

INDUSTRIAL DISPUTES ACT, 1947

14 of 1947

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INDUSTRIAL DISPUTES ACT, 1947

14 of 1947

An Act to make provision for the investigation and settlement of industrial disputes, and for certain other purposes. Whereas it is expedient to make provision for the investigation and settlement of industrial disputes, and for certain other purposes hereinafter appearing : It is hereby enacted as follows :

CHAPTER 1 PRELIMINARY

1. Short title, extent and commencement :-

- (1) This Act may be called the Industrial Disputes Act, 1947.
- (2) It extends to the whole of India.
- (3) It shall come into force on the first day of April, 1947.

2. Definitions :-

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

(a) "appropriate Government" means-

(i) in relation to any industrial disputes concerning any industry carried on by or under the authority of the Central Government or by a railway company or concerning any such controlled industry as may be specified in this behalf by the Central Government or in relation to an industrial dispute concerning a Dock Labour Board established under section 5-A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), or the Industrial Finance Corporation of India Limited formed and registered under the Companies Act, 1956 (1 of 1956), or the Employees State Insurance Corporation established under section 3 of the Employees State Insurance Act, 1948 (34 of 1948), or the Board of Trustees constituted under section 3-A of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (46 of 1948), or the Central Board of Trustees and the State Boards of Trustees constituted under section 5-A and section 5-B, respectively, of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952), or the Life Insurance Corporation Act, 1956 (31 of 1956), or the Oil and Natural Gas Corporation Limited registered under the Companies Act, 1956 (1 of 1956), or the Deposit Insurance and Credit Insurance and Credit Guarantee Corporation established under section 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961), or the Central Warehousing Corporation established under section 3 of the Warehousing Corporations Act, 1962 (58 of 1962), or the Unit Trust of India established under section 3 of the Unit Trust of India Act, 1963 (52 of 1963), or the Food Corporation of India established under section 3, or a Board of Management established for two or more contiguous States under section 16 of the Food Corporations Act, 1964 (37 of 1964), or the Airports Authority of India constituted under section 3 of the Airports Authority of India Act, 1994 (55 of 1994), or a Regional Rural Bank established under section 3 of the Regional Rural Banks Act, 1976 (21 of 1976), or the Export Credit and Guarantee Corporation Limited or the Industrial Reconstruction Corporation of India Limited, or the National Housing Bank established under section 3 of the National Housing Bank Act, 1987 (53 of 1987) or the Banking Service Commission established under section 3 of the Banking Service Commission Act, 1975, 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 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 10A ;

(bb) "banking company" means a banking company as defined in section 5 of the Banking Companies Act, 1949 (10 of 1949), having branches or other establishments in more than one State, and includes the Export-Import Bank of India, the Industrial Reconstruction Bank of India; the Industrial Development Bank of India, the Small Industries Development Bank of India established under section 3 of the Small Industries Development Bank of India Act, 1989 (39 of 1989) the Reserve Bank of India, the State Bank of India, a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1969, a corresponding new bank constituted under section 3 of the Banking Companies Acquisition and Transfer of Undertakings Act, 1970, 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 India (Subsidiary Banks) Act, 1959 (38 of 1959);

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

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

(d) "conciliation officer" means a conciliation officer appointed under this Act:

(e) "conciliation proceeding" means any proceeding held by a

conciliation officer or Board under this Act ;

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

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

(g) "employer" means-

(i) in relation to an industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department ;

(ii) in relation to an industry carried on b.y 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;

(h) ***

(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 a vocation of workmen; The following clause (j) shall he substituted by the Industrial Disputes (Amendment) Act, 1982 with effect from date yet to be notified:

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

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

(ii) such activity is carried on with a motive to make any gain or

profit, and includes-

(a) any activity of the Dock Labour Board established under section 5A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1949) ;

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

(1) any agricultural operation except where such agricultural operation is carried on in an integrated manner with any other activity (being any such activity as is referred to in the foregoing provisions of this clause) and such other activity is the predominant one. Explanation: For the purposes of this sub-clause, "agricultural operation" does not include any activity carried on in a plantation as defined in clause (f) of 11 2 of the Plantations Labour Act, 1951 (69 of 1951); or

(2) hospitals or dispensaries ; or

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

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

(5) khadi or village industries ; or

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

(7) any domestic service ; or

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

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

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

(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on : Provided that where several activities are carried on in an

establishment or undertaking and only one or some of such activities is or are an industry or industries, then,-

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

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

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

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

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

(kkk) "lay-off" (with its grammatical variations and cognate expressions) means the failure, refusal or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the break-down of machinery or natural calamity or for any other connected reason to give employment to a workman whose name is borne on the muster-rolls of his industrial establishment and who has not been retrenched ; Explanation: Every workman whose name is borne on the musterrolls of the industrial establishment and who presents himself for work at the establishment at the time appointed for the purpose during normal working hours on any day and is not given employment by the employer within two hours of his so presenting himself shall be deemed to have been laid Off for that day within the meaning of this clause: Provided that if the workman, instead of being given employment at the commencement of any shift for any day, is asked to present himself for the purpose during the second half of the shift for the day and is given employment, then, he shall be deemed to have been laid off only for one half of that day : Provided further that if he is not given any such employment even

after so presenting himself, he shall not be deemed to have been laid off for the second half of the shift for the day and shall be entitled to full basic wages and dearness allowance for that part of the day ;

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

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

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

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

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

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

(n) "public utility service" means

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

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

(ii) any section of an industrial establishment, on the working of which the safety of the establishment or the workmen employed therein depends;

(iii) any postal, telegraph or telephone service ;

(iv) any industry which supplies power, light or water to the public ;

(v) any system of public conservancy or sanitation ;

(vi) any industry specified in the First Schedule which the appropriate Government may, if satisfied that public emergency or public interest so requires, by notification in the Official Gazette, declare to be a public utility service for the purposes of this Act, for such period as may be specified in the notification: Provided that the period so specified shall not, in the first instance, exceed six months but may, by a like notification, be extended from time to time, by any period not exceeding six months, at any one time, if in the opinion of the appropriate Government, public emergency or public interest requires such extension:

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

(oo) "retrenchment" means the termination by the employer of the

service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include

(a) voluntary retirement of the workman ; or

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

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

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

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

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

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

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

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

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

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

(i) such allowances (including dearness allowance) as the work-

man is for the time being entitled to ;

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

(iii) any travelling concession;

(iv) any commission payable on the promotion of sales or business or both; but does not include

(a) any bonus;

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

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

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

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

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

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

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

ANDHRA PRADESH Section 2A shall be numbered as sub-section (1) thereof and after the sub,- section, as so renumbered, the following sub-section (2) shall be inserted :- "(2) Notwithstanding anything in section 10, any such workman as is specified in sub-section (1) may, make an application in the prescribed manner direct to the Labour Court for adjudication of the dispute referred to therein; and on receipt of such application the Labour Court shall have jurisdiction to adjudicate upon any matter in the dispute, as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act; and accordingly all the provisions of this Act, shall apply in relation to such dispute as they apply in relation to any other industrial dispute." - Andhra Pradesh Act No. 32 of 1987.

TAMIL NADU Section 2A shall be re-numbered as sub-section (1) of that section and after the said sub-section (1) as so re-numbered, the following sub-section shall be added, namely:- "(2) Where no settlement is arrived at in the course of any conciliation proceeding taken under this Act in regard to an industrial dispute referred to in sub-section (7), the aggrieved individual workman may apply, in the prescribed manner, to the Labour Court for adjudication of such dispute and the Labour Court shall proceed to adjudicate such dispute, as if such dispute has been referred to it for adjudication and accordingly all the provisions of this Act relating to adjudication of industrial disputes by the Labour Court shall apply to such adjudication." - Tamil Nadu Act No. 5 of 1988.

WEST BENGAL In section 2A: (a) after the words "dismisses, retrenches", the words "refuses employment" shall be inserted ; (b) after the words "dismissal retrenchment", the words "refusal of employment" shall be inserted - West Bengal Act No. 33 of 1989.

CHAPTER 2 AUTHORITIES UNDER THIS ACT

3. Works Committee :-

(1) In the case of any industrial establishment in which one hundred or more workmen are employed or have been employed on any day in the preceding twelve months the appropriate Government may by general or special order require the employer to constitute in the prescribed manner a Works Committee

consisting of representatives of employers and workmen engaged in the establishment so however that the number of representatives of workmen on the Committee shall not be less than the number of representatives of the employer. The representatives of the workmen shall be chosen in the prescribed manner from among the workmen engaged in the establishment and in consultation with their trade union, if any, registered under the Indian Trade Unions Act, 1926 (16 of 1926).

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

4. Conciliation officers :-

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

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

5. Boards of Conciliation :-

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

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

(3) The Chairman shall be an independent person and the other members shall be persons appointed in equal numbers to represent the parties to the dispute and any person appointed to represent a party shall be appointed on the recommendation of that party : Provided that, if any party fails to make a recommendation as aforesaid within the prescribed time, the appropriate Government shall appoint such persons as it thinks fit to represent that party.

(4) A Board, having the prescribed quorum, may act notwithstanding the absence of the Chairman or any of its

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

6. Courts of Inquiry :-

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

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

(3) A Court, having the prescribed quorum, may act notwithstanding the absence of the chairman or any of its members or any vacancy in its number: Provided that, if the appropriate Government notifies the Court that the services of the Chairman have ceased to be available, the Court shall not act until a new chairman has been appointed.

7. Labour Courts :-

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

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

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

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

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

(c) ***

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

57(e) he has been the Presiding Officer of a Labour Court

constituted under any Provincial Act or State Act for not less than five years.

GUJARAT In section 7, in sub-section (3),- (i) in clause (b), after the words "Additional District Judge," the words "or a Joint Judge or an Assistant Judge" shall be inserted; (ii) in clause (d), for the words "seven years" the words "five years" shall be substituted; (iii) in clause (e), for the words "five years" the words "three years" shall be substituted and the word "or" shall be added at the end; (iv) after clause (e), the following clause shall be added, namely :- "(f) he has practised as an advocate or attorney for not less than seven years in a High Court or any Court subordinate thereto or in any Industrial Court or Industrial Tribunal or Labour Court constituted under any law for the time being in force; - Gujarat Act No. 28 of 1977.

HARYANA In sub-section (3) of section 7,- (i) for clause (b), the following clause shall be substituted, namely:- "(b) he is qualified for appointment as, is, or has been, a District Judge or an Additional District Judge, or"; and (ii) after clause (c), the following clause shall be inserted, namely :- "(cc) He has been a Commissioner of a division or an Administrative Secretary to Government or an officer of the Labour Department not below the rank of a Joint Labour Commissioner for a period of not less than two years; or" - Haryana Act No. 39 of 1976.

MADHYA PRADESH In section 7, after sub-section(1), the following sub-section shall be inserted, namely:- "(1A) In addition to the functions specified in sub-section (1) the Labour Court shall try offences punishable under this Act and the Acts specified in Part B of the Second Schedule." - Madhya Pradesh Act No. 43 of 1981.

MAHARASHTRA In section 7 in sub-section (3), after clause (d) the following clauses shall be inserted, namely:- "(d-1) he has practised as an advocate or attorney for not less than seven years in the High Court, or any court subordinate thereto, or any Industrial Court or Tribunal or Labour Court, constituted under any law for the time being in force; or (d-2) 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 a Deputy Registrar of any such Industrial Court or Tribunal for not less than five years; or" - Maharashtra Act No. 56 of 1974. After clause (d-2), the following new clause shall be inserted, namely;- "(d-3) 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 Assistant Commissioner of Labour under the State

Government for not less than five years; or" - Maharashtra Act No. 22 of 1976.

PUNJAB(PRIOR TO AMENDMENT OF 1964) In sub-section (3) of section 7 at the end of clause (b), the word or and the following new clauses shall be added, namely :- "(c) he is or has been a District Judge; or (d) he has held the office of the Chairman or any other member of the Labour Appellate Tribunal constituted under the Industrial Disputes (Appellate Tribunal) Act, 1950 or of any Tribunal, for a period not less than two years." - Punjab Act No. 8 of 1957.

UTTAR PRADESH (PRIOR TO AMENDMENT OF 1964) 2. After sub-section (3) of section 7 the following shall be added as a new sub-section (3A)- "(3A) In relation to an industrial dispute other than that referred in sub-clause (i) of clause (a) of section 2 or in section 4 of the Industrial Disputes (Banking and Insurance (Companies Act), 1949, the provisions of sub-section (3) shall have effect as if- (a) after clause (c), the following new clauses (d) and (e) had been added- "(d) is or-has been a Magistrate of the first class for a period exceeding two years." "(e) is a person possessing more than two years practical experience of adjudicating or settling industrial disputes." (b) in the proviso after the words clause (b) the words or clause (d) or clause (e) had been added." - Uttar Pradesh Act No. 25 of 1951.

WEST BENGAL For clause (b) of sub-section (3) of section 7, the following clause shall be substituted:- "(b) he is, or has been, a District Judge or an Additional District Judge; or" - West Bengal Act, 35 of 1989.

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 and for performing such other functions as may be assigned to them under this Act. (2) A Tribunal shall consist of one person only to be appointed by the appropriate Government. (3) A person shall not be qualified for appointment as the presiding officer of a Tribunal unless- (a) he is, or has been, a Judge of a High Court; or (aa) he has, for a period of not less than three years, been a District Judge or an Additional District Judge; *** (b) *** (4) The appropriate Government may, if it so thinks fit, appoint two persons as

assessors to advise the Tribunal in the proceeding before it.

GUJARATIn section 7A :- in clause (ad), after the words "an Additional District Judge" the words "or a Joint Judge or an Assistant Judge" shall be inserted; in clause (b), the word "or" shall be added at the end; after clause (b), the following clause shall be added, namely :- "(c) he has for not less than five years been the presiding officer of a Labour Court constituted under any law for the time being in force." - Gujarat Act No. 28 of 1977. In section 7A, in sub-section (3), after clause (c), the following clause shall be added, namely:- "(d) 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 Assistant Commissioner of Labour under the State Government for not less than ten years." - Gujarat Act No. 22 of 1981.

HARYANAIn sub-section (3) of section 7A,- (i) for clause (aa), the following clause shall be substituted, namely :- "(aa) he is qualified for appointment as, is, or has been, a District Judge or an Additional District Judge; or", and (ii) after clause (aa), the following clause shall be inserted, namely:- "(aaa) he has been a Commissioner of a division or an administrative Secretary to Government or an officer of the Labour Department not below the rank of a Joint Labour Commissioner for a period of not less than two years; or"- Haryana Act No. 39 of 1976

KARNATAKA In sub-section (3) of section 7A after clause (a), the following clause shall be inserted, namely:- "(aa) he is, or has been a District Judge for a period of not less than three years, or" - Mysore Act No. 6 of 1963 and Mysore Act No. 35 of 1963

KERALAIn sub-section (3) of section 7A for clause (a), the following clause shall be substituted, namely:- "(a) he is, or has been, a judicial officer not below the rank of a District Judge, or is qualified for appointment as a Judge of a High Court; or" - Kerala Act No. 28 of 1961

MADHYAPRADESH In section 7A in sub-section (3), the following sub-section shall be substituted, namely:- "(3) A person shall not be qualified for appointment as the Presiding Officer of a Tribunal unless- (a) he is, or has been, a Judge of a High Court; or (b) he is eligible for being appointed a Judge of a High Court; or (c) he has worked as President of the Board of Revenue; or (d) he has worked as member of the Board of Revenue for a period of not less than three years; or (e) he has worked as Commissioner of Labour for a period of not less than three years: or (f) he has worked as a member of the Industrial Court constituted under section 9 of the

Madhya Pradesh Industrial Relations Act, 1960 (No. 27 of 1960), for a period of not less than-five years" - Madhya Pradesh Act No. 19 of 1988

MAHARASHTRA In section 7A in sub-section (3), in clause (a), after the words "a Judge of a High Court" the following shall be inserted, namely :- "or a District Judge or a person qualified for appointment as a Judge of a High Court" - Maharashtra Act No. 2 of 1963 In section 7A in sub-section (3),- (i) in clause (aa), for the words "an Additional District Judge; or" words "an Additional District Judge or an Assistant Judge; or" shall be substituted; and (ii) after clause (b), the following new clause shall be inserted, namely :- (c) he has for not less than five years been a Presiding Officer of the Labour Court, constituted under any law for the time being in force - Maharashtra Act No. 56 of 1974. In section 7A of the principal Act, in sub-section (3), after clause (c), the following new clause shall be inserted, namely :- (d) 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 Assistant Commissioner of Labour under the State Government for not less than ten years." - Maharashtra Act No. 22 of 1976.

ORISSA After clause (a) of sub-section (3) of section 7A, insert the following :- "(aa) he has been a member of the Orissa Superior Judicial Service for a period of not less than seven years." - Orissa Act No. 6 of 1960.

WEST BENGAL In clause (a) of sub-section (3) of section 7A after the words "High Court*" insert the words "or a District Judge" or an "Additional District Judge". - West Bengal Act No. 17 of 1958. For clause (ad) of sub-section (3) of section 7A, the following clause shall be substituted:- (aa) he is, or has been, a District Judge or an Additional District Judge; or" - West Bengal Act No. 35 of 1989.

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.

PUNJAB- In section 7C for clause (b), the following shall be substituted, namely :- (b) he has attained the age of sixty-seven years;" - Punjab Act No. 8 of 1947.

WEST BENGAL To clause (b) of section 7C of the said Act, the following proviso shall be added, namely:- "Provided that where such presiding officer of a Tribunal appointed by the State Government attains the age of sixty-five years before completion of any proceedings pending before him, the State Government may if in the opinion of such Government public interest so requires, order his continuance in office for a period not exceeding six months for completion of the proceedings - West Bengal Act No. 11 of 1959.

GUJARAT After section 7C, insert the following section : "7D. Certain District Judges qualified for appointment on Tribunal constituted by State Government - Notwithstanding anything contained in sub-section (1) of section 7A- (1) the State Government may constitute an Industrial Tribunal under that sub-section for performing such other functions as may be assigned to it under this Act; (2) where the State Government constitutes a Tribunal under section 7A, the Tribunal may consist of a person who is, or has been, for a period of not less than 5 years, a District Judge or Additional or Joint Direct Judge and, notwithstanding anything contained in sub-section (3) of section 7A but subject to section 7C, such person shall be deemed to be qualified for appointment as the presiding officer of the Tribunal; (3) the appointment of a person qualified under clause (2) shall be made after consultation with the High Court" - Gujarat Act No. 22 of 1962.

8. Filling of vacancies :-

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

9. Finality of orders constituting Boards, etc :-

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

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

(3) Where the report of any settlement arrived at in the course of conciliation proceeding before a Board is signed by the chairman and all the other members

CHAPTER 2A Ommitted

9A. NOTICE OF CHANGE :-

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

(a) without giving to the 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 workman likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Service (Temporary Service) Rules, Revised Leave Rules, Civil Services 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,

ANDHRA PRADESH In clause (b) of section 9A for the words "within twenty-one days" the words "within forty-two days" shall be substituted - Andhra Pradesh Act 32 of 1987.

WEST BENGAL In clause (b) of section 9A for the words "within twenty-one days" the words "within forty-two days" shall be substituted. - West Bengal Act No. 57 of 1980.

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.

CHAPTER 2B 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- (1), a workman or any trade union of workmen of which such workman is a member, refer, in such manner as may be prescribed, such dispute to the Grievance Settlement Authority provided for by the employer under that sub-section for settlement.

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

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

CHAPTER 3 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 a reference under this subsection 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 that 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, Tribu- nal or National Tribunal for extension of such period or for any other reason, and the presiding officer to 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 (1A) 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, insofar 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 33A, section 33B 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.

KARNATAKA In section 10, after sub-section(4), the following sub-section shall be inserted, namely:- "(4A) Notwithstanding anything contained in section 9-C and in this section, in the case of a dispute falling within the scope of section 2-A, the individual workman concerned may, within six months from the date of communication to him of the order of discharge, dismissal, retrenchment or termination or the date of commencement of the Industrial Disputes (Karnataka Amendment) Act, 1987, whichever is later, apply, in the prescribed manner, to the Labour Court for adjudication of the dispute and the Labour Court shall dispose of such application in the same manner as a dispute referred under sub-section (1).

TAMIL NADU In section 10 after sub-section (2); the following sub-section shall be inserted, namely:- "(2A) Notwithstanding anything contained in sub-sections (1) and (2), where a Tribunal has been constituted, under this Act for the adjudication of disputes in any specified industry or industries and a dispute exists or is apprehended in any such industry, the employer or a majority of the workmen concerned may refer the dispute to that Tribunal" - Madras Act No. 12 of 1949

MAHARASHTRA In section 10, in sub-section (2), after appropriate

Government insert on such application being made by a union recognised for any undertaking under any law for the time being in force, and in any other case - Maharashtra Act No. I of 1972.

WEST BENGAL In section 10 after sub-section (I A), the following sub-section shall be inserted:- "(IB)(a) Notwithstanding anything contained elsewhere in this Act, where in a conciliation proceeding of an industrial dispute relating to an individual workman, no settlement is arrived at within a period of sixty days from the date of raising of the dispute, the party raising the dispute may apply to the Conciliation Officer in such manner and in such form as may be prescribed, for a certificate about the pendency of the conciliation proceedings. The Conciliation Officer shall, on receipt of the application under clause (a), issue a certificate within seven days from the date of receipt in such manner, in such form and containing such particulars as may be prescribed. A copy of the certificate shall also be sent to the appropriate Government for information. (c).The party may, within a period of sixty days from the receipt of such certificate or, where such certificate has not been issued within seven days as aforesaid, within a period of sixty days commencing from the day immediately after the expiry of seven days as aforesaid, file an application in such form and in such manner and with such particulars of demands as may be prescribed, to such Labour Courts or Tribunal as may be specified by the appropriate Government by notification. Different Labour Courts or Tribunals may be specified for different areas or different classes of industries. (d) The Labour Court or Tribunal specified under clause (c) shall, within a period of thirty days from the date of receipt of an application under clause (c), give a hearing to the parties and frame the specific issues in dispute, and shall thereafter proceed to adjudicate on the issues so framed as if it were an industrial dispute referred to in sub-section (1)." - West Bengal Act No. 33 of 1989.

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 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.

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

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

ANDHRA PRADESH After section IOA the following section shall be inserted, namely :- 10B. Power to issue order regarding terms and conditions of service, etc.-(1) Notwithstanding anything contained in this Act, if in the opinion of the State Government, it is necessary or expedient so to do, for securing the public safety or convenience or the maintenance of public order of supplies and service essential to the life of the community or for maintaining

employment or maintaining industrial peace, it may by a general or special order, make provision,- (a) for requiring employers, workmen or both to observe for such period as may be specified in the order such terms and conditions of employment as may be determined in accordance with the order; and (b) for prohibiting, subject to the provisions of the order, strikes or lock-outs generally or a strike or lock-outs in connection with any industrial dispute. (2) In case any industrial dispute is raised in respect of any provisions in the order of the State Government made under sub-section (I), within a period of three months of the orders, it shall be referred by the State Government for adjudication to an Industrial Tribunal or Labour Court and the order shall lapse when the award of the Tribunal or Labour Court becomes enforceable: Provided, that the reference of the industrial dispute to adjudication shall not have the effect of staying the operation of the order." - Andhra Pradesh Act No. 32 of 1987.

KARNATAKA After section IOA the following section shall be inserted, namely :- 10B. Power to issue order regarding terms and conditions of service pending settlement of dispute.-(1) Where an industrial dispute has been referred by the State Government to a Labour Court or a Tribunal under sub-section (1) of section 10 and if in the opinion of the State Government it is necessary or expedient so to do for securing the public safety or convenience or the maintenance of public order or supplies and services essential to the life of the community or for maintaining employment or industrial peace in the establishment concerning which such reference has been made, it may, by general or special order, make provision,- (a) for requiring the employer or workman or both to observe such terms and conditions of employment as may be specified in the order or as may be determined in accordance with the order, including payment of money by the employer to any person who is or has been a workman; (b) for requiring any public utility service not to close or remain closed and to work or continue to work on such terms and conditions as may be specified in the order; and (c) for any incidental or supplementary matter which appears to it to be necessary or expedient for the purpose of the order : Provided that no order made under this sub-section shall require any employer to observe terms and conditions of employment less favourable to the workman than those which were applicable to them at any time within three months immediately preceding the date of the order.

KERALA After section IOA the following section shall be inserted,

namely :- "10B. Power to issue orders regarding terms and conditions of service pending settlement of disputes.-(7) Where an industrial dispute has been referred by the State Government to a Labour Court or Tribunal under sub-section (1) of section 10 and if, in the opinion of that Government, it is necessary or expedient so to do for securing the public safety or convenience or the maintenance of public order or supplies and services essential to the life of the community or for maintaining employment or industrial peace in the establishment concerning which such reference has been made, it may, by general or special order, make provision- (a) for requiring employers or workmen or both to observe such terms and conditions of employment as may be specified in the order or as may be determined in accordance with the order, including payment of money by the employer to any person who is or has been a workman; (b) for requiring any public utility service not to close or remain closed and to work or continue to work on such terms and conditions as may be specified in the order; and (c) for any incidental or supplementary matters which appear to it to be necessary or expedient for the purpose of the order: Provided that no order made under this sub-section shall require any employer to observe terms and conditions of employment less favourable to the workmen than those which were applicable to them at any time within three months immediately preceding the date of the order.

MAHARASHTRA In section 10A,- (a) in sub-section (1) after the word "workmen" the words "and where under any law for the time being in force, there is a recognised union in respect of any undertaking, the employer and such recognised union shall be inserted: (b) to sub-section (3A), the following proviso shall be added, namely :- "Provided that, nothing in this sub-section shall apply, where a dispute has been referred to arbitration in pursuance of an agreement between the employer and the recognised union under sub-section (1) of this section."; (c) in sub-section (4A), after the words, brackets, figure and letter "sub-section (3A) the words or where there is a recognised union for any undertaking under any law for the time being in force and an industrial dispute has been referred to arbitration" shall be inserted - Maharashtra Act No. I of 1972

RAJASTHAN For section 10A, the following new Chapter shall be inserted, namely :-

CHAPTER 3A ARBITRATION

10B. Submission :-

(1) Any employer and a Representative Union or, in the absence of any registered Representative Union, any other Union which is 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) 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.

10C. 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 three months notice in writing : Provided further that, before the expiry of the said period of three months the parties may agree to continue the submission for such further period may be agreed upon between them.

10D. Proceedings in arbitration :-

The proceedings in arbitration under this Chapter shall be in accordance with the provisions of the Arbitration Act, 1940 (Central Act X 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 the Industrial Tribunal.

10E. Special case may be stated to Industrial Tribunal :-

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

10F. Award by arbitrator :-

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

10G. (1) Dispute to be referred to Industrial Tribunal 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 circumstances no arbitrator is appointed, such dispute may be referred by the State Government for adjudication by the Industrial Tribunal.

10H. State Government may refer industrial dispute to Industrial Tribunal for adjudication :-

(1) Notwithstanding anything contained in this Chapter, the State Government may, at any time, refer an industrial dispute for adjudication by the Industrial Tribunal, if on a report made by the Conciliation Officer or otherwise it is satisfied that-

(A) 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

(B) the dispute is not likely to be settled by other means; or

(C) it is necessary in the public interest to do so.

(2) When the State Government makes a reference to the Industrial Tribunal for adjudication of any industrial dispute, any submission or any award of an arbitrator with regard to that industrial dispute shall stand as cancelled.

10I. Notice of award to parties :-

(1) The arbitrator or the Industrial Tribunal as an arbitrator, as the case may be, shall forward copies of the award made by him or it to the parties, the Commissioner of Labour, the Registrar and the State Government.

(2) On receipt of such award, the Registrar shall enter it in the register kept for the purpose.

10J. Completion of proceeding :-

The arbitration proceeding shall be deemed to have completed when the award is published under section 17."- Rajasthan Act No. 34 of 1958. After section 10J, the following new section shall be inserted, namely :-

10K. State Government may lay down terms and conditions of employment and prohibit strikes, etc :-

"

(1) Notwithstanding anything contained in the Act, if in the opinion of the State Government, it is necessary or expedient so to do, for securing the public safety or convenience or the maintenance of public order or supplies and services essential to the life of the community or for maintaining employment or maintaining industrial peace, it may by a general or special order, make provision-

(a) for requiring employers, workmen or both to observe for such period as may be specified in the order, such terms and conditions of employment as may be determined in accordance with the order; and

(b) for prohibiting, subject to the provision of the order, strikes, lock-outs generally or a strike or lock-out in connection with any industrial dispute.

(2) In case any industrial dispute is raised in respect of any provisions in the order of the State Government made under sub-section (1) within a period of three months of the order, it shall be referred by the State Government for adjudication to an Industrial Tribunal and the order shall lapse when the award of the Tribunal becomes enforceable : Provided, however, that the reference of the industrial dispute to adjudication shall not have the effect of staying the operation of the order." - Rajasthan Act No. 14 of 1970.

TAMILNADU After section 10A, the following section shall be inserted, namely :- "10B. Power to issue order regarding terms and conditions of service pending settlement of disputes.-(1) Where an industrial dispute has been referred by the State Government to a Labour Court or a Tribunal under sub-section (1) of section 10 and if, in the opinion of the State Government, it is necessary or expedient so to do for securing the public safety or convenience or the maintenance of public order or supplies and services essential to the life of the community or for maintaining employment or industrial peace in the establishment concerning which such reference has been made, they may, by general or special order, make provision- (a) for requiring employers or workmen or both to

observe such terms and conditions of employment as may be specified in the order or as may be determined in accordance with the order, including payment of money by the employer to any person who is or has been a workman; (b) for requiring any public utility service not to close or remain closed and to work or continue to work on such terms and conditions as may be specified in the order; and (c) for any incidental or supplementary matters which appears to them to be necessary or expedient for the purpose of the order: Provided that no order made under this sub-section shall require any employer to observe terms and conditions of employment less favourable to the workmen than those which were applicable to them at any time within three months immediately preceding the date of the order.

CHAPTER 4 PROCEDURE, POWERS AND DUTIES OF AUTHORITIES

11. Procedure and powers of conciliation officers. Boards, Courts and Tribunals and National Tribunals. :-

(1) Subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think fit.

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

(3) Every Board, Court, Labour Court, Tribunal or National Tribunal shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit, in respect of the following matters, namely:-

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

(b) compelling the production of documents and material objects;

(c) issuing commissions for the examination of witness;

(d) in respect of such other matters as may be prescribed; and every inquiry or investigation by a Board, Court, Labour Court, Tribunal or National Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860).

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

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

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

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

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

KARNATAKA For sub-section (4) of section 11 the following sub-sections shall be substituted, namely:- "(4) A Conciliation Officer may, if he considers that any document or the testimony of any person is relevant or necessary for the settlement of an industrial dispute or for the purpose of verifying the implementation of any award or carrying out any other duty imposed on him under this Act, call for and inspect such document or summons and examine such person. For the aforesaid purposes, the Conciliation Officer shall have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908 (Central Act V

of 1908), in respect of the following matters, namely :- (i) summoning and enforcing the attendance of any person and examining him on oath; (ii) compelling the production of documents; (iii) issuing commission for examination of witnesses. (4A) Whoever refuses or fails to attend or take part in a conciliation proceeding or fails or refuses to produce the documents in pursuance of an order issued under sub-section (4), shall, on conviction, be punishable with imprisonment for a period which may extend to three months or with fine which may extend to five hundred rupees or with both - Karnataka Act No. 5 of 1988.

TAMIL NADU For sub-section (4) of section 11 of the following sub-section shall be substituted, namely:- "(4) A conciliation officer may, if he considers that any document or the testimony of any person is relevant or necessary for the settlement of an industrial dispute or for the purpose of verifying the implementation of any award or carrying out any other duty imposed on him under this Act, call for and inspect such document or summons and examine such person. For the aforesaid purposes, the conciliation officer shall have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908 (Central Act V of 1908), in respect of the following matters, namely :- (i) summoning and enforcing the attendance of any person and examining him on oath; (ii) compelling the production of documents; (iii) issuing commissions for examination of witness." - Tamil Nadu Act No. 5 of 1988.

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.

11B. Section 11B :-

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ANDHRA PRADESH After section 11A of the principal Act, the following section shall be inserted namely:-

"11B. Power of Labour Court or Tribunal to execute its award by decree.-

A Labour Court or a Tribunal shall have the power of a Civil Court to execute its award or any settlement as a decree of a Civil Court." - Andhra Pradesh Act No. 32 of 1987.

MADHYAPRADESH After section 11A, the following sections shall be inserted, namely :-

"11B. Powers of Labour Courts in respect of criminal cases.-

In respect of offences punishable under this Act and the Acts specified in Part-B of the Second Schedule a Labour Court shall have all the powers under Code of Criminal Procedure, 1973 (No. 2 of 1974) of a Judicial Magistrate of the First Class and in the trial of every such offence shall follow the procedure laid down in Chapter XXI of the said Code for summary trial and the rest of the provisions of the Code, shall, so far as may be, apply to such trial.

11C. Appeal-

(1) An appeal shall lie to the Industrial Court constituted under section 9 of the Madhya Pradesh Audyogik Sambandh Adhiniyam, 1960 (27 of 1960),-

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

(b) against an acquittal by a Labour Court, by the State Government:

(c) for enhancement of sentence, awarded by a Labour Court, by the State Government.

(2) Every appeal shall be made within sixty 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.

11D. Powers of the Industrial Court hearing appeal under section I IC.-In respect of offence punishable under this Act and the Acts specified in Part B of the Second Schedule, Industrial Court hearing appeal under section I IC shall have all the powers of the High Court under the Code of

Criminal Procedure, 1973 (2 of 1974) and shall follow such procedure as it may think fit in disposing of the appeal." - Madhya Pradesh Act No. 43 of 1981.

WEST BENGAL After section 11 A the following section shall be inserted :-

"11B. Power of a Labour Court or Tribunal to execute its award by decree, -etc.-

A Labour Court or a Tribunal shall have the power of a civil court to execute its own award as a decree of a civil court and also to execute any settlement as defined in clause (p) of section 2 as a decree." - West Bengal Act No. 57 of 1980.

12. Duties of conciliation officers :-

(1) Where an industrial dispute exists or is apprehended, the conciliation officer may, or where the dispute relates to a public utility service and a notice under section 22 has been given, shall, hold conciliation proceedings in the prescribed manner.

(2) The conciliation officer shall, for the purpose of bringing about a settlement of the dispute, without delay, investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

(3) If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings the conciliation officer shall send a report thereof to the appropriate Government or an officer authorised in this behalf by the appropriate Government together with a memorandum of the settlement signed by the parties to the dispute.

(4) If no such settlement is arrived at, the conciliation officer shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, and the reasons on account of which, in his opinion, a settlement could not be arrived at.

(5) If, on a consideration of the report referred to in sub-section (4), the appropriate Government is satisfied that there is a case for reference to a Board, Labour Court, Tribunal or National Tribunal, it

may make such reference. Where the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reasons therefor.

(6) A report under this section shall be submitted within fourteen days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate Government : Provided that, subject to the approval of the conciliation officer, the time for the submission of the report may be extended by such period as may be agreed upon in writing by all the parties to the dispute.

STATE AMENDMENT WEST BENGAL 1 sub-section (6) of section 12,- (i) for the words "within fourteen days" the words "after completion of the conciliation proceedings within sixty days" shall be substituted; and (ii) in the proviso, after the words "such period" the words "not exceeding six months" shall be inserted - West Bengal Act No. 57 of 1980.

13. Duties of Board :-

(1) Where a dispute has been referred to a Board under this Act, it shall be the duty of the Board to endeavour to bring about a settlement of the same and for this purpose the Board shall, in such manner as it thinks fit and without delay, investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all such things as it thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

(2) If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings, the Board shall send a report thereof to the appropriate Government together with a memorandum of the settlement signed by the parties to the dispute.

(3) If no such settlement is arrived at, the Board shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the proceedings and steps taken by the Board for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, its findings thereon, the reasons on account of which, in its opinion, a settlement could not be arrived at and its recommendations for the determination of the dispute.

(4) If, on the receipt of a report under sub-section (3) in respect of a dispute relating to a public utility service, the appropriate Government does not make a reference to a Labour Court, Tribunal or National Tribunal under section 10, it shall record and communicate to the parties concerned its reasons therefor.

(5) The Board shall submit its report under this section within two months of the date on which the dispute was referred to it or within such shorter period as may be fixed by the appropriate Government : Provided that the appropriate Government may from time to time extend the time for the submission of the report by such further periods not exceeding two months in the aggregate: Provided further that the time for the submission of the report may be extended by such period as may be agreed on in writing by all the parties to the dispute.

14. Duties of Courts :-

A court shall inquire into the matters referred to it and report thereon to the appropriate Government ordinarily within a period of six months from the commencement of its inquiry.

15. Duties of Labour Courts, Tribunals and National Tribunals :-

. Where an industrial dispute has been referred to a Labour Court, Tribunal or National Tribunal for adjudication, it shall hold its proceedings expeditiously and shall, within the period specified in the order referring such industrial dispute or the further period extended under the second proviso to sub-section (2A) of section 10 submit its award to the appropriate Government. STATE AMENDMENTS

WEST BENGAL For section 15 the following section shall be substituted :- " 15. Duties of Labour Courts, Tribunals and National Tribunals.-(1) Where an industrial dispute has been referred to a 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 (2A) of section 10, submit its award to the appropriate Government. (2) Where an industrial dispute has been referred to a Labour Court or Tribunal under sub-section (f) of section 10, it shall,- (a) after the filing of statements and taking of evidence, give day to day hearing and pronounce its award, other determination or decision in the manner specified in

section 17-AA, and (b) after hearing the parties to the dispute, determine, within a period of sixty days from the date of the order referring such industrial dispute or within such shorter period as may be specified in such order, the quantum of interim relief admissible, if any : Provided that the quantum of interim relief shall, in the case of discharge, dismissal or retrenchment of a workman from service or termination of service of workman, be equivalent to the subsistence allowance admissible under the West Bengal Payment of Subsistence Allowance Act, 1969-West Bengal Act No. 33 of 1986.

16. Form of report or award :-

(1) The report of a Board or Court shall be in writing and shall be signed by all the members of the Board or Court, as the case may be : Provided that nothing in this section shall be deemed to prevent any member of the Board or Court from recording any minute of dissent from a report or from any recommendation made therein.

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

17. Publication of reports and awards :-

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

(2) Subject to the provisions of section 17A, 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 Government, or before Parliament, if the order has been made by the Central Government.

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

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(1) A settlement ***shall come into operation on such date as is agreed upon by the parties to the dispute, and if no date is agreed upon, on the date on which the memorandum of the settlement is signed by the parties to the dispute.

(2) Such settlement shall be binding for such period as is agreed upon by the parties, and if no such period is agreed upon, for a period of six months from the date on which the memorandum of settlement is signed by the parties to the dispute, and shall continue to be binding on the parties after the expiry of the period aforesaid, until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement.

(3) An award shall, subject to the provisions of this section, remain in operation for a period of one year from the date on which the award becomes enforceable under section 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.

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MAHARASHTRA In section 19,- (a) after sub-section (2), the following sub-section shall be added, namely :- "(2A) Notwithstanding, anything contained in this section, where a union has been recognised under any law for the time being in force, or where any other union is recognised in its place under such law, then notwithstanding anything contained in sub-section (2), it shall be lawful to any such recognised union to terminate the settlement after giving two months written notice to the employer in that behalf."; (b) to sub-section (7), the following shall be added, namely :- "and where there is a recognised union for any undertaking under any law for the time being in force, by such recognised union." - Maharashtra Act No. 1 of 1972.

WEST BENGAL In section 19, in sub-section (3), for the words, figures and letter "or section 17B" the words, figures and letter "or section 17AA" shall be substituted - West Bengal Act Nos. 34 of 1983 and 57 of 1980.

20. commencement and conclusion of proceedings :-

(1) A conciliation proceeding shall be deemed to have commenced on the date on which a notice of strike or lock-out under section 22 is received by the conciliation officer or on the date of the order referring the dispute to a Board, as the case may be.

(2) A conciliation proceeding shall be deemed to have concluded-

(a) where a settlement is arrived at, when a memorandum of the settlement is signed by the parties to the dispute;

(b) where no settlement is arrived at, when the report of the conciliation officer is received by the appropriate Government or when the report of the Board is published under section 17, as the case may be; or

(c) when a reference is made to a Court, Labour Court, Tribunal or National Tribunal under section 10 during the pendency of conciliation proceedings.

(3) Proceedings before an arbitrator under section 10A or before a Labour Court, Tribunal or National Tribunal shall be deemed to have commenced on the date of the reference of the dispute for arbitration or adjudication, as the case may be, and such

proceedings shall be deemed to have concluded on the date on which the award becomes enforceable under section 17A.

21. tain 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 arbitrator, if the trade union, person, firm or company, in question has made a request in writing to the conciliation officer. Board, Court, Labour Court, Tribunal, National Tribunal or arbitrator, as the case may be, that such information shall be treated as confidential; nor shall such conciliation officer or any individual member of the Board, or Court or the presiding officer of the Labour Court, Tribunal or National Tribunal or the arbitrator or any person present at or concerned in the proceedings disclose any such information without the consent in writing of the secretary of the trade union or the person, firm or company in question, as the case may be: Provided that nothing contained in this section shall apply to a disclosure of any such information for the purposes of a prosecution under section 193 of the Indian Penal Code (45 of 1860).

CHAPTER 5 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 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 (7) or gives to any person 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 (3A) of

section 10A; or

(c) during any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award.

24. Illegal strikes and lock-outs :-

(1) A strike or a lock-out shall be illegal if-

(i) it is commenced or declared in contravention of section 22 or section 23; or

(ii) it is continued in contravention of an order made under sub-section (3) of section 10 or sub-section (4A) of section 10A;

(2) Where a strike or lock-out in pursuance of an industrial dispute has already commenced and is in existence at the time of the reference of the dispute to a Board, an arbitrator, a Labour Court, Tribunal or National Tribunal, the continuance of such strike or lock-out shall not be deemed to be illegal, provided that such strike or lock-out was not at its commencement in contravention of the provisions of this Act or the continuance thereof was not prohibited under sub-section (3) of section 10 or sub-section (4A) of section 10A.

(3) A lock-out declared in consequence of an illegal strike or a strike declared in consequence of an illegal lock-out shall not be deemed to be illegal

.

25. Prohibition of financial aid to illegal strikes and lock-outs :-

No person shall knowingly expend or apply any money in direct furtherance or support of any illegal strike or lock-out.

CHAPTER 5A LAY-OFF AND RETRENCHMENT

25A. Application of sections 25C to 25E :-

(1) Sections 25C to 25E 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.

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 25F at any time after the expiry of the first fortyfive 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.

STATE AMENDMENTS MAHARASHTRA In section 25C (a) after the words had he not been so laid of: the following proviso shall be inserted, namely:- "Provided that, where the lay off is on account of discontinuance or reduction of the supply of power to the industrial establishments for contravention of any provisions of the bombay Electricity (Special Powers) Act, 1946(Bom.XXof 1946), or of any orders ord irectionsissued thereunder, the compensation payable to the workman shall be equal to hundred 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:"; (b) in the existing first proviso, for the words "Provided that the words Provided further that" shall be substituted; (c) in the existing second proviso, for the words "Provided further that the words "Provided also that shall be substituted. - Maharashtra Act No. 22 of 1981.

WEST BENGAL In section 25C, the second proviso shall be omitted - West Bengal Act No. 57 of 1980.

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.

STATE AMENDMENTS

WEST BENGAL In section 25E after clause (ii), the following proviso shall be inserted :- "Provided that where lay off extends beyond seven days at a stretch the workman may be required to present himself only once in a week; - West Bengal Act No. 57 of 1980.

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 months notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; ***

(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 25F, 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 :-

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(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 undertakings :-

(1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, 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 25F shall not exceed his average pay for three months.

(1A) 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 25F, if-

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

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

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

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

(2) Where any undertaking set up for the construction of buildings, bridges, roads, canals, dams or other construction work is closed down on account of the completion of the work within two years

from the date on which the undertaking had been set up, no workman employed therein shall be entitled to any compensation under clause (b) of section 25F, 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.

ANDHRAPRADESH In sub-section (1) of section 25FFF,- "Provided that the prior payment of compensation to the workman shall be a condition precedent to the closure of any undertaking"; (b) in the existing proviso, for the words "Provided that", the words "Provided further that" shall be substituted - Andhra Pradesh Act No. 32 of 1987.

WEST BENGAL In section 25FFF of the principal Act, in sub-section (1),- (7) before the existing proviso, the following proviso shall be inserted :- "Provided that prior payment of compensation to the workmen shall be a condition precedent to the closure of any undertaking;". (2) in the existing proviso, for the words "Provided that" the words "Provided further that" shall be substituted. - West Bengal Act No. 57 of 1980.

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 employment any persons, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen who offer themselves for re-employment shall have preference over other persons.

25HH. Section 25HH :-

ANDHRA PRADESH Section 25H, of the principal Act, shall be renumbered as sub-section (1) of that section and after sub-section

(1) as so numbered, the following sub-section shall be inserted, namely:- "(2) Where a closed unit is re-opened the workmen on the roll of the Unit immediately before its closure shall be given an opportunity to offer them- selves for re-employment in the manner provided in sub-section (1). -Andhra Pradesh Act No. 32 of 1987. Section 25H of the Principal Act, the following section shall be inserted, namely:-

"25-HH. Condition of reinstatement in service by an award of Labour Court or Tribunal-Where a workman is reinstated in service by an award of Labour Court or Tribunal, the workman shall be deemed to be in service from the date specified in the award whether or not the workman was earlier reinstated by the employer and his wages shall be recovered in the manner provided in section 33C." - Andhra Pradesh Act No. 32 of 1987.

WEST BENGAL Section 25H of the principal Act shall be re-numbered as sub-section (1) of that section and after sub-section (1), as so renumbered, the following sub-section shall be inserted:-

"(2) Where a closed unit is reopened the workmen on the roll of the unit immediately before its closure shall be given an opportunity to offer them- selves for re-employment in the manner provided in sub-section (1)." - West Bengal Act No. 57 of 1980. After section 25H of the principal Act, the following section shall be inserted :-

"25HH. Condition of reinstatement of workman by an award of a Labour Court or Tribunal-Where a workman is reinstated in service by an award of a Labour Court or Tribunal, the workman shall be deemed to be in service from the date specified in the award whether or not the workman was earlier reinstated by the employer and his wages shall be recovered in the manner provided in section 33C." - West Bengal Act No. 57 of 1980.

25I. Recovery of moneys due from employers under this Chapter :-

Omitted by the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956 w.e.f. 10-3-1957.

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 (20 of 1946): Provided that where

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

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

CHAPTER 5B SPECIAL PROVISIONS RELATING TO LAY-OFF, RETRENCHMENT AND CLOSURE IN CERTAIN ESTABLISHMENTS

25K. Application of Chapter V-B :-

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

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

25L. Definitions :-

For the purposes of this Chapter,-

(a) "industrial establishment" means-

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

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

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

(b) notwithstanding anything contained in sub-clause (ii) of clause

(a) of section 2,-

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

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

RAJASTHAN In clause (b) of section 25L "the Central Government shall be the appropriate Government", the expression "the State Government shall have no powers under this Chapter"-shall be substituted - Rajasthan Act No. 8 of 1984

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 (herein- after 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 25C (other than the second proviso thereto) shall apply to cases of lay-off referred to in this section.

STATE AMENDMENTS

RAJASTHAN In section 25M,- (a) in sub-section (1), between the expression "this Chapter applies" and the expression "shall be laid off", the expression "or is applied under sub-section (1A) of section 25K" shall be inserted and for the expression "appropriate Government", the expression "State Government" shall be substituted; (b) in sub-section (2), for the expression "(Amendment) Act, 1976", the expression "(Rajasthan Amendment) Act, 1984" shall be substituted; (c) for the existing sub-section (3), the following sub-sections shall be substituted, namely:- "(3) In the case of every application for permission under sub-section (1) or sub-section (2), the employer shall state clearly the reasons due to which he intends to lay-off or continue the lay-off of a workman and a copy of such application shall be served on the workman intended to be laid-off or continued to be laid-off by registered post with acknowledgement due. (4) Where an application for permission has been made under sub-section (1) or sub-section (2), the authority to whom the application has been made, after making such enquiry as it thinks fit and after giving reasonable opportunity of being heard to the employer and the workman, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the terms of contract of service and the standing orders governing the establishment, by order and for reasons to be recorded in writing grant or refuse to grant such permission and such order shall be communicated to the employer and the workman."; (d) the existing sub-section (4) shall be renumbered as sub-section (5) thereof; (e) after sub-section (5) as so renumbered, the following sub-sections shall be inserted, namely:- "(6) An order of the authority specified under sub-section (1) granting or refusing to grant permission shall, subject to the provisions of sub-section (7), be final and binding on both the parties. (7) The authority specified under sub-section (1) may, either of its own motion or on the application made by the employer or the workman-, review its order granting or refusing to grant permission under sub-section (4) or refer the matter to the Labour Court having jurisdiction for adjudication : Provided that where a reference has been made to a Labour Court under this sub-section, it shall pass an award within a period of thirty days from the date of such reference." and (f) the existing sub-sections (5)

and (6) shall be renumbered as sub-sections (8) and (9) thereof - Rajasthan Act No. 8 of 1984.

WEST BENGAL In sub-section (4) of section 25M for the words "two months", the words "three months" shall be substituted - West Bengal Act No. 57 of 1980.

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 the notice; and

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

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

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

(4) Where an application for permission has been made under sub-section (1) and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from

the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

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

(6) The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (3) or refer the matter or, as the case may be, cause it to be referred, to a Tribunal for adjudication : Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

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

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

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

RAJASTHAN In section 25N- (a) in sub-section (7),- (i) between the expression "this Chapter applies" and the expression "who has been", the expression "or is applied under sub-section (I-A) of section 25K" shall be inserted; and (ii) for clause (c), the following

clause shall be substituted, namely :- "(c) three months notice in writing stating clearly the reasons for retrenchment is served on the State Government or such authority as may be specified by the State Government by notification in the Official Gazette by registered post with acknowledgement due, and the permission of the State Government or of the such authority is obtained under sub-section (2)."; (b) for sub-section (2), the following sub-section shall be substituted, namely:- "(2) On receipt of a notice under clause (c) of sub-section (1), the State Government or authority, after making such enquiry as it thinks fit and after giving reasonable opportunity of being heard to the employer, the workman and the office-bearer of the representative union of the concerned industrial establishment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, requirements of industrial peace, prevention of victimisation and unfair labour practice, by order and for reasons to be recorded in writing grant or refuse to grant such permission and such order shall be communicated to the employer, the workman and the office-bearer of such representative union."; (c) in sub-section (4), "for the expression "(Amendment) Act, 1976", the expression "(Rajasthan Amendment) Act, 1984", for the expression "(a) of section 25F", the expression "(c) of sub-section (I)", for the word "appropriate", the word "State" and for the expression "sub-section (2)", the expression "the said clause of the said sub-section" shall respectively be substituted: (d) in sub-section (5), for the word "appropriate", the word "State" shall be substituted; (e) after sub-section (5), the following sub-sections shall be inserted, namely:- "(6) an order of the State Government or the authority granting or refusing to grant permission shall, subject to the provisions of sub-section (7), be final and binding on all the parties and shall remain in force for one year from the date of such order. (7) The State Government or, as the case may be, the authority may, either on its own motion or on the application made by the employer or the 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."; (f) the existing sub-sections (6) and (7) shall respectively be renumbered as sub-sections (8) and (9) thereof; and (g) in sub-section (9) as so renumbered,- (i) for the expression "(Amendment) Act, 1976", the expression "(Rajasthan Amendment) Act, 1984" shall be

substituted; (ii) the expression "or the Central Government" shall be deleted; (iii) for the word "appropriate", wherever occurring, the word "State" shall be substituted; and (iv) for the expression "and any order passed by such authority shall be final and binding on the employer and the workman or workmen", the expression "and such authority while deciding such matter shall proceed to hold the enquiry in the manner and have regard to the matters specified in sub-section (2). Any order passed by such authority shall, subject to review under the proviso to this sub-section, be final and binding on the employer and the workman or workmen : Provided that such authority as aforesaid may, either on its own motion or on the application made by the employer or the workman, review the order passed by it under this sub-section or refer the matter to a Tribunal for adjudication and to such reference, the provisions contained in the proviso to sub-section (7) shall, mutatis mutandis, apply, shall be substituted - Rajasthan Act No. 8 of 1984.

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

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

(3) Where an application has been made under sub-section (1) and

the appropriate Government does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

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

(5) The appropriate Government may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (2) or refer the matter to a Tribunal for adjudication : Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

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

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

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

MADHYAPRADESH For section 25-0, the following section shall be substituted, namely :- "25-0. 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 apply for prior permission at least ninety days before

the date on which the intended closure is to become effective, to the State Government, stating clearly the reasons for the intended closure of the undertaking and a copy of such application shall also be served simultaneously on the representatives of the workmen by registered post with acknowledgement due. (2) Where a notice has been served on the State Government by an employer under sub-section (1) of section 25FFA and the period of notice has not expired at the commencement of the Industrial Disputes (Madhya Pradesh Amendment) Ordinance, 1983, such employer shall not close down the undertaking but shall, within a period of fifteen days from such commencement, apply to the State Government for permission to close down the undertaking. (3) Where an application for permission has been made under sub-section (1) or sub-section (2) the State Government, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen and the persons interested in such closure may, having regard to the genuineness and adequacy of the reasons stated by 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. (4) Where an application has been made under sub-section (1) or sub-section (2), as the case may be, and the State Government does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days. (5) An order of the State Government granting or refusing to grant permission shall, subject to the provisions of sub-section (6), be final and binding on all the parties and shall remain in force for one year from the date of such order. (6) The State Government may, either on its own motion or on the application made by the employer or any workmen, review its order granting or refusing to grant permission under sub-section (3) or refer the matter to the Tribunal for adjudication : Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference. (7) Where no application for permission under sub-section (1) or sub-section (2) 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. (8) Notwithstanding anything contained in the foregoing provisions of this section, the State Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, 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. (9) Where an undertaking is permitted to be closed down under sub-section (3) or where permission for closure is deemed to be granted under sub-section (4), 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." - Madhya Pradesh Act No. 32 of 1983.

MAHARASHTRA For section 25-0, the following section shall be substituted, namely:- "25-0. Application to be made for obtaining permission to close down any undertaking ninety days before closure,-(1) An employer, who intends to close down an undertaking of an industrial establishment to which this Chapter applies, shall submit, for permission, at least ninety days before the date on which the intended closure is to become effective, an application, in the prescribed manner, to the appropriate Government, stating clearly the reasons for the intended closure of the undertaking. A copy of such application shall be served by the employer simultaneously on the representatives of the workmen in the prescribed manner: Provided that nothing in this section shall apply to an undertaking set up for the construction of buildings, bridges, roads, canals, dams, or other construction works. (2) On receipt of an application under sub-section (1), the appropriate Government, after holding such inquiry as it deems fit, and after giving a reasonable opportunity of being heard to the applicant and the representatives of the workmen, man, for the reasons to be recorded in writing, by order grant the permission for closure, or if it is satisfied that the reasons given for the intended closure of the undertaking are not adequate and sufficient, or are not urged in good faith or are grossly unfair or unjust, and in any case such closure would be prejudicial to the interests of the general public, it may, for the reasons to be recorded in writing, by order refuse to grant the permission and direct the employer not to close such undertaking. A copy of any decision given by the appropriate

Government under this sub-section shall be sent by it simultaneously to the representatives of the workmen. (3) Where an application for permission has been made under sub-section (1), and the appropriate Government does not communicate the refusal to grant the permission to the employer, within a period of sixty days from the date of receipt of the application by it, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days. (4) Any employer or any workman affected by any order made under sub-section (2) or any workman affected by the permission deemed to be granted under sub-section (3), may, within thirty days from the date of the order or from the date from which the permission is deemed to be granted, as the case may be, prefer an appeal to such Industrial Tribunal as may be specified by the appropriate Government by notification in the Official Gazette for such area or areas or for the whole State, as may be specified therein. The Industrial Tribunal shall, after holding such inquiry as it deems fit, as far as possible within thirty days from the date of filing the appeal, pass an order, either affirming or setting aside the order of the appropriate Government or the permission deemed to be granted, as the case may be. (5) Any order made by the appropriate Government under sub-section (2) or any permission deemed to be granted under sub-section (3), subject to an appeal to the Industrial Tribunal, and any order made by the Industrial Tribunal in such appeal, shall be final and binding on all the parties concerned. (6) Any order refusing to grant permission for closure made by the appropriate Government under sub-section (2) shall remain in force for a period of one year from the date of such order, unless it is set aside earlier by the Industrial Tribunal in appeal. (7) When no application for permission under sub-section (7) is made, 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 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 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 the provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order. (9) 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 in the said undertaking, who has been in continuous service for not less than one year in that undertaking immediately before the date of application for permission under this section, shall be entitled to notice and compensation as specified in section 25 N, as if the said workman has been retrenched under that section." - Maharashtra Act No. 3 of 1982.

RAJASTHAN For section 25-0 the following section shall be substituted, namely:- "25-0. 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 including an employer who has served a notice under sub-section (1) of section 25FFA on the State Government of his intention to close down such an undertaking but the period of such a notice has not expired at the commencement of the Industrial Disputes (Rajasthan Amendment) Ordinance, 1983, shall apply for prior permission at least ninety days before the date on which the intended closure is to become effective, to the State Government, stating clearly the reasons for the intended closure of the undertaking and a copy of such application shall also be served simultaneously on the representatives of the workmen by registered post with acknowledgement due. (2) Where an application for permission has been made under sub-section (1), the State Government, after making such enquiry as it thinks fit and after giving 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 employer, the interests of the general public and all other relevant factors, by order and for reason to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen. (3) Where an application has been made under sub-section (1), and the State Government does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days. (4) An order of the State Government granting or refusing to grant permission shall, subject to the provisions of sub-section (5), be final and binding on all the parties and shall remain in force for one year from the date of such order. (5) The State Government may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission

under sub-section (2) or refer the matter to a Tribunal for adjudication : Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference. (6) Where no application for permission under sub-section (1) is made within the period specified therein, or where the permission for closure has been refused, the closure of the undertaking shall be deemed to be illegal from the date of closure and the workmen shall be entitled to all the benefits under any law for the time being in force as if the undertaking had not been closed down. (7) Notwithstanding anything contained in the foregoing provisions of this section, the State Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employee 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," - Rajasthan Act No. 8 of 1984.

WEST BENGAL In section 25-F, (a) in sub-section (1), after the first proviso, the following proviso shall be inserted:- "Provided further that every application for permission to close down an undertaking shall, having regard to the first proviso to section 25-F, contain the particulars of the quantum, mode, manner and time of payment of compensation to the workmen, in the manner prescribed, and such employer shall furnish such guarantee as may be required by the appropriate Government to discharge his liability for payment of compensation and other statutory dues to the workmen in the event of such permission being granted under sub-section (2) or deemed to have been granted under sub-section (3)."; (b) after sub-section (1), the following sub-section shall be inserted:- "(I A) Where an application for permission has been made under sub-section (1), the appropriate Government may, having regard to the reasons adduced in such application and the interests of the undertaking and the concerned workmen, issue such directions as may be necessary for maintaining normalcy and continuity of work during the notice period."; (c) to sub-section (6),

the following Explanation shall be added:- Explanation : "Benefit under any law" shall include benefits under any contract, agreement, award or settlement under any law; (d) after sub-section (7), the following sub-section shall be inserted:- (7A) Every order of the appropriate Government under sub-section (7) shall indicate, for reasons to be recorded, the extent to which compensation computed under sub-section (8) shall be payable in the case, having regard to the facts and circumstances of the same and for securing such payment, the appropriate Government may obtain such information and guarantee specified in the second proviso to sub-section (1) as may be considered necessary. (e) in sub-section (8), after the words "shall be entitled to receive" the words and brackets, "in addition to all legal dues (including gratuity)", shall be inserted. West Bengal Act 33 of 1989.

ORISSA For section 25-0 of the principal Act, the following section shall be substituted, namely:- "25-0. Procedure for closing down an undertaking.-(1) An employer who intends to close down an undertaking of an industrial establishment to which this Chapter applies shall, in the prescribed manner, apply, for prior permission at least ninety days before the date on which the intended closure is to become effective, to the appropriate Government, stating clearly the reasons for the intended closure of the undertaking and a copy of such application shall also be served simultaneously on the representatives of the workmen in the prescribed manner: Provided that nothing in this sub-section shall apply to an undertaking set up for the construction of buildings, bridges, roads, canals, dams or other construction work. (2) Where an application for permission has been made under sub-section (1), the appropriate Government, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen and the persons interested in such closure may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the general public and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen. (3) Where an application has been made under sub-section (1) and the appropriate Government does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days. (4) An order of the

appropriate Government granting or refusing to grant permission shall, subject to the provisions of sub-section (5), be final and binding on all the parties and shall remain in force for one year from the date of such order. (5) The appropriate Government may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (2) or refer the matter to a Tribunal for adjudication: Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference. (6) Where no application for permission under sub-section (1) is made within the period specified therein, or where the permission for closure has been refused, the closure of the undertaking shall be deemed to be illegal from the date of closure and the workmen shall be entitled to all the benefits under any law for the time being in force as if the undertaking had not been closed down. (7) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that the provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order. (8) Where an undertaking is permitted to be closed down under sub-section (2) or where permission for closure is deemed to be granted under sub-section (3) every workman who is employed in that undertaking immediately before the date of application, for permission under this section, shall be entitled to receive compensation which shall be equivalent to fifteen days average pay for every completed year of continuous or any part thereof in excess of six months service - Orissa Act No. 6 of 1983.

25P. Special provision as to restarting of undertakings closed down before commencement of the Industrial Disputes (Amendment) Act, 1976. :-

If the appropriate Government is of opinion in respect of any undertaking of an industrial establishment to which this Chapter applies and which closed down before the commencement of the Industrial Disputes (Amend- ment) Act, 1976 (32 of 1976)-

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

(b) that there are possibilities of restarting the undertaking;
(c) that it is necessary for the rehabilitation of the workmen employed in such undertaking before its closure or for the maintenance of supplies and services essential to the life of the community to restart the undertaking or both; and
(d) that the restarting of the undertaking will not result in hardship to the employer in relation to the undertaking, 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 be specified in the order.

STATE AMENDMENTS

RAJASTHAN For section 25P the following section shall be substituted, namely:- 25P. Special provisions as to restarting of undertaking closed down before commencement of the Industrial Disputes (Rajasthan Amendment) Act, 1984.- (1) Where the undertaking of an industrial establishment to which this Chapter applies had been closed down before the commencement of the Industrial Disputes (Rajasthan Amendment) Act, 1984, and the State Government, after giving reasonable opportunity of being heard to the employer, workmen and the office-bearer of the representative union of the concerned industrial establishment and after making such enquiry as it thinks fit, is satisfied that,- (a) such undertaking was closed down otherwise than on account of unavoidable circumstances beyond the control of the employer; (b) there are possibilities of restarting the undertaking; (c) 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 or both to restart the undertaking; and (d) the restarting of the undertaking will not result in hardship to, the employer in relation to the undertaking: it may 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 orders) as may be specified in the order. (2) An order of the State Government directing the restarting of the undertaking under sub-section (1) shall, subject to the provisions of sub-section (3), be final and binding on all the parties. (3) The State Government may either on its own motion or on the application made by the employer and after giving to such employer, the workmen and the office-bearer of the representative union of the concerned industrial establishment an opportunity of being heard, review its order

directing the restarting of the undertaking under sub-section (1) 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 sixty days from the date of such reference and pending award by the Tribunal, the undertaking shall continue to remain restarted." - Rajasthan Act No.-8 of 1984. After section 25P as so substituted, the following new section shall be added, namely:- "25PP. Special provision as to reinstatement of workmen retrenched before the commencement of the Industrial Disputes (Rajasthan Amendment) Act, 1984.- (1) Notwithstanding any award or order of a Tribunal or any judgment, order or direction of any Court upholding the validity of retrenchment of any workman employed in any industrial establishment to which this Chapter applies who is retrenched at any time during six months immediately before the commencement of the Industrial Disputes (Rajasthan Amendment) Act, 1984, the State Government shall, either on its own motion or on the application made by any such retrenched workman or by the office-bearer of the representative union of the concerned industrial establishment, examine the validity of retrenchment of such workman and if, after making such enquiry as it thinks fit and after giving reasonable opportunity of being heard to the employer, the retrenched workman, or, as the case may be, to such office-bearer, it is satisfied that,- (a) the retrenchment of the workman was without genuine or adequate reasons; (b) the retrenchment was by way of victimisation and unfair labour practice; and (c) the reinstatement of the workman is required for maintaining industrial peace in the industrial establishment. It shall, by order and for reasons to be recorded in writing, direct the employer to reinstate the retrenched workman within such time as may be specified in the order and if it is not so satisfied, it shall by such reasoned order uphold the validity of retrenchment of the workman and shall communicate its order to the employer and the workman. (2) An order of the State Government under sub-section (1), subject to the order passed by it as a result of review under sub-section (3) and, where a reference has been made by it to a Tribunal under the said sub-section, subject to the award passed by the Tribunal, shall be final and binding on the employer and the workman. (3) The State Government may, either on its own motion or on the application made by the employer or the retrenched workman, review its order directing reinstatement of the retrenched workman or, as the case may be, the order upholding the validity of

retrenchment of the workman under sub-section (7) 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." - Rajasthan Act No. 8 of 1984.

WEST BENGAL For section 25P, the following section shall be substituted:- "25P. Special provision as to re-starting of the undertaking closed down before the commencement of the Industrial Disputes (West Bengal Second Amendment) Act, 1986.-(1) If the appropriate Government is of opinion in respect of any undertaking of an industrial establishment to which this Chapter applies and which is closed down before the commencement of the Industrial Disputes (West Bengal Second Amendment) Act, 1986,- (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 re-starting the undertaking, (c) that it is necessary for the rehabilitation of the workmen employed in such undertakings before its closure or for the maintenance of surplus and services essential to the life of the community to re-start the undertaking or both, and (d) that the re-starting of the undertaking shall not result in hardship to the employer in relation to the undertaking, it may, after giving such employer and the workmen an opportunity of being heard, direct, by order published in the Official Gazette, that the undertaking shall be re-started within such time (not being less than one month from the date of the order) as may be specified in the order. (2) Notwithstanding anything contained in sub-section (1) the appropriate Government may, either on its own motion or on the application made by the employer and after giving the employer and the workmen an opportunity of being heard, review its order under sub-section (1) or refer the matter to the 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 sixty days from the date of such reference and, pending such award, the undertaking shall not be closed down" - West Bengal Act No. 33 of 1989.

25Q. Penalty for lay-off and retrenchment without previous permission :-

Any employer who contravenes the provisions of section 25M or *** of section 25N 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.

RAJASTHAN For section 25Q the following section shall be substituted, namely:- "25Q. Penalties for lay-off and retrenchment without previous permission. - Any employer who- (a) lays off a workman without complying with the provisions of sub-section (1) or sub-section (2) of section 25M; or (b) contravenes an order refusing to grant permission to lay-off or to continue the lay-off of a workman under sub-section (4) of section 25M; or (c) contravenes such an order as is referred to in clause (b) passed as a result of review under sub-section (7) of section 25M; or (d) contravenes the provisions of clause (c) of sub-section (1) or sub-section (4) of section 25N; or (e) contravenes an order refusing to grant permission to retrench a workman under sub-section (2) or an order under sub-section (9) of section 25N; or (f) contravenes such an order as is referred to in clause (e) passed as a result of review under sub-section (7) or sub-section (9) of section 25N; or (g) contravenes the direction to reinstate a retrenched workman given under sub-section (1) of section 25PP or such a direction given as a result of review under sub-section (3) of the said section, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to two thousand rupees or with both." - Rajasthan Act No. 8 of 1984.

25R. Penalty for closure :-

(1) Any employer who closes down an undertaking without complying with the provisions of sub-section (1) of section 25-0 shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

(2) Any employer, who contravenes an order refusing to grant permission to close down an undertaking under sub-section (2) of section 25-0 or a direction given under section 25P 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.

(3) ***

MADHYA PRADESH In section 25R,- (a) for sub-section (2), the

following sub-section shall be substituted, namely:- Any employer, who contravenes an order refusing to grant permission to close down an undertaking under sub-section (2) of section 25-0 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; (b) sub-section (3) shall be omitted - Madhya Pradesh Act No. 32 of 1983.

MAHARASHTRA For section 25R, the following section shall be substituted, namely :- "25R. Penalty for closure.- (1) Any employer who closes down an undertaking without complying with the provisions of sub-section (1) of section 25-0 shall, on conviction, be punished 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 a direction given under sub-section (2) of section 25-0 or section 25P shall, on conviction, be punished 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." - Maharashtra Act No. 3 of 1982.

ORISSA In section 25R,- (a) in sub-section (2), for the words, brackets, figures and letters "a direction given under sub-section (2) of section 25-0 or section 25P", the words, brackets, figures and letters "an order refusing to grant permission to close down an undertaking under sub-section (2) of section 25-0 or a direction given under section 25P" shall be substituted ; (b) sub-section (3) shall be omitted - Orissa Act No. 6 of 1983.

RAJASTHAN In section 25R- (a) for sub-section (2), the following sub-section shall be substituted, namely:- "(2) Any employer, who contravenes an order refusing to grant permission to close down an undertaking under sub-section (2) of section 25-0 or a direction given under section 25P, shall be punishable with an 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."; and (b) sub-section (3) shall be omitted - Rajasthan Act No. 8 of 1984.

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.

RAJASTHAN In section 25S after the expression "provision of this Chapter apply", the expression "or are applied under sub-section (IA) of section 25K" shall be added. - Rajasthan Act No. 8 of 1984.

GUJARAT After section 25S, the following new section shall be inserted, namely :- "25SS. Removal of doubt as to effect of other laws - For the removal of doubt it is hereby declared that notwithstanding anything contained in any other law for the time being in force in the State providing for settlement of industrial disputes, the rights and liabilities of employers and workmen in relation to closure shall be determined in accordance with the provisions of this Chapter." - Gujarat Act No. 20 of 1984.

CHAPTER 5C 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 (16 of 1926), or riot, 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.

CHAPTER 6 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.

ANDHRA PRADESH After section 29 of the principal Act, the following section shall be inserted, namely:- "29A. Penalty for failure to comply with an order issued under section SOB.-Any person who fails to comply with any provisions contained in an order made under sub-section (7) of section I OB shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to one year and with fine : Provided that the Court may, for reasons to be recorded in its judgment, award a sentence or imprisonment for a term of less

than six months." - Andhra Pradesh Act 32 of 1987.

KERALA After section 29, the following section shall be inserted, namely :- "29A. Penalty for failure to comply with an order issued under section IOB. - Any person who fails to comply with any provision contained in any order made under sub-section (7) of section IOB, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to one year and with fine." - Kerala Act No. 30 of 1979.

TAMIL NADU After section 29, the following section shall be inserted, namely:- "29A. Penalty for failure to comply with an order issued under section IOB. - Any person who fails to comply with any provision contained in any order made under sub-section (/) of section IOB, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to one year and with fine." - Tamil Nadu Act No. 36 of 1982.

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.

GUJARAT After section 30, the following section shall be inserted, namely :- "30A. Penalty for failure to nominate members of Council by employer. - Any employer who fails to nominate his representatives to be appointed as members of the Council within the time limit specified for the constitution of the Council under sub-section (1) of section 3A 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." - Gujarat Act No. 21 of 1972.

RAJASTHAN After section 30, the following new section shall be inserted, namely :- "30A. Penalty for contravention of an order

made under section IOK.-Any person who contravenes an order issued by the State Government in pursuance of section IOK of the Act shall, on conviction, be punishable with imprisonment for a term which may extend to one year or with fine which may extend to two thousand rupees or with both." - Rajasthan Act No. 14 of 1970.

WEST BENGAL After section 30, the following sections shall be inserted, namely :- "30A. Insertion of new section 30A.- 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 and with fine which may extend to five thousand rupees." - West Bengal Act No. 8 of 19-71.

31. Penalty for other offences :-

(1) Any employer who contravenes the provisions of section 33 shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(2) Whoever contravenes any of the provisions of this Act or any rule made thereunder shall, if no other penalty is elsewhere provided by or under this Act for such contravention, be punishable with fine which may extend to one hundred rupees.

CHAPTER 7 MISCELLANEOUS

32. Offence by companies, etc :-

Where a person committing an offence under this Act is a company, or other body corporate, or an association of persons (whether incorporated or not), every director, manager, secretary, agent or other officer or person concerned with the management thereof shall, unless he proves that the offence was committed without his knowledge or consent, be deemed to be guilty of such offence.

33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings :-

(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before an arbitrator or a Labour Court or Tribunal or National Tribunal in

respect of an industrial dispute, no employer shall,-

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

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

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

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

(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman :
Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

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

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

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

(4) In every establishment, the number of workmen to be recognised as protected workmen for the purposes of sub-section (3) shall be one per cent of the total number of workmen employed therein subject to a minimum number of five protected workmen and a maximum number of one hundred protected workmen and for the aforesaid purpose, the appropriate Government may make rules providing for the distribution of such protected workmen

among various trade unions, if any, connected with the establishment and the manner, in which the workmen may be chosen and recognised as protected workmen.

(5) Where an employer makes an application to a conciliation officer, Board, an arbitrator, a Labour Court, Tribunal or National Tribunal under the proviso to sub-section (2) for approval of the action taken by him, the authority concerned shall, without delay, hear such application and pass, within a period of three months from the date of receipt of such application such order in relation thereto as it deems fit : Provided that where any such authority considers it necessary or expedient so to do, it may, for reasons to be recorded in writing, extend such period by such further period as it may think fit : Provided further that no proceedings before any such authority shall lapse merely on the ground that any period specified in this sub-section had expired without such proceedings being completed.

33A. Special provision for adjudication as to whether conditions of service, etc., changed during pendency of proceedings :-

Where an employer contravenes the provisions of section 33 during the pendency of proceedings before a conciliation officer, Board, an arbitrator, 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 : Provided that where a proceeding under section 33 or section 33A is pending before a Tribunal or National Tribunal, the proceeding may also be transferred to a Labour Court.

(2) Without prejudice to the provisions of sub-section (1), any Tribunal or National Tribunal, if so 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 VA or Chapter VB, the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue : Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer : Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be

computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government within a period not exceeding three months. Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.

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

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

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

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

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35. Protection of persons :-

(1) No person refusing to take part or to continue to take part in any strike or lock-out which is illegal under this Act shall, by reason of such refusal or by reason of any action taken by him under this section, be subject to expulsion from any trade union or society, or to any fine or penalty, or to deprivation of any right or benefit to

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

(2) Nothing in the rules of a trade union or society requiring the settlement of disputes in any manner shall apply to any proceeding for enforcing any right or exemption secured by this section, and in any such proceeding the Civil Court may, in lieu of ordering a person who has been expelled from membership of a trade union or society to be restored to membership, order that he be paid out of the funds of the trade union or society such sum by way of compensation or damages as that Court thinks just.

36. Representation of parties. :-

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

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

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

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

(c) where the employer is not a member of any association of employers, by an officer of any association of employers connected with, or by any other employer engaged in, the industry in which the employer is engaged and authorised in such manner as may be prescribed.

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

any proceedings before a Court.

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

MAHARASHTRA In section 36, to sub-section (1), the following shall be added, namely:- "Provided that, where there is a recognised union for any undertaking under any law for the time being in force, no workman in such undertaking shall be entitled to be represented as aforesaid in any such proceeding (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 by such recognised union." - Maharashtra Act No. I of 1972.

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 decision shall be final and binding on all such parties.

36B. Power to exempt :-

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

37. Protection of action taken under the Act :-

No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.

38. Power to make rules :-

(1) The appropriate Government may, subject to the condition of previous publication, make rules for the purpose of giving effect to the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :- (a) the power and procedure of conciliation officers. Boards, Courts, Labour Courts, Tribunals or 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 (3A) of section 10 A, the powers of the arbitrator named in the arbitration agreement and the procedure to be followed by him;

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

(ab) 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 Courts 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 establishments;

(e) the manner in which and the persons by and to whom notice of strike or lock-out may be given and the manner in which such

notices shall be communicated;

(f) the conditions subject to which parties may be represented by legal practitioners in proceedings under this Act before a Court, Labour Court, Tribunal or National Tribunal;

(g) any other matter which is to be or may be prescribed.

(3) Rules made under this section may provide that a contravention thereof shall be punishable with fine not exceeding fifty rupees.

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

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

GUJARAT In section 38 in sub-section (2), after clause (b), the following clauses shall be inserted, namely:- "(b-1) the manner of constituting a Council and filling of vacancies therein, the number of members of such Council, and the manner of electing the representatives of workmen under sub-section (1) of section 3A; (b-2) the other things which a council may do under clause (f) of sub-section (1) of section 3B; (b-3) the administrative functions with which a Council shall be entrusted under sub-section (3) of section 3B; (b-4) matters relating to which information shall be furnished to the Council by the employers under sub-section (4) of section 3B; (b-5) the procedure to be followed by the Council in the discharge of its duties under sub-section (5) of section 3B. - Gujarat Act No. 21 of 1972.

WEST BENGAL In section 38, after clause (a) of sub-section (2), the following clause shall be inserted:- "(A-1) the manner and the form in which an application for certificate shall be made, the manner and the form in which a certificate is to be issued and the particulars which the certificate shall contain and the manner and the form in which an application shall be filed before a Labour Court

or Tribunal, referred to in sub-section (I-B) of section 10 and the procedure to be followed by the Industrial Tribunal or the Labour Court, as the case may be, on receipt of such an application under clause (c) of sub-section (I-B) of section 10" - West Bengal Act No. 33 of 1989.

39. Delegation of powers :-

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

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

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

40. Power to amend Schedules :-

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

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

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

SCHEDULE 1

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

See section 2(n)(vi) 1. Transport (other than railways) for the carriage of

passengers or goods by land or water. 2. Banking. 3. Cement. 4. Coal. 5. Cotton textiles. 6. Foodstuffs. 7. Iron and steel. 8. Defence establishments. 9. Service in hospitals and dispensaries. 10. Fire brigade service. 11. India Government Mints. 12. India Security Press. 13. Copper Mining. 14. Lead Mining. 15. Zinc Mining. 16. Iron Ore Mining. 17. Service in any oil field. 18. *** 19. Service in uranium industry. 20. Pyrites mining industry. 21. Security Paper Mill, Hoshangabad. 22. Services in Bank Note Press, Dewas. {23. Phosphoritemining. 24. Magnesite Mining. 25. Currency Note Press. 26. Manufacture or production of mineral oil (crude oil), motor and aviation spirit, diesel oil, kerosene oil, fuel oil, diverse hydrocarbon oils and their blends including synthetic fuels, lubricating oils and the like. 27. Service in the International Airports Authority of India. 28. Industrial establishments manufacturing or producing Nuclear Fuel and Components, Heavy Water and Allied Chemicals and Atomic Energy.

SCHEDULE 2

MATTERS WITHIN THE JURISDICTION OF LABOUR COURTS

See section 7 1. The propriety or legality of an order passed by an employer under the standing orders; 2. The application and interpretation of standing orders; 3. Discharge or dismissal of workmen including reinstatement of, or grant of relief to, workmen wrongfully dismissed; 4. Withdrawal of any customary concession or privilege; 5. Illegality or otherwise of a strike or lock-out; and 6. All matters other than those specified in the Third Schedule.

SCHEDULE 3

MATTERS WITHIN THE JURISDICTION OF INDUSTRIAL TRIBUNALS

See section 7A 1. Wages, including the period and mode of payment; 2. Compensatory and other allowances; 3. Hours of work and rest intervals; 4. Leave with wages and holidays; 5. Bonus, profit sharing, provident fund and gratuity; 6. Shift working otherwise than in accordance with standing orders; 7. Classification by grades; 8. Rules of discipline; 9. Rationalisation; 10. Retrenchment of workmen and closure of establishment; and 11. Any other matter that may be prescribed.

SCHEDULE 4

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

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

SCHEDULE 5

UNFAIR LABOUR PRACTICES

See section 2(ra) I-On the part of employers and trade unions of employers I, To interfere with, restrain from, or coerce, workmen in the exercise of their right to organise, form, join or assist a trade union or to engage in concerted activities for

the purposes of collective bargaining or other mutual aid or protection, that is to say,- (a) threatening workmen with discharge or dismissal, if they join a trade union; (b) threatening a lock-out or closure, if a trade union is organised; and (c) granting wage increase to workmen at crucial periods of trade union organisation, with a view to undermining the efforts of the trade union at organisation. 2. To dominate, interfere with or contribute support, financial or otherwise, to any trade union, that is to say :- (a) an employer taking an active interest in organising a trade union of his workmen: and (b) an employer showing partiality or granting favour to one of several trade unions attempting to organise his workmen or to its members, where such a trade union is not a recognised trade union. 3. To establish employer-sponsored trade unions of workmen. 4. To encourage or discourage membership in any trade union by discriminating against any workman, that is to say :- (a) discharging or punishing a workman, because he urged other workmen to join or organise a trade union; (b) discharging or dismissing a workman for taking part in any strike (not being a strike which it deemed to be an illegal strike under this Act); (c) changing seniority rating of workmen because of trade union activities; (d) refusing to promote workmen to higher posts on account of their trade union activities; (e) giving unmerited promotions to certain workmen with a view to creating discord amongst other workmen, or to undermine the strength of their trade union; (f) discharging office bearers or active members of the trade union on account of their trade union activities. 5. To discharge or dismiss workmen- (a) by way of victimisation; (b) not in good faith, but in the colourable exercise of the employers rights; (c) by falsely implicating a workman in a criminal case on false evidence or on concocted evidence; (d) for patently false reasons; (e) on untrue or trumpet up allegations of absence without leave; (f) in utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste; (g) for misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record of service of the workman, thereby leading to a disproportionate punishment. 6. To abolish the work of a regular nature being done by workmen, and to give such work to contractors as a measure of breaking a strike. 7. To transfer a workman mala fide from one place to another, under the guise of following management policy. 8. To insist upon individual workmen, who are on a legal strike to sign a good conduct bond, as a pre-condition to allowing them to resume work. 9. To show favouritism or partiality to one set of workers regardless of merit. 10. To employ workmen as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen. 11. To discharge or discriminate against any workman for filing charges or testifying against an employer in any enquiry or proceeding relating to any industrial dispute. 12. To recruit workmen during a strike which is not an illegal strike. 13. Failure to implement award, settlement or agreement. 14. To indulge in acts of force or violence. 15. To refuse to bargain collectively, in good faith with the recognised trade unions. 16. Proposing or continuing a lock-out deemed to be illegal under this Act. II-On the part of workmen and trade unions of workmen 1. To advise or actively support or instigate any strike deemed to be illegal under this Act. 2. To coerce workmen in the exercise of their right to self-organisation or to join a trade union or refrain from joining any trade union, that is to say- (a) for a trade union or its members to picketing in such a manner that non-striking workmen are physically debarred from entering the work places; (b) to indulge in acts of force or violence or to hold out threats of intimidation in connection with a strike against non-striking workmen or against managerial staff. 3. For a recognised union to refuse to bargain collectively in good faith with the employer. 4. To indulge in

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