registered office. Notice of any change in the address of the head office shall be given within fourteen days of such change to the

Registrar in writing, and the changed address shall be recorded in the register referred to in section 8.

### **13. Incorporation of registered Trade Unions.**

Every registered Trade Union shall be a body corporate by the name under which it is registered, and shall have perpetual succession and a common seal with power to acquire and hold both movable and immovable property and to contract, and shall by the said name sue and be sued.

### **14. Certain Acts not to apply to registered Trade Unions.**

The following Acts, namely:--

- (a) The Societies Registration Act, 1860
- (b) The Co-operative Societies Act, 1912
- (c) The Companies Act, 1956

shall not apply to any registered Trade Union, and the registration of any such Trade Union under any such Act shall be void.

## **RIGHTS AND LIABILITIES OF REGISTERED TRADE UNIONS**

### **15. Objects on which general funds may be spent.**

The general funds of a registered Trade Union shall not be spent on any other objects than the following, namely:--

- (a) the payment of salaries, allowances and expenses to of the Trade Union;
- (b) the payment of expenses for the administration of the Trade Union, including audit of the accounts of the general funds of the Trade Union;
- (c) the prosecution or defence of any legal proceeding to which the Trade Union or any member thereof is a party, when such prosecution or defence is undertaken for the purpose of securing or protecting any rights of the Trade Union as such or any rights arising out of the relations of any member with his employer or with a person whom the member employs
- (d) the conduct of trade disputes on behalf of the Trade Union or any member thereof;
- (e) the compensation of members for loss arising out of trade disputes;
- (f) allowances to members or their dependants on account of death, old age, sickness, accidents or unemployment of such members;
- (g) the issue of, or the undertaking of liability under, policies of assurance on the lives of members, or under policies insuring members against sickness, accident or unemployment;
- (h) the provision of educational, social or religious benefits for members (including the payment of the expenses of funeral or religious ceremonies for deceased members) or for the dependants of members;
- (i) the upkeep of a periodical published mainly for the purpose of discussing questions affecting employers or workmen as such;
- (j) the payment, in furtherance of any of the objects on which the general funds of the Trade Union may be spent, of contributions to any cause

intended to benefit workmen

in general, provided that the expenditure in respect of such contributions in any financial year shall not at any time during that year be in excess of one-fourth of the combined total of the gross income which has up to that time accrued to the general funds of the Trade Union during that year and of the balance at the credit of those funds at the commencement of that year; and

(k) subject to any conditions contained in the notification, any other object notified by the in the official Gazette.

#### **16. Constitution of a separate fund for political purposes.**

(1) A registered Trade Union may constitute a separate fund, from contributions separately levied for or made to that fund, from which payments may be made, for the promotion of the civic and political interests of its members, in furtherance of any Of the objects specified in sub-section (2).

(2) The objects referred to in sub-section (1) are:--

(a) the payment of any expenses incurred, either directly or indirectly, by a candidate or prospective candidate for election as a member of any legislative body constituted under<sup>2</sup> or of any local authority, before, during, or after the election in connection with his candidature or election; or

(b) the holding of any meeting or the distribution of any literature or documents in support of any such candidate or prospective candidate; or

(c) the maintenance of any person who is a member of any legislative body constituted under 2\*[the Constitution] or of any local authority; or

(d) the registration of electors or the election of a candidate for any legislative body constituted under 2\*[the Constitution] or for any local authority; or

(e) the holding of political meetings of any kind, or the distribution of political literature or political documents of any kind.

(3) No member shall be compelled to contribute to the fund constituted under sub-section (1); and a member who does not contribute to the said fund shall not be

excluded from any benefits of the Trade Union, or placed in any respect either directly or indirectly under any disability or at any disadvantage as compared with other members of the Trade Union (except in relation to the control or management of the said fund) by reason of his not contributing to the said fund; and contribution to the said fund shall not be made a condition for admission to the Trade Union.

### **17. Criminal conspiracy in trade disputes.**

No 1or member of a registered Trade Union shall be liable to punishment under subsection (2) of section 120B Indian Penal Code, in respect of any agreement made between the members for the purpose of furthering any such object of the Trade Union as is specified in section 15, unless the agreement is an agreement to commit an offence.

### **18. Immunity from civil suit in certain cases.**

(1) No suit or other legal proceeding shall be maintainable in any Civil Court against any registered Trade Union or any 1\*[office-bearer; or member thereof in respect of any act done in contemplation or furtherance of a trade dispute to which a member of the Trade Union is a party on the ground only that such act induces some other person to break a contract of employment, or that it is in interference with the trade, business or employment of some other person or with the right of some other person to dispose of his capital or of his labour as he wills.

(2) A registered Trade Union shall not be liable in any suit or other legal proceeding in any Civil Court in respect of any tortious act done in contemplation or furtherance of a trade dispute by an agent of the Trade Union if it is proved that such person acted without the knowledge of, or contrary to express instructions given by, the executive of the Trade Union.

### **19. Enforceability of agreements.**

Notwithstanding anything contained in any other law for the time being in force, an agreement between the members of a registered Trade Union shall not be void or voidable merely by reason of the fact that any of the objects of the agreement are in restraint of trade:

Provided that nothing in this section shall enable any Civil Court to entertain any

legal proceeding instituted for the express purpose of enforcing or recovering damages for the breach of any agreement concerning the conditions on which any members of a Trade Union shall or shall not sell their goods, transact business, work, employ or be employed.

## **20. Right to inspect books of Trade Union.**

The account books of a registered Trade Union and the list of members thereof shall be open to inspection by an 1\*[office-bearer] or member of the Trade Union at such times as may be provided for in the rules of the Trade Union.

## **21. Rights of minors to membership of Trade Unions.**

Any person who has attained the age of fifteen years may be a member of a registered Trade Union subject to any rules of the Trade Union to the contrary, and may, subject as aforesaid, enjoy all the rights of a member and execute all instruments and give all acquittances necessary to be executed or given under the rules.

### **21A. Disqualifications of office-bearers of Trade Unions.**

1) A person shall be disqualified for being chosen as, and for being, a member of the executive or any other office-bearer of a registered Trade Union if--

(i) he has not attained the age of eighteen years,

(ii) he has been convicted by a Court in India of any offence involving moral turpitude and sentenced to imprisonment, unless a period of five years has elapsed since his release.

(2) Any member of the executive or other office-bearer of a registered Trade Union who, before the commencement of the Indian Trade Unions (Amendment) Act, 1964, has been convicted of any offence involving moral turpitude and sentenced to imprisonment, shall on the date of such commencement cease to be such member or office-bearer unless a period of five years has elapsed since his release before that date.]

(3) In its application to the State of Jammu and Kashmir, reference in sub-section (2) to the commencement of the Indian Trade Unions (Amendment) Act, 1964 , shall be construed as reference to the commencement of this Act in the said State.

## **22. Proportion of office-bearers to be connected with the industry.**

Not less than one-half of the total number of the of every registered Trade Union shall be persons actually engaged or employed in an industry with which the Trade Union is connected:

Provided that the appropriate Government may, by special or general order, declare that the provisions of this section shall not apply to any Trade Union or class of Trade Unions specified in the order.

## **23. Change of name**

Any registered Trade Union may, with the consent of not less than two-thirds of the total number of its members and subject to the provisions of section 25, change its name.

## **24. Amalgamation of Trade Unions.**

Any two or more registered Trade Unions may become amalgamated together as one Trade Union with or without dissolution or division of the funds of such Trade Unions or either or any of them, provided that the votes of at least one-half of the members of each or every such trade Union entitled to vote are recorded, and that at least sixty per cent. of the votes recorded are in favour of the proposal.

## **25. Notice of change of name or amalgamation.**

(1) Notice in writing of every change of name of every amalgamation, signed, in the case of a change of name, by the Secretary and by seven members of the Trade Union changing its name, and, in the case of an amalgamation, by the Secretary and by seven members of each and every Trade Union which is a party thereto, shall be sent to the Registrar, and where the head office of the amalgamated Trade Union is situated in a different State, to the Registrar of such State.

(2) If the proposed name is identical with that by which any other existing Trade Union has been registered or, in the opinion of the Registrar, so nearly resembles such name as to be likely to deceive the public or the members of either Trade Union, the Registrar shall refuse to register the change of name.

(3) Save as provided in sub-section (2), the Registrar shall, if he is satisfied that the provisions of this Act in respect of change of name have been complied with, register the change of name in the register referred to in section 8, and the change of name shall have effect from the date of such registration.

(4) The Registrar of the State in which the head office of the amalgamated Trade Union is situated shall, if he is satisfied that the provisions of this Act in respect of amalgamation have been complied with and that the Trade Union formed thereby is entitled to registration under section 6, register the Trade Union in the manner provided in section 8, and the amalgamation shall have effect from the date of such registration.

## **26. Effects of change of name and of amalgamation.**

(1) The change in the name of a registered Trade Union shall not affect any rights or obligations of the Trade Union or render defective any legal proceeding by or against the Trade Union, and any legal proceeding which might have been continued or commenced by or against it by its former name may be continued or commenced by or against it by its new name.

(2) An amalgamation of two or more registered Trade Unions shall not prejudice any right of any of such Trade Unions or any right of a creditor of any of them.

## **27. Dissolution.**

(1) When a registered Trade Union is dissolved, notice of the dissolution signed by seven members and by the Secretary of the Trade Union shall, within fourteen days of the dissolution, be sent to the Registrar, and shall be registered by him if he is satisfied that the dissolution has been effected in accordance with the rules of the Trade Union, and the dissolution shall have effect from the date of such registration.

(2) Where the dissolution of a registered Trade Union has been registered and the rules of the Trade Union do not provide for the distribution of funds of the Trade Union on dissolution, the Registrar shall divide the funds amongst the members in such manner as may be prescribed.



## **28. Returns.-**

(1) There shall be sent annually to the Registrar, on or before such date as may be prescribed, a general statement, audited in the prescribed manner, of all receipts and expenditure of every registered Trade Union during the year ending on the 31st day of 1December next preceding such prescribed date, and of the assets and liabilities of the Trade Union existing on such 31st day of 1December. The statement shall be prepared in such form and shall comprise such particulars as may be prescribed.

(2) Together with the general statement there shall be sent to the Registrar a statement showing all changes of made by the Trade Union during the year to which the general statement refers, together also with a copy of the rules of the Trade Union corrected up to the date of the despatch thereof to the Registrar.

(3) A copy of every alteration made in the rules of a registered Trade Union shall be sent to the Registrar within fifteen days of the making of the alteration.

(4) For the purpose of examining the documents referred to in sub-sections (1), (2) and (3), the Registrar, or any officer authorised by him, by general or special order, may at all reasonable time inspect the certificate of registration, account books, registers, and other documents, relating to a Trade Union, at its registered office or may require their production at such place as he may specify in this behalf, but no such place shall be at a distance of more than ten miles from the registered office of a Trade Union

## **REGULATIONS**

### **29. Power to make regulations.**

(1) The appropriate Government may make regulations for the purpose of carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:--

(a) the manner in which Trade Unions and the rules of Trade Unions shall be registered and the fees payable on registration;

(b) the transfer of registration in the case of any registered Trade Union which has changed its head office from one State to another;

(c) the manner in which, and the qualifications of persons by whom, the accounts of registered Trade Unions or of any class of such Unions shall be audited;

(d) the conditions subject to which inspection of documents kept by Registrars shall be allowed and the fees which shall be chargeable in respect of such inspections; and

(e) any matter which is to be or may be prescribed.

### **30. Publication of regulations.**

(1) The power to make regulations conferred by section 29 is subject to the condition of the regulations being made after previous publication.

(2) The date to be specified in accordance with clause (3) of section 23 of the General Clauses Act, 1897), as that after which a draft of regulations proposed to be made will be taken into consideration shall not be less than three months from the date on which the draft of the proposed regulations was published for general information

(3) Regulations so made shall be published in the Official Gazette, and on such publication shall have effect as if enacted in this Act.

## **PENALTIES AND PROCEDURE**

### **31. Failure to submit returns.**

(1) If default is made on the part of any registered Trade Union in giving any notice or sending any statement or other document as required by or under any provision of this Act, every or other person bound by the rules of the Trade Union to give or send the same, or, if there is no such or person every member of the executive of the Trade Union, shall be punishable, with fine which may extend to five rupees and, in the case of a continuing default, with an additional fine which may extend to five rupees for each week after the first during which the default continues:

Provided that the aggregate fine shall not exceed fifty rupees.

(2) Any person who wilfully makes, or causes to be made, any false entry in, or any omission from, the general statement required by section 28, or in or from any copy of rules or of alterations of rules sent to the Registrar under that section, shall be punishable with fine which may extend to five hundred rupees.

### **32. Supplying false information regarding Trade Unions.-**

Any person who, with intent to deceive, gives to any member of a registered Trade Union or to any person intending or applying to become a member of such Trade Union any document purporting to be a copy of the rules of the Trade Union or of any alterations to the same which he knows, or has reason to believe, is not a correct copy of such rules or alterations as are for the time being in force, or any person who, with the like intent, gives a copy of any rules of an unregistered Trade Union to any person on the pretence that such rules are the rules of a registered Trade Union, shall be punishable with fine which may extend to two hundred rupees.

### **33. Cognizance of offences.**

(1) No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act.

(2) No Court shall take cognizance of any offence under this Act, unless complaint thereof has been made by, or with the previous sanction of, the Registrar or, in the case of an

offence under section 32, by the person to whom the copy was given, within six months of the date on which the offence is alleged to have been committed.