

Uttar Pradesh Industrial Disputes Act, 1947

28 of 1947

[17 November 1947]

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Uttar Pradesh Industrial Disputes Act, 1947

28 of 1947

[17 November 1947]

Preamble

Whereas it is necessary to provide for powers to prevent strikes and lock-outs, and for the settlement of industrial disputes and other incidental matter :

it is hereby enacted as follows :

1. Short title, extent and commencement :-

(1) This Act may be called "The Uttar Pradesh Industrial Disputes Act, 1947".

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

(3) It shall come into force on such date¹ as the 2[State Government] may by notification in the Official Gazette, appoint in this behalf.

Note. --The provisions contained in this Act shall not apply to co-operative societies.[Vide U.P. Act XI of 1966, S. 135.]

1. Substituted by the A.O. 1950 for "United Provinces".

2. The Act came into force on February 1, 1948, see Noti. No. 495 (ST)/XVIII, dated January 19, 1948, Part I, p. 71. The U.P. Ordinance No. XIII of 1947 has been withdrawn from the date the U.P. Industrial Disputes Act, 1947 (XVIII of 1947) came into force; see Noti. No. 494 (ST)/XVIII, dated January 19, 1947, Part I, p. 71.

3. Substituted by the A.O. 1950 for "Provl. Govt".

2. Definitions :-

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

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

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

(d) Board means a Conciliation Board constituted under clause (d) of Section 3;

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

2 [(ee) Closure means the permanent closing down of a place of employment or part thereof;]

(f) Conciliation Officer means a Conciliation Officer appointed under Section 4-F;

(g) Continuous service means uninterrupted services, and includes service which may be interrupted merely on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman, and a workman, who during a period of twelve calendar months has actually worked in an industry for not less than two hundred and forty days shall be deemed to have completed one year of continuous service in the industry.

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

(i) he has been laid off under the agreement or as permitted by standing order made under the Industrial Employment (Standing Orders) Act, 1946, or under this Act or under any other law applicable to the industrial establishment, the largest number of days during which he has been so laid off being taken into account for the purposes of this clause,

(ii) he has been on leave with full wages, earned in the previous

year, and

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

(h) Controlled Industry will have the meaning assigned to it in clause (ee) of Section 2 of the Industrial Disputes Act, 1947;

(i) Employer includes--

(i) an association or a group of employers;

(ii) where an industry is conducted or carried on by a department of the State Government, the authority specified in that behalf, and where no such authority has been specified, the head of such department;

(iii) where an industry is conducted or carried on by or on behalf of a local authority, the chief executive officer of such authority;

(iv) where the owner of any industry in the course of or for the purpose of conducting the industry contracts with any person for the execution by or under such person of the whole or any part of any work which is ordinarily part of the industry, the owner of such industry;

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COMMENT

"Employer" and "Workman"--"Industrial Dispute" between.--A person employed as clerk on payment of salary and not employed in any supervisory capacity is a "workman" and dispute between employer and workman connected with the employment is "industrial dispute". [(M/s.) Reptakos Brett & Co. v. Labour Court (Vth), Kanpur, 1999 (81), FLR 222 (All)].

(j) 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 State Government the nature and extent of the share held by him in such company;

(k) Industry means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workman;

(I) Industrial Dispute means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the

term of employment or with the conditions of labour, of any person; but does not include an industrial dispute concerning--

- (i) any industry carried on by or under the authority of the Central Government or by a Railway Company, or
- (ii) such controlled industry as may be specified in this behalf by Central Government, or
- (iii) banking and insurance companies as defined in the Industrial Dispute Act, 1947, or
- (iv) a mine or an oil-field;

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COMMENT

"Industrial Dispute"--Meaning of.--A person employed as clerk on payment of salary and not employed in any supervisory capacity is a "workman" and dispute between employer and workman connected with the employment is "industrial dispute". [(M/s.) Reptakos Brett & Co. v. Labour Court (Vth), Kanpur, 1999 (81) FLR 222 (All)].

(m) Labour Court means a Labour Court constituted under Section 4-A;

(n) 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 stock or the break-down of machinery, or for other 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 muster-rolls of the industrial establishment and who presents himself for work at the establishment at the time appointed for the purpose during normal working hours on any day and is not given employment by the employer within two hours of his so presenting himself shall be deemed to have been laid off for that day within the 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 clearness allowance for that part of the day;

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

(p) Prescribed means prescribed by the rules framed under this Act;

(q) Public Utility Service means--

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

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

(iii) any system of public conservancy or sanitation;

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

Provided that the period so specified shall not, in the first instance, exceed six months but may, by a like notification, be extended from time to time, by any period not exceeding six months, at any one time, if in the opinion of the State

Government public emergency or public interest requires such extension;
(r) Registration as respects any settlement means registration in accordance with Section 6-B;
(s) Retrenchment means the termination by the employer of the service of a workman or any reason whatsoever, otherwise than as punishment inflicted by way of disciplinary action, but does not include--
(i) voluntary retirement of the workmen; or
(ii) retirement of the workmen on reaching the age of superannuation if the contract of employment between the employer and workman concerned contains a stipulation in that behalf;

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COMMENT

Termination from service--When amounts to retrenchment.--Any termination of service would be retrenchment unless it is covered by one of the exceptions mentioned in the section. [Bageshwari Prasad Srivastava v. State of U.P., 1999 (82) FLR 720 (All)].

(t) "Settlement" means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such an agreement has been signed by the parties thereto in such a manner as may be prescribed and a copy thereof has been sent to the State Government and the Conciliation Officer;

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

(v) 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 person who are or have been so employed to continue to work or to accept employment;

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

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

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

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

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

(iii) any travelling concession, but does not include--

(a) any bonus;

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

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

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

any such person--

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

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

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

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

"Workman"--Definition of.--A person doing clerical work in the Industry can be treated as a workman. Therefore a lady clerk typist in City Board falls within the definition of "workman". [Samishta Dube v. City Board, Etawah, 1999 (81) FLR 746 (SC)].

Workman--what includes ?--Field workers of Sugar factory are "workmen" within the meaning of Section 2 (z) of the Act. [Mool Chandra Sharma v. General Manager, Kisan Sahakari Chini Mills Ltd., Moradabad, 1999 (81) FLR 288 (All)].

"Workman" and "Industrial Dispute"--Meaning of.--A person employed as clerk on payment of salary and not employed in any supervisory capacity is a "workman" and dispute between employer and workman connected with the employment is "industrial dispute". [(M/s.) Reptakos Brett & Co. v. Labour Court (Vth), Kanpur, 1999 (81) FLR 222 (All)].

3 [2-A. 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.

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COMMENTS

Benefit of the provision--Availability of.--Provisions of Section 2-A shall apply in respect of dispute raised on or after the section came in the Statute book, even if the services of the workman were terminated much before coming into force of Section 2-A. [Ram Lakhan Singh v. P.O., Labour Court, Varanasi,, 1999 (82) FLR 819 (All)].

Enforcement of provisions.--Section 2-A in the principal Act will be taken as if it was in force at all material time and any reference may be withdrawn and transferred under the provisions of the principal Act for disposal by Labour Court or Tribunal. [Glass Works Mazdoor Sangh v. Labour Court, Agra, 1999 (82) FLR 906 (All)].

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1. Subs, by U.P. Act No. I of 1957.

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

3. Ins. by U.P. Act No. 34 of 1978.

2A. Dismissal etc., of an individual workman to be deemed to be an industrial dispute :-

1[Where any employer discharges, dismisses, retrenches or

otherwise terminates the services of an individual workman any dispute or difference between that workman and his employer connected with or arising out of such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.]

1. Ins. by U.P. Act No. 34 of 1978.

3. Power to prevent strikes, lock-outs, etc :-

If, in the opinion of the 1 [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, it may, by general or special order, make provision--

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

(b) 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;

(c) 2 [for appointing committees, representative both of the employer and workmen for securing amity and good relations between the employer and workmen and for settling industrial disputes by conciliation; for consultation and advice on matters relating to production, organization, welfare and efficiency;]

3 [(d) for constitution and functioning of Conciliation Boards for settlement of industrial disputes in the manner specified in the order;]

(e) for requiring any public utility service, or any subsidiary undertaking not to close or remain closed and to work or continue to work on such conditions as may be specified in the order;

(f) for exercising control over any public utility service, or any subsidiary undertaking by authorising any person (hereinafter referred to as an authorized controller) to exercise, with respect to such service, undertaking or part thereof such functions of control as may be specified in the order; and on the making of such order the service, undertaking or part, as the case may be, shall so long as the order continues to be carried on in accordance with any directions given by the authorized controller in accordance with the provisions of the order; and every person having any functions of

management of such service, undertaking or part thereof shall comply with such directions;

(g) for any incidental or supplementary matters which appear to the 4 [State Government] necessary or expedient for the purposes of the order;

Provided that no order made under clause (b)--

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

5 [(ii)] * * *

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IMPORTANT NOTIFICATION

English translation of Shram Anubhag-2, Noti No. 1351IXXXVI-2-98-21Q(SM)-92, dated 19.9.1998, published in the U. P. Gazette, Extra., Part 4, Section (Kha), dated 19th September, 1998, p. 2

Whereas, various workers associations operating in the sugar industry in Uttar Pradesh have been consistently pressing for their demands including increase in wages, clearness allowance, etc. in respect of absence of Fourth Wage Board of Sugar Industry;

And whereas, a State Labour Tripartite Conference (Sugar industry) was held on 24.7.1998 and 3.9.1998 under the Chairmanship of the Honble Minister of Labour Department, U.P., in which demand of payment of interim relief was considered in detail;

And whereas, after detailed discussion between the parties, a consensus was reached with regard to the issue of interim relief both the parties unanimously agreed to refer the arbitration of the Honble Minister of Labour Department, Uttar Pradesh and to be bound by their decision;

And whereas, after consultation with the representatives of employers and workmen, and Honble Minister of Sugarcane was present on Tripartite Conference held on September 3, 1998, the Honble Minister of Labour Department gave their verdict;

And whereas, in the opinion of the State Government, it is necessary to implement the decision taken by the parties themselves as well as the verdict of the Honble Labour Minister, Uttar Pradesh for securing the public convenience and the maintenance of public order and supplies and services essential to the life of the community and for maintaining employment.

Now, therefore, in exercise of the powers under clause (b) of Section 3 of the U. P. Industrial Disputes Act, 1947 (U. P. Act No. 28 of 1947), the Governor is pleased to make the following order and to direct with reference to Section 19 of the said Act that notice of this order shall be given by publication in the Official Gazette.

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ORDER

All Vacuum Pan Sugar Factories in the State shall pay Rs. 150 per month as addition interim relief by fixed pay allowances to all their workmen for four years with effect from September 1, 1998, an additional pay shall be extra in addition to that sanctioned vide Notification No. 1610/XXXVI-2--210 (SM)/92, dated 26th July, 1994 and amended Notification No. 522/XXXVI--2--98-210 (SM)/92, dated July 7, 1998, paid to all the workmen of Sugar Industries.

6 [3-A. Control of trade or business of public utility service or a subsidiary undertaking.--(1) Where the trade or business of any public utility service or any subsidiary undertaking has closed or is likely to be closed the State Government may, on the application of more than one-half of the total number of partners and owning between them more than fifty per cent share therein, by order, published in the Gazette, authorize any person to carry on the trade or business, for the period in the manner and to the extent provided in the order :

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

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

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

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

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

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

(d) such person shall not, in respect of such matters relating to the said management as may be specified by order of the State Government, be bound by any obligation or limitation imposed on him as agent of the service or undertaking by or under any law, instrument or contract;

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

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

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

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

7 [3-B. Person exercising control under Section 3 (f) to be deemed to be appointed under Section 3-A. --Where on the date immediately preceding the date of the commencement on the Uttar Pradesh Industrial Disputes (Amendment) Act, 1950

any person was in pursuance of an order made under clause (f) of Section 3, exercising control over any public utility service or any subsidiary undertaking, he shall, notwithstanding anything in the said clause or Section 3-A, be deemed from the commencement of the said Act to have been a person validly authorized under and in accordance with Section 3-A and the order aforesaid shall have effect as if it were an order duly or validly passed under Section 3-A.]

1. Subs, by the A.O. 1950 for Provl. Govt..

2. Added by S. 2 of U.P. Act XXV of 1950 and re-numbered as clause (c) by U.P. Act No. I of 1957 in place of the original clause (c) which has been deleted by A.O. 1950.

3. Subs, by U.P. Act 1 of 1957.

4. Subs, by the A.O. 1950 for Provl. Govt.

5. Clause (ii) deleted by U.P. Act 1 of 1957

6. Added by U.P. Act XXV of 1950.

7. Added by section 3 of U.P. Act XXV of 1950

3A. Control of trade or business of public utility service or a subsidiary undertaking :-

(1) Where the trade or business of any public utility service or any subsidiary undertaking has closed or is likely to be closed the State Government may, on the application of more than one-half of the total number of partners and owning between them more than fifty per cent share therein, by order, published in the Gazette, authorize any person to carry on the trade or business, for the period in the manner and to the extent provided in the order :

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

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

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

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

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

(c) such person shall be deemed to be acting as the agent of the service or undertaking and, subject only to such restrictions as the State Government may impose, shall have in relation to the management of the affairs of the service or undertaking all such

powers and authority as the service or undertaking itself would have if its trade or business were not taken over under sub-section (1);

(d) such person shall not, in respect of such matters relating to the said management as may be specified by order of the State Government, be bound by any obligation or limitation imposed on him as agent of the service or undertaking by or under any law, instrument or contract;

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

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

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

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

3B. Person exercising control under Section 3(f) to be deemed to be appointed under Section 3-A :-

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

1. Ins. by U.P. Act No. 25 of 1950.

4. Labour Court :-

2 4. xxx xxx xxx

2 [4-A. Labour Court. --(1) The State Government may, by notification in the Official Gazette, constitute one or more Labour Courts for the adjudication of industrial disputes relating to any matter specified in the First Schedule and for performing such other function as may be assigned to them under this Act.

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

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

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

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

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

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

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

5 [4-B. Tribunal. --(1) The State Government may, by notification in the official Gazette, constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter whether specified in the First Schedule or the Second Schedule.

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

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

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

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

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

Disputes Act, 1947, for a period of not less than five years; or
(c) he is enrolled in the list prepared in accordance with Section 4-D.

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

7 [4-C. Disqualifications for the Presiding Officer of Labour Court or Tribunal.-- No person shall be appointed to or continue in, the Office of the Presiding Officer of a Labour Court or Tribunal, if--

- (i) he is not an independent person; or
- (ii) he has attained the age of 65 years.]

7 [4-D. List of persons for appointment as Presiding Officer of Labour Court and Tribunal.--For the purpose of constituting a Labour Court under Section 4-A and an Industrial Tribunal under Section 4-B the State Government shall cause to be prepared--

(i) a list of all persons who may be appointed Presiding Officer of a Labour Court, and

(ii) a list of all persons who may be appointed Presiding Officer of an Industrial Tribunal,

and shall maintain the list by making such alterations therein as may, from time to time, be reported by the Committee appointed under Section 4-E.

4-E. Committee to prepare lists under Section 4-D.--8 [(1) The State Government shall constitute a Committee consisting of the following :

(a) two Judges of the High Court nominated by the Chief Justice of the High Court. The Judge, who is senior, shall be the Chairman;

(b) the Chief Secretary to the State Government;

(c) the Principal Secretary or Secretary, as the case may be, to the State Government in the Labour Department;

(d) the Principal Secretary to the State Government in the Legislative Department;

(e) the Principal Secretary to the State Government in the Judicial Department;

(f) the Labour Commissioner, Uttar Pradesh;

(g) a person who is, or has been, a member of a Public Service Commission, appointed by the State Government].

(2) The Committee constituted under sub-section (1) shall, in the manner inscribed, prepare the lists referred to in Section 4-D having regard--

(a) in the case of the list referred to in clause (i) of the said section, to the education and practical experience of the person in

matters relating to Labour and Industry, and

(b) in the case of the list referred to in clause (ii) thereof, also to special knowledge of the person in those matters.

9 [(3) No person who is not or who has not been a member of the State Higher Judicial Service or the Uttar Pradesh Nyayik Sewa or who is not or who has not been such member of the Indian Administrative Service, or State Labour Service as has experience of dispensation of Justice for a period of not less than 3 years or who is not or who has not been such member of the State Civil Service (Executive Branch) as has experience of working for at least three years in the Labour Department of the State and has experience of dispensation of justice for a period of not less than three years, shall be eligible for enrolment in the lists prepared under sub-section (2).]

10 [4-F. Conciliation Officer.--(1) The State Government may, by notification in the official Gazette, appoint such number of persons as it thinks fit, to be Conciliation Officers, charged with the duty of mediating in, and promoting the settlement of, industrial disputes, in the manner to be prescribed.

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

10 [4-G. Filling of vacancies.--If, for any reason a vacancy occurs in the Office of the Presiding Officer of a Labour Court or Tribunal, the State Government shall appoint any other person in accordance with the provisions of this Act to fill the vacancy, and the proceedings may be continued before the Labour Court or Tribunal, as the case may be, from the stage at which the vacancy is filled].

11 [4-H. Finality of orders.--No order of the State Government appointing any person on the Board or as the Presiding Officer of a Labour Court or Tribunal shall be called in question in any manner; and no act or proceeding before any Board, Labour Court or Tribunal 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, Labour Court or Tribunal.]

11 [4-I. Notice of change.--No employer who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Third Schedule, shall effect such change--

(a) without giving to the 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--

(i) where the change is effected in pursuance of any settlement, award or decision of the Appellate Tribunal constituted under the Industrial Disputes (Appellate Tribunal) Act, 1950; or

(ii) where the change is likely to affect workmen who are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Civil Service Regulation or any other rules or regulations that may be notified in this behalf by the State Government in the Official Gazette, apply.]

12 [4-J. Power of Government to exempt.--Where the State Government is of opinion that the application of the provisions of Section 4-I to any class of industrial establishment or to any class of workmen employed in any industrial establishment affects the employers in relation thereto so prejudicially that such application may cause serious repercussion on the industry concerned and that public interest so requires, the State Government may, by notification in the Official Gazette, direct that the provisions of the said section shall not apply, or shall apply, subject to such conditions as may be specified in the notification, to that class of industrial establishments or to that class of workmen employed in any industrial establishment.]

13 [4-K. Reference of disputes to Labour Court or Tribunal.-- Where the State Government is of opinion that any industrial dispute exists or is apprehended, it may at any time by order in writing refer the dispute or any matter appearing to be connected with, or relevant to, the dispute to a Labour Court if the matter of industrial dispute is one of those contained in the First Schedule, or to a Tribunal if the matter of dispute is one contained in the First Schedule or the Second Schedule for adjudication:

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

COMMENTS

Reference--Power of State Government.--When it came to its notice that the name of the workman was not correctly mentioned in the reference though there was no doubt about his identity, the Labour Court itself could have sought correction of the reference from the State Government. When the appellant approached the State Government for correcting the reference, the Labour Court

certainly could have waited till the State Government amended the reference or otherwise. If the Labour Court did not possess jurisdiction inasmuch as there was no industrial dispute because there was no workman in respect of whom industrial dispute was sought to be raised, the reference itself was non est and the award a nullity. When the reference had been amended, jurisdiction stood conferred on the Labour Court and it could have held proceedings from the stage taking the reference to be valid from the date of its amendment. With the consent of the parties it could have relied upon the evidence which it had recorded before the reference was amended. Whatever the situation, the Court cannot permit injustice to perpetrate. [Madan Pal Singh v. State of U.P., AIR 2000 SC 537 at p. 540; reversing C.M.W.P. No. 549 of 1994, dated 7.10.1998 (All)].

State Government has power and discretion to make reference to Labour Court for resolving an industrial dispute. [U.P. State Electricity Board v. Presiding Officer, Labour Court, 1999 (81) FLR 236 (All)].

If a dispute is squarely covered by the definition of "Industrial dispute", the State Government is fully competent to refer the dispute to Labour Court. [(M/s.) Reptakos Brett & Co. v. Labour Court (Vth), Kanpur, 1999 (81) FLR 222 (All)].

Withdrawal or transfer of reference.--Section 2-A in the principal Act will be taken as if it was in force at all material times and any reference may be withdrawn and transferred under the provisions of the principal Act for disposal by Labour Court or Tribunal. [Glass Works Mazdoor Sangh v. Labour Court, Agra, 1999 (82) FLR 906 (All)].

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1. Deleted by U.P. Act No. 1 of 1957.
 2. Ins. by U.P. Act 1 of 1957.
 3. Ins. by U.P. Act No. 2 of 1966.
 4. Existing clauses (a) and (b) re-numbered as clauses (d) and (e) by Act No. 2 of 1966.
 5. Ins. by U.P. Act 1 of 1957.
 6. Added by Act No. 11 of 1966.
 7. Ins. by U.P. Act 1 of 1957.
 8. Subs, by U.P. Act No. 21 of 2000, vide Noti. No. 1242 (2)/XVII-V-I-I (Ka) 13-2000, dated 5th May, 2000, published in the U.P. Gazette (Extra.), dated 5th May, 2000 (w.e.f. 16.3.2000).
 - 9 Subs by U P Act No 21 of 2000, vide Noh No 1242 (2)/XVII V-1-1 (Ka) 13-2000, dated 5th May, 2000, published in the U.P. Gazette

(Extra), dated 5th May, 2000 (w e f 16 3 2000)

10 Ins by U.P. Act 1 of 1957

11 Ins. by U.P. Art 1 of 1957

12. Subs, by U.P. Act 1 of 1957.

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

4A. Labour Court :-

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

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

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

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

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

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

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

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

1. Inserted by U.P. Act No. 1 of 1957.

2. Inserted by U.P. Act No. 2 of 1966.

3. Clauses (a) and (b) renumbered as clauses (d) and (e) by U.P. Act No. 2 of 1966.

4B. Tribunal :-

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

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

State Government.

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

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

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

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

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

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

1. Inserted by U.P. Act No. 1 of 1957.

2. Inserted by U.P. Act No. 2 of 1966.

4C. Disqualifications for the Presiding Officer of Labour Court or Tribunal :-

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

(i) he is not an independent person; or

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

1. Inserted by U.P. Act No. 1 of 1957.

4D. List of persons for appointment as Presiding Officer of Labour Court and Tribunal :-

1[For the purpose of constituting a Labour Court under Section 4-A and an Industrial Tribunal under Section 4-B the State Government shall cause to be prepared,--

(i) a list of all persons who may be appointed Presiding Officer of a Labour Court, and

(ii) a list of all persons who may be appointed Presiding Officer of an Industrial Tribunal, and shall maintain the list by making such alternation therein as may, from time to time, be reported by the Committee appointed under Section 4-E.]

1. Inserted by U.P. Act No. 1 of 1957.

4E. Committee to prepare lists under Section 4-D :-

1[2[(1) The State Government shall constitute a committee consisting of the following,--

- (a) two Judges of the High Court nominated by the Chief Justice of the High Court. The Judge, who is senior, shall be the Chairman;
- (b) the Chief Secretary to the State Government;
- (c) the Principal Secretary or Secretary as the case may be, to the State Government in the Labour Department;
- (d) the Principal Secretary to the State Government in the Legislative Department;
- (e) the Principal Secretary to the State Government in the Judicial Department;
- (f) the Labour Commissioner, Uttar Pradesh;
- (g) a person who is, or has been, a member of a Police Service Commissioner, appointed by the State Government.]

(2) The committee constituted under sub-section (1) shall, in the manner prescribed, prepare the lists referred to in Section 4-D having regard,--

- (a) in the case of the list referred to in clause (i) of the said section, to the education and practical experience of the person in matters relating to Labour and Industry, and
- (b) in the case of the list referred to in clause (ii) thereof, also to special knowledge of the person in those matters.

3[(3) Only such person shall be eligible for enrolment in the lists prepared under sub-section (2) who is or has been a member of the State Higher Judicial Service or the Uttar Pradesh Nyayik Sewa, or is or has been a member of the Indian Administrative Service, or the State Civil Service (Executive Branch) or the State Labour Service and has experience of dispensation of justice for a period of at least three years].

1. Inserted by U.P. Act No. 2 of 1966.

2. Substituted by U.P. Act No. 21 of 2000 (w.e.f. 16.3.2000).

3. Substituted by U.P. Act No. 2 of 2007.

4F. Conciliation Officer :-

1[(1) The State Government may, by notification in the Official Gazette, appoint such number of persons as it thinks fit, to be

Conciliation Officers, charged with the duty of mediating in, and promoting the settlement of, industrial disputes, in the manner to be prescribed.

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

1. Inserted by U.P. Act No. 1 of 1957.

4G. Filling of vacancies :-

1[If, for any reason a vacancy occurs in the Office of the Presiding Officer of a Labour Court or Tribunal, the State Government shall appoint any other person in accordance with the provisions of this Act to fill the vacancy, and the proceedings may be continued before the Labour Court or Tribunal, as the case may be, from the stage at which the vacancy is filled.]

1. Inserted by U.P. Act No. 1 of 1957.

4H. Finality of orders :-

1[No order of the State Government appointing any person on the Board or as the Presiding Officer of a Labour Court or Tribunal shall be called in question in any manner; and no act or proceeding before any Board, Labour Court or Tribunal 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, Labour Court or Tribunal.]

1. Inserted by U.P. Act No. 1 of 1957.

4I. Notice of change :-

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

(a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or

(b) within twenty-one days of giving such notice :

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

(i) where the change is effected in pursuance of any settlement,

award or decision of the Appellate Tribunal constituted under the Industrial Disputes (Appellate) Tribunal Act, 1950; or

(ii) where the change is likely to affect workmen who are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Civil Service Regulations or any other rules or regulations that may be notified in this behalf by the State Government in the Official Gazette apply.]

1. Inserted by U.P. Act No. 1 of 1957.

4J. Power of Government to exempt :-

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

1. Inserted by U.P. Act No. 1 of 1957.

4K. Reference of disputes to Labour Court or Tribunal :-

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

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

1. Inserted by U.P. Act No. 1 of 1957.

5. Power to include other undertaking in any adjudication :-

(1) Where an industrial dispute referred to adjudication 1 [under Section 4-A] has arisen only in a particular undertaking or group of undertaking, the 2 [State Government] may include in the adjudication proceedings any other undertaking either of its own motion or on an application received in this behalf, whether an industrial dispute exists at the time in that undertaking or not, provided that the 2 [State Government] is satisfied--

(i) that the undertaking to be so included is engaged in the same type of industry or business as the undertaking or the group of undertaking in which the industrial dispute referred for adjudication has arisen; and

3 [(ii) that the issues involved in the industrial dispute referred for adjudication have already given rise, or are such as, in the circumstances, may reasonably be expected to give rise, to a similar dispute in the undertaking to be so included].

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

4 [5-A. Special composition of Tribunal.--(1) Where any industrial dispute may be referred to an Industrial Tribunal under Section 4-K, the State Government, if, having regard to the nature of the dispute and the effect which its decision is likely to have on industry or any section thereof, or if the dispute is such as is likely as to affect more than one industrial establishment it so considers necessary, may constitute, notwithstanding anything in the said section, a tribunal consisting of three persons, of whom one to be designated by the State Government, shall be in the Chairman.

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

5 [5-B. Voluntary reference of disputes to arbitration.--(1) Where

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

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

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

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

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

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

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

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

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

(b) requiring the discovery and production of documents and material objects;

(c) issuing commissions for the examination of witnesses;

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

(e). in respect of such other matters as may be prescribed; and

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

6 [5-D. Power of the Conciliation Officer. --(1) A Conciliation Officer may call for and inspect any document which he has ground for considering to be relevant to the industrial dispute or which he considers necessary for verifying the implementation of any award or for carrying out any other duty imposed on him under this Act, and for the aforesaid purposes, the Conciliation Officer shall have the same powers as are vested in a Civil Court under the Civil Procedure Code, 1908, in respect of compelling the production of documents before it.

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

6 [5-E. Award of Costs. --Subject to any rules made under this Act, the costs of, and incidental to, any proceedings before an arbitrator, a Labour Court or Tribunal shall be in the discretion of the arbitrator, Labour Court or Tribunal, and the arbitrator, Labour Court or Tribunal, as the case may be, shall have full power to determine by and to whom and to what extent and subject to what condition, if any, such costs are to be paid, and to give all necessary directions for the purpose aforesaid and such costs may, on application made to the State Government by the person entitled be recovered by the State Government in the same manner as an arrear of land revenue.]

1. Subs, by U.P. Act 1 of 1957.
2. Subs, by the A.O. 1950 for "Provincial Government".
3. The Original clause (ii) deleted and the clause (iii) re-numbered as clause (ii) by U.P. Act 1 of 1957.
4. Ins. by U.P. Act No. 1 of 1957.
5. Ins. by U.P. Act 1 of 1957.
6. Ins. by U.P. Act 1 of 1957.

5A. Special composition of Tribunal :-

1[(1) Where any industrial dispute may be referred to an Industrial Tribunal under Section 4-K, the State Government, if, having regard to the nature of the dispute and the effect which its decision is likely to have on industry or any section thereof, or, if the dispute is such as is likely to affect more than one industrial

establishment, it so considers necessary, any constitute, notwithstanding anything in the said section, a tribunal consisting of three persons, of whom one to be designated by the State Government, shall be the Chairman.

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

1. Inserted by U.P. Act No. 1 of 1957.

5B. Voluntary reference of disputes to arbitration :-

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

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

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

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

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

1. Inserted by U.P. Act No. 1 of 1957.

5C. Procedure and powers of Boards, Labour Courts and Tribunals :-

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

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

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

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

(b) requiring the discovery and production of documents and material objects;

(c) issuing commissions for the examination of witnesses;

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

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

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

1. Inserted by U.P. Act No. 1 of 1957.

5D. Power of the Conciliation Officer :-

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

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

1. Inserted by U.P. Act No. 1 of 1957.

5E. Award of Costs :-

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

1. Inserted by U.P. Act No. 1 of 1957.

6. Awards and action to be taken thereon :-

(1) While an industrial dispute has been referred to a Labour Court or Tribunal for adjudication, it shall hold its proceedings expeditiously and shall as soon as it is practicable on the conclusion thereof, submit its award to the State Government.

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

1 [(2-A) An award in an industrial dispute relating to the discharge or dismissal of a workman may direct the setting aside of the discharge or dismissal and reinstatement of the workman on such terms and conditions, if any, as the authority making the award may think fit, or granting such other relief to the workman, including the substitution of any lesser punishment for discharge or dismissal, as the circumstances of the case may require.]

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

2 [(4) Before publication of an award of a Labour Court or Tribunal under sub-section (3), if the State Government is of the opinion that,--

(a) the adjudicating authority has unreasonably refused permission to any party to adduce evidence; or

(b) any party was prevented by any other sufficient cause from adducing evidence; or

(c) new and important material fact or evidence has come to notice, which after the exercise of due diligence, was not within the knowledge of, or could not be produced by, the party at the time when the award was made; or

(d) the award is likely to disturb the industrial peace; or

(e) the award is likely to affect prejudicially the national or State economy; or

(f) the award is likely to interfere with the principles of social justice; or

(g) the award has left undermined any of the matters referred for adjudication, or where it determines any matter not referred for adjudication and such matter cannot be separated without affecting the determination of the matter referred; or

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

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

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

3 [6-A. Commencement of the award. --(1) An award (including an arbitration award) shall become enforceable on the expiry of thirty days from the date of its publication under Section 6;

Provided that if the State Government is of the opinion that it will be inexpedient 4 [on public grounds affecting national or State economy or social justice] to give effect to the whole or any part of the award, the State Govern- merit 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;

Provided further that an arbitration award shall not become enforceable where the State Government after such enquiry as it

considers necessary, is satisfied that the same has been given or obtained through collusion, fraud or misrepresentation.

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

(3) Where any award as rejected or modified by an order made under subsection (2) is laid before the Legislature of the State, such award shall become enforceable on the expiry of fifteen days from the date on which it is so laid and where no order under subsection (1) is made in pursuance of a declaration under the first proviso to sub-section (1), the award shall become enforceable on the expiry of the period of ninety days referred to in sub-section (2).

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

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

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

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

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

(4) Where a settlement under sub-section (1) has been refused

registration, it shall not be binding under this Act.]

Settlement of dispute--To be signed by the parties.--Settlement of a dispute, which is required to be registered under Section 6-B of the Act, should be duly signed and verified by the parties before the Registering officer. [(M/s.) Prag Vanaspati Products v. Assti. Labour Commissioner, 1999 (81) FLR 1 (A11)].

5 [6-C. Award of Labour Court or tribunal or arbitration and its operation. --An award shall in the first instance remain in operation for a period of one year or such shorter period as may be specified therein :

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

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

5 [6-D. Commencement and conclusion of proceeding. --Proceedings before a Labour Court or Tribunal shall be deemed to have commenced on the date of reference of a dispute to adjudication, and such proceedings shall be deemed to have concluded on the date on which the award becomes enforceable under Section 6-A.]

5 [6-E. Conditions of service, etc. to remain unchanged in certain circumstances during the pendency of proceedings. --(1) During the pendency of any conciliation proceeding before a Conciliation Officer or a Board or of any proceedings before a Labour Court or Tribunal in respect of an industrial dispute, no employer shall--

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

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

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

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(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 proceedings in respect of an industrial dispute, take any action against any protected workman concerned in such dispute--

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

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

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

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

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

6 [6-F. Special provision for adjudication as to whether the conditions of service, etc. changed during the pendency of proceedings.--Where an employer contravenes the provisions of

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

Remedy--Scope of.--Alternative remedy provided under Section 6-F is a complete, adequate and efficacious remedy which can be availed by petitioner. Writ petition is not maintainable. [Subhas Ganguly v. Industrial Tribunal, Agra, 1999 (82) FLR 562 (All)].

7 [6-G. Power to transfer certain proceedings. --8 [(1) The State Government may by order in writing for reasons to be recorded withdraw and transfer a proceeding from--

(i) one Labour Court to another Labour Court or any Tribunal;

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

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

9 [6-H. Recovery of money due from an employer. --(1) Where any money is due to a workman from an employer under the provisions of Sections 6-J to 6-R or under a settlement or award, or under an award given by an adjudicator or the State Industrial Tribunal appointed or constituted under this Act, before the commencement of the Uttar Pradesh Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956, the workman may, without prejudice to any other mode of recovery, make an application to the State Government for the recovery of the money due to him, and if the State Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same as if it were an arrear of land revenue.

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

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

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COMMENTS

Claim of money due under settlement.--The provisions of Section 6-H of the Act can be invoked where any money is due to a workman from an employer under a settlement or an award or under an award given by an adjudicator or the State Industrial Tribunal appointed or constituted under the Act. [Mathum Zila Sahkari Bank Ltd. v. Upper Shrama Ayukta, Agra, 1999 (81) FLR 658 (All)].

Retiral benefits.--If order of the Labour Court is not challenged by the respondents, the respondent cannot withhold the pension and other retiral benefits. [Ratan Lal Shukla v. State of U.P., 1999 (82) FLR 452 (All)].

10 [6-I. Representation of the parties. --(1) Subject to the provisions of subsections (2) and (3), the parties to an industrial dispute may be represented before the Board, Labour Court, or Tribunal in the manner prescribed.

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

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

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

12 [6-J. Non-application of the provision for lay-off in certain cases.--(1) Section 6-K to 6-M inclusive shall not apply--

(a) to industrial establishment 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 State Government thereon shall be final.

Explanation.--In this section and in Sections 6-K, 6-L and 6-M "industrial establishment" means--

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

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

(iii) a plantation as defined in clause (f) of Section 2 of the Plantations Labour Act, 1951.]

13 [6-K. Right of workmen laid-off for compensation.--(1) Whenever a workman (other than a substitute or casual workman) whose name is borne on the muster-rolls of an industrial establishment and who has completed not less than one year of continuous service under an employer is laid-off, he shall be paid by the employer for all days during which he is so laid-off except for such weekly holidays as may intervene, compensation which shall be equal to fifty per cent of the total of the basic wages and dearness allowance that would have been payable to him had he not been so laid-off :

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

(2) Notwithstanding anything contained in the proviso to sub-section (1), if during any period of twelve months, a workman is laid-off for more than forty-five days, whether continuously or intermittently, and the lay-off after the expiry of the first forty-five days comprises continuous periods of one week or more, the workman shall, unless there is any agreement to the contrary between him and the employer, be paid for all the days comprised in every such subsequent period of lay-off for one week or more compensation at the rate specified in sub-section (1) : Provided that it shall be lawful for the employer in any case falling within this sub-section to retrench the workman in accordance with the provisions contained in Section 6-N at any time after the expiry of the first forty-five days of lay-off and when he does so, any compensation paid to the workman for having been laid-off during the preceding twelve months may be set-off against the compensation payable for retrenchment.

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

14 [6-L. Duty of an employer to maintain muster rolls of workmen.--Notwithstanding that workman in any industrial establishment have been laid-off, it shall be the duty of every employer to maintain for the purposes of Sections 6-J to 6-R a muster-roll, and to provide for the making of entries therein by workmen who may present themselves for work at the establishment at the appointed time during normal working hours.]

14 [6-M. 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 to 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.]

15 [6-N. Conditions precedent to retrenchment of workmen.--No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until--

- (a) the workman has been given one months notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice wages for the period of notice :
Provided that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of service;
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days average pay for every completed year of service or any part thereof in excess of six months, and
- (c) notice in the prescribed manner is served on the State Government.]

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COMMENTS

Principle of "First come last go"--Applicability of.--If there arises an occasion to retrench the workman, the employer should ordinarily retrench the workman who is the last person to be employed in that category unless the employer retrenches other person. [Samishta Dube v. City Board, Etawah, 1999 (81) FLR 746 (SC)].

Termination of workman--Without complying with the provisions of the Act--Validity of.--Where workman was engaged for a period more than 240 days in one calendar year, termination of his services without complying with the provisions of Section 6-N held illegal. [M/s Bharat Heavy Electricals Ltd. v. State of U.P., 1999 (81) FLR 990 (All)].

Statutory benefit--Entitlement of.--A time bound workman is not entitled to any benefit of Section 6-N of the Act. The provisions of retrenchment do not apply in such cases. [District Co-operative Bank Ltd. v. Presiding Officer, Labour Court, Kanpur, 1999 (81) FLR 246 (All)].

Workman--Benefit of Statutory provisions.--If a workman has worked continuously more than 240 days in one calendar year, he becomes entitled to retrenchment compensation or notice prior to termination of his services. [(M/s.) Reptakos Brett & Co. v. Labour Court (Vth), Kanpur, 1999 (81) FLR 222 (All)].

16 [6-O. Special provisions relating to workmen employed in under-takings which are transferred. --Notwithstanding anything contained in Section 6-N no workman shall be entitled to compensation under that section by reason merely of the fact that there has been a change of employers in any case where the ownership or management of the undertaking in which he is employed is transferred, whether by agreement or by operation of law, from one employer to another :
Provided that--

- (a) the service of the workman has not been interrupted by reason of the transfer;
(b) the terms and conditions of service applicable to the workman after such transfer are not in any way less favourable to the workman than those applicable to him immediately before the transfer; and

(c) the employer to whom the ownership or management of the undertaking is so transferred is, under the terms of the transfer or otherwise, legally liable to pay to the workman in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by the transfer.]

16 [6-P. Procedure for retrenchment.--Where any workman in an industrial establishment who is a citizen of India, is to be retrenched and he belongs to a particular category of workman in the 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.]

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COMMENTS

Procedure for retrenchment.--If there arises an occasion to retrench the workmen, the employer should ordinarily retrench the workman who is the last person to be employed in that category unless the employer retrenches other person. [Samishta Dube v. City Board, Etawah, 1999 (81) FLR 746 (SC)].

16 [6-Q. Re-employment of retrenched workmen. --Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed give an opportunity to the retrenched workmen to offer themselves for re-employment, and the retrenched workmen who offer themselves for re-employment shall have preference over other persons.]

COMMENT

Vacancies--Reservation--Filling of.--It there are vacancies in the quota of Scheduled Castes and other Backward classes in that event it is to be filled up only by the candidates from the Scheduled Caste and Backward classes community. [Om Prakash v. U.P. State Electricity Board, 1999 (82) FLR 917 (All)].

17 [6-R. Effect of laws inconsistent with Sections 6-J to 6-Q.-- (1) The provisions from Section 6-J to 6-Q shall have effect notwithstanding anything inconsistent therewith contained in any other law (including Standing Orders) made under the Industrial Employment (Standing Orders) Act, 1946 :

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

(2) For the removal of doubts, it is hereby declared that nothing contained in Sections 6-J to 6-R shall be deemed to affect the provisions of any other law for the time being in force so far as that law provides for the settlement of industrial disputes, but the rights and liabilities and employers and workmen in so far as they relate to lay-off and retrenchment shall be determined in accordance with the provisions of Section 6-J to 6-Q.]

17 [6-S. Prohibition of illegal strikes and lock-outs. --(1) No person employed in an industrial establishment shall go on strike--

(a) without giving to the employer a notice of strike within thirty days 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 conditions proceedings before a Conciliation Officer or a Board and thirty days after the conclusion of such proceedings, if he is concerned in the dispute which is the subject-matter of such proceedings; or

(e) between the commencement and the conclusion of proceeding before a Labour Court or a Tribunal, if he is concerned in the dispute which is the subject-matter of such proceeding; or

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

(2) No employer shall lock-out any of his workmen--

(a) without giving him notice of lock-out within thirty days before locking out; or

(b) within fourteen days of giving such notice; or

(c) before the expiry of the date of lock-out specified in any such notice as aforesaid; or

(d) during the pendency of any conciliation proceeding before a Conciliation Officer or a Board, and thirty days after the conclusion of such proceeding, if the workman is concerned in the dispute which is the subject-matter of such proceeding; or

(e) between the commencement and the conclusion of proceeding before a Labour Court or a Tribunal, if the workman is concerned in the dispute which is the subject-matter of such proceeding; or

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

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

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

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

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

18 [6-T. Illegal strikes and lock-outs. --(1) A strike or lock-out shall be illegal if it is commenced or declared in contravention of Section 6-S or is continued beyond the date on which the industrial dispute to which the strike or, as the case may be, the lock-out relates, is taken up by a Board or is referred for adjudication to a Labour Court or Tribunal.

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

19 [6-U. Prohibition of institution or incitement to illegal strikes and lockout.--No person shall aid, instigate or incite others to take part in or otherwise act in furtherance of any strike or lock-out which is, or when commenced, will be in contravention of the provisions of this Act.]

20 [6-V. Application of Sections 6-W and 6-X. --(1) The provisions of Sections 6-W and 6-X shall apply to an industrial establishment pertaining to an industry other than an industry referred to in sub-clause (i) of clause (a) of Section 2 of the Industrial Disputes Act, 1947 (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than three hundred workmen were employed on an average per working day for the preceding twelve months.

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

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

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

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

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

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

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

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

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

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

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

(8) Where an undertaking is permitted to be closed down under subsection (2) or where permission for closure is deemed to be granted under subsection (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.

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

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

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

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

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

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

1. Ins. by U.P. Act 34 of 1978.

2. Subs, by U.P. Act 3 of 1991.

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

4. Subs, by U.P. Act XXIII of 1957.

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

6. Ins. by U.P. Act No. 1 of 1957.

7. Ins. by U.P. Act No. 1 of 1957.

8. Subs, by U.P. Act 34 of 1978.

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

10. Ins. by U.P. Act No. 1 of 1957, as amended by U.P. Act No. XXIII of 1957.
11. Subs, by U.P. Act No. XXIII of 1957.
12. Ins. by Section 8 of U.P. Act No. 1 of 1957.
13. Ins. by Section 8 of U.P. Act No. 1 of 1957.
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16. Ins. by Section 8 of U.P. Act No. 1 of 1957.
17. Ins. by Section 8 of U.P. Act No. 1 of 1957.
18. Ins. by Section 8 of U.P. Act No. 1 of 1957.
19. Ins. by Section 7 of U.P. Act No. XXIII of 1957.
20. Ins. by U.P. Act No. 26 of 1983 (w.e.f. 3-8-1983).

6A. Commencement of the award :-

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

Provided that if the State Government is of the opinion that it will be inexpedient 2[on public grounds affecting national or State economy or social justice] to give effect to the whole or any part of the award, the State Government may, by notification in the Official Gazette, declare that the award shall not-become enforceable on the expiry of the said period of thirty days :

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

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

(3) Where any award as rejected or modified by an order made under sub-section (2) is laid before the Legislature of the State, such award shall become enforceable on the expiry of fifteen days from the date on which it is so laid and where no order under sub-section (1) is made in pursuance of a declaration under the first proviso to sub-section (1), the award shall become enforceable on the expiry of the period of ninety days referred to in sub-section (2).

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

the award becomes enforceable under sub-section (1) of sub-section (3) as the case may be.]

1. Inserted by U.P. Act No. 1 of 1957.

2. Substituted by U.P. Act No. 23 of 1957.

6B. Settlement outside conciliation proceedings :-

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

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

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

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

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

1. Inserted by U.P. Act No. 1 of 1957.

6C. Award of Labour Court or Tribunal or arbitration and its operation :-

1[An award shall in the first instance remain in operation for a period of one year or such shorter period as may be specified therein :

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

Provided further that where the State Government whether of its own motion or on the application of any party bound by the award, considers that since the award was made there has been a material change in the circumstances on which it was based, the State

Government may, after such enquiry as it may think fit, shorten the period of operation of the award.]

1. Inserted by U.P. Act No. 1 of 1957.

6D. Commencement and conclusion of proceeding :-

1[Proceedings before a Labour Court or Tribunal shall be deemed to have commenced on the date of reference of a dispute to adjudication, and such proceedings shall be deemed to have concluded on the date on which the award becomes enforceable under Section 6-A.]

1. Inserted by U.P. Act No. 1 of 1957.

6E. Conditions of service, etc. to remain unchanged in certain circumstances during the pendency of proceedings :-

1[(1) During the pendency of any conciliation proceeding before a Conciliation Officer or a Board or of any proceeding before a Labour Court or Tribunal in respect of an industrial dispute, no employer shall,--

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

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

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

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

(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise :

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the

proceeding is pending for approval of the action taken by the employer.

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

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

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

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

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

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

1. Inserted by U.P. Act No. 1 of 1957.

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

1[Where an employer contravenes the provisions of Section 6-E during the pendency of proceedings before a Labour Court or Tribunal, any workman aggrieved by such contravention may make

a complaint in writing in the prescribed manner, to the Labour Court or Tribunal as the case may be, and on receipt of such complaint that Labour Court or Tribunal as the case may be, shall adjudicate upon the complaint as if it were a dispute referred to or pending before it, in accordance with this Act and shall submit its award to the State Government and the provisions of this Act shall apply accordingly.]

1. Inserted by U.P. Act No. 1 of 1957.

6G. Power to transfer certain proceedings :-

1[2[(1) The State Government may by order in writing for reasons to be recorded withdraw and transfer a proceeding from,--

(i) one Labour Court to another Labour Court or any Tribunal;

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

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

1. Inserted by U.P. Art No. 1 of 1957.

2. Substituted by U.P. Act No. 34 of 1978.

6H. Recovery of money due from an employer :-

1[(1) Where any money is due to a workman from an employer under the provisions of Section 6-J to 6-R or under a settlement or award, or under an award given by an adjudicator or the State Industrial Tribunal appointed or constituted under this Act, before the commencement of the Uttar Pradesh Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956, the workman may, without prejudice to any other mode of recovery, make an application to the State Government for the recovery of the money due to him, and if the State Government is satisfied that any

money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same as if it were an arrear of land revenue.

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

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

1. Inserted by U.P. Act No. 1 of 1957.

6I. Representation of the parties :-

1[(1) Subject to the provisions of subsections (2) and (3), the parties to an industrial dispute may be represented before a Board, Labour Court, or Tribunal in the manner prescribed.

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

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

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

1. Inserted by U.P. Act No. 1 of 1957.

2. Substituted by U.P. Act No. 23 of 1957.

6J. Non-application of the provision for lay-off in certain cases :-

1[(1) Sections 6-K to 6-M inclusive shall not apply,--

(a) to industrial establishments in which less than fifty workmen on an average per working day have been employed in the preceding calendar month, or

(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 State Government thereon shall be final.

Explanation.--In this section and in Sections 6-K, 6-L and 6-M "industrial establishment" means,--

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

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

(iii) a plantation as defined in clause (f) of Section 2 of the Plantations Labour Act, 1951.]

1. Inserted by U.P. Act No. 1 of 1957.

6K. Right of workmen laid-off for compensation :-

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

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

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

compensation at the rate specified in sub-section (1) :

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

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

1. Inserted by U.P. Act No. 1 of 1957.

6L. Duty of an employer to maintain muster-rolls of workmen :-

1[Notwithstanding that workmen in any industrial establishment have been laid off, it shall be the duty of every employer to maintain for the purposes of Sections 6-J to 6-R a muster-roll, and to provide for the making of entries therein by workmen who may present themselves for work at the establishment at the appointed time during normal working hours.]

1. Inserted by U.P. Act No. 1 of 1957.

6M. Workmen not entitled to compensation in certain cases :-

1[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 situated in the same town or village or situated 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.]

1. Inserted by U.P. Act No. 1 of 1957.

6N. Conditions precedent to retrenchment of workmen :-

1 [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;

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

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

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

1. Inserted by U.P. Act No. 1 of 1957.

6O. Special provisions relating to workmen employed in undertakings which are transferred :-

1[Notwithstanding anything contained in Section 6-N no workman shall be entitled to compensation under that section by reason merely of the fact that there has been a change of employers in any case where the ownership or management of the undertaking in which he is employed is transferred, whether by agreement or by operation of law, from one employer to another :

Provided that,--

(a) the service of the workman has not been interrupted by reason of the transfer;

(b) the terms and conditions of service applicable to the workman

after such transfer are not in any way less favourable to the workman than those applicable to him immediately before the transfer; and

(c) the employer to whom the ownership or management of the undertaking is so transferred is, under the terms of the transfer or otherwise, legally liable to pay to the workman in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by the transfer.]

1. Inserted by U.P. Act No. 1 of 1957.

6P. Procedure for retrenchment :-

1[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]

1. Inserted by U.P. Act No. 1 of 1957.

6Q. Re-employment of retrenched workmen :-

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

1. Inserted by U.P. Act No. 1 of 1957.

6R. Effect of laws inconsistent with Sections 6-J to 6-Q :-

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

Provided that nothing contained in this Act shall have effect to derogate from any right which a workman has under the Minimum Wages Act, 1948, or any notification or order issued thereunder or

any award for the time being in operation or any contract with the employer.

(2) For the removal of doubts, it is hereby declared that nothing contained in Sections 6-J to 6-R shall be deemed to affect the provision of any other law for the time being in force so far as that law provides for the settlement of industrial disputes, but the rights and liabilities of employers and workmen in so far as they relate to lay-off and retrenchment shall be determined in accordance with the provisions of Sections 6-J to 6-Q.]

1. Inserted by U.P. Act No. 1 of 1957.

6S. Prohibition of illegal strikes and lock-outs :-

1[(1) No person employed in an industrial establishment shall go on strike,--

(a) without giving to the employer a notice of strike within thirty days 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 proceeding before a Conciliation Officer or a Board and thirty days after the conclusion of such proceeding, if he is concerned in the dispute which is the subject-matter of such proceeding; or

(e) between the commencement and the conclusion of proceeding before a Labour Court or a Tribunal, if he is concerned in the dispute which is the subject-matter of such proceeding; or

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

(2) No employer shall lock out any of his workmen,--

(a) without giving him notice of lock-out within thirty days before locking out; or

(b) within fourteen days of giving such notice; or

(c) before the expiry of the date of lock-out specified in any such notice as aforesaid; or

(d) during the pendency of any conciliation proceeding before a Conciliation Officer or a Board, and thirty days after the conclusion of such proceeding, if the workman is concerned in the dispute which is the subject-matter of such proceeding; or

(e) between the commencement and the conclusion of proceeding

before a Labour Court or a Tribunal, if the workman is concerned in the dispute which is the subject-matter of such proceeding; or
(f) during any period in which a settlement or award is in operation, in respect of any of the matter covered by the settlement or award.

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

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

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

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

1. Inserted by U.P. Act No. 1 of 1957.

6T. Illegal strikes and lock-outs :-

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

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

1. Inserted by U.P. Act No. 1 of 1957.

6U. Prohibition of instigation or incitement to illegal strikes and lock-out :-

1[No person shall aid, instigate or incite others to take part in or otherwise act in furtherance of any strike or lock-out which is, or when commenced, will be in contravention of the provisions of this Act.]

1. Inserted by U.P. Act No. 23 of 1957.

6V. Application of Sections 6-W and 6-X :-

1[(1) The provisions of Sections 6-W and 6-X shall apply to an industrial establishment pertaining to an industry other than an industry referred to in sub-clause (i) of clause (a) of Section 2 of the Industrial Disputes Act, 1947 (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than three hundred workmen were employed on an average per working day for the preceding twelve months;

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

1. Inserted by U.P. Act No. 26 of 1983 (w.e.f. 3.8.1983).

6W. Procedure for closing down an undertaking :-

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

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

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

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

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

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

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

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

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

(8) Where an undertaking is permitted to be closed down under subsection (2) or where permission for closure is deemed to be granted under subsection (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.]

1. Inserted by U.P. Act No. 26 of 1983.

6X. Special provisions as to the restarting of certain

undertakings :-

1[(1) If the State Government is of opinion in respect of any undertaking of an industrial establishment which has been closed down before or after the commencement of the Uttar Pradesh Industrial Disputes (Amendment) Act, 1983,--

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

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

(c) that it is necessary for the rehabilitation of the workmen employed in such undertaking before its closure or for the maintenance of supplies and services essential to the life of the community of 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 for reason, to be recorded in writing direct, by order published in the Gazette, that the undertaking shall be restarted within such time (not being less than one month from the date of the order) as may be specified in the order.

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

1. Inserted by U.P. Act No. 26 of 1983.

7. Power to continue order passed under other enactments :-

Without prejudice to the generality of the powers vesting under 1 [the provisions of this Act] the 2 [State Government] may, by order, for the purposes contemplated in Section 3--

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

(ii) enforce 3 [in the prescribed manner] for such period as may be specified, the whole or any part of an agreement reached in conciliation proceedings between the parties to an industrial dispute.

1 Subs. by Section 9 of U.P. Act No. 1 of 1957.

2. Subs. by the A.O. 1950 for "Provl. Govt.".

3. Subs. by Section 9 of U.P. Act No. 1 of 1957.

8. Power to obtain information :-

Without prejudice to any other provision contained in this Act the¹[State Government] or an officer authorised by it in this behalf may--

(i) require by order any person to furnish or produce before any specified authority or person such information or article in his possession as may be specified in the order, being information or article which the²[State Government] or such officer considers it necessary or expedient to obtain or examine for the purposes of this Act;

(ii) authorise any person to enter or search any premises, or to inspect and seize any books or other documents or articles belonging to or under the control of any person which the¹[State Government] or the officer making the order may consider necessary for enforcing such order.

1 Subs. by the A.O. 1950 for "Provl. Govt.".

2. Subs. by the A.O. 1950 for "Provl. Govt.".

9. False statements :-

If any person--

(i) when required by order to make any statement or furnish any information, makes any statement or furnishes any information which he knows or has reasonable cause to believe to be false, or not true, in any material particular; or

(ii) makes any such statement as aforesaid in any account, declaration, estimate, return or other document, which he is required by order to furnish, he shall be punishable with imprisonment for a term which extends to three years, or with fine or with both.

10. Power to require production of books, etc. :-

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

11. Prohibition against disclosing information :-

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

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

1 [11-A. Delegation of powers.--

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

1 [11-B. Powers to remove difficulties.-

(1) If in the opinion of the State Government any difficulty or doubt arises as to the interpretation of any provision of an award or settlement, if any refer the question to such Labour Court or Tribunal as it may think fit.

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

2 [11-C. Interpretation, etc. of standing orders.-If any question arises as to the application or interpretation of a standing order certified under the Industrial Employment (Standing Orders) Act, 1946, any employer or workman may refer the question to any one of the Labour Courts specified for the disposal of such proceeding by the State Government by notification in the Official Gazette, and the Labour Court to which the question is so referred shall, after giving the parties an opportunity of being heard, decide the

question and such decision shall be final and binding on the parties.]

2 [11-D. Conciliation Officers and certain others to be public servants.-- Every Conciliation Officer and every member and Chairman of a Board and every Presiding Officer of a Labour Court or Tribunal shall be deemed to be a public servant within meaning of Section 21 of the Indian Penal Code.]

2 [11-E. Labour Court or Tribunal to be deemed Civil Court for certain purposes.--Every Labour Court or Tribunal shall be deemed to be a Civil Court for the purposes of Sections 480 and -182 of the Code of Criminal Procedure, 1898.]

2 [11-F. Powers of the Labour Court or Tribunal in relation to contempt.-

(1) If any person--

(a) when ordered by a Labour Court or Tribunal to produce or deliver up any document, being legally bound, intentionally omits to do so, or

(b) when required by a Labour Court or Tribunal to bind himself by an oath or affirmation to state the truth, refuses to do so, or

(c) being legally bound to state the truth on any subject to a Labour Court or Tribunal refuses to answer any question put to him touching such subject by such Labour Court or Tribunal, or

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

(e) intentionally offers any insult or causes any interruption to a Labour Court or Tribunal at any stage of its judicial proceedings, he shall be deemed to be guilty of contempt of such Labour Court or Tribunal as the case may be.

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

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

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

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

11A. Delegation of powers :-

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

1. Inserted by U.P Act No. 1 of 1957.

11B. Powers to remove difficulties :-

1[(1) If in the opinion of the State Government any difficulty or doubt arises as to the interpretation of any provision of an award or settlement, it may refer the question to such Labour Court or Tribunal as it may think fit.

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

1. Inserted by U.P. Act No. 1 of 1957

11C. Interpretation, etc. of standing orders :-

1[If any question arises as to the application or interpretation of a standing order certified under the Industrial Employment (Standing Orders) Act, 1946, any employer or workman may refer the question to any one of the Labour Courts specified for the disposal of such proceeding by the State Government by notification in the Official Gazette, and the Labour Court to which the question is so referred shall, after giving the parties an opportunity of being heard, decide the question and such decision shall be final and binding on the parties.]

1. Inserted by U.P. Act No. 1 of 1957.

11D. Conciliation Officers and certain others to be public servants :-

1[Every Conciliation Officer and every member and Chairman of a Board and every Presiding Officer of a Labour Court or Tribunal

shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code.]

1. Inserted by U.P. Act No. 1 of 1957.

11E. Labour Court or Tribunal to be deemed Civil Court for certain purposes :-

1[Every Labour Court or Tribunal shall be deemed to be a Civil Court for the purposes of Sections 480 and 482 of the Code of Criminal Procedure, 1898.]

1. Inserted by U.P. Act No. 1 of 1957.

11F. Powers of the Labour Court or Tribunal in relation to contempt :-

1[(1) If any person,--

(a) when ordered by a Labour Court or Tribunal to produce or deliver up any document, being legally bound, intentionally omits to do so, or

(b) when required by a Labour Court or Tribunal to bind himself by an oath or affirmation to state the truth, refuses to do so, or

(c) being legally bound to state the truth on any subject to a Labour Court or Tribunal refuses to answer any question put to him touching such subject by such Labour Court or Tribunal, or

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

(e) intentionally offers any insult or causes any interruption to a Labour Court or Tribunal at any stage of its judicial proceedings, he shall be deemed to be guilty of contempt of such Labour Court or Tribunal, as the case may be.

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

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

1. Inserted by U.P. Act No. 1 of 1957.

12. Power under Industrial Disputes Act, 1947 to continue :-

Unless any order made under this Act makes express provision to the contrary, nothing in this Act shall affect the power of the State Government to refer any industrial dispute or matters connected therewith under the Industrial Disputes Act, 1947, or to deal with any or settlement in accordance with the provisions of that Act.]

1 [12-A.--For the removal of doubts it is hereby declared that nothing in this Act shall be deemed to preclude the Central Government from constituting a National Tribunal under the Industrial Disputes Act, 1947, for the time being in force or any such Tribunal from exercising any powers conferred upon it under that Act.]

1. Secs. 12 and 12-A, subs. for S. 12 by S. 11 of U.P. Act No. 1 of 1957.

12A. Section 12A :-

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

1. Substituted by U.P. Act No. 1 of 1957.

13. Arbitration Act, 1940 not to apply :-

Nothing in the Arbitration Act, 1940, shall apply to any proceedings under any other made under this Act.

14. Penalty :-

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

2 [14-A. Penalty for breach of term or award. --Any person who

commits a breach of any terms 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 further the 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.]

COMMENT

Execution of Award--Passed by Labour Court or Industrial Court.-- An award passed by the Labour Court or Industrial Tribunal is capable of being executed. Section 14-K of the Act provides that in case of non-implementation of award by the employer, the employee may seek compensation while providing for penal action in addition. [Ram Kripal Singh v. U.P. S.R.T.C., 1999 (81) FLR 996 (All)].

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

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

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

2. Ins. by U.P. Act 34 of 1978.

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

14A. Penalty for breach of term of award :-

1[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 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.]

1. Inserted by U.P. Act No. 34 of 1978.

14B. Section 14B :-

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

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

1. Inserted by U.P. Act No. 26 of 1983 (w.e.f. 3.8.1983).

15. Offence to be deemed cognizable :-

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

16. Cognizance of offence :-

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

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

17. Effect or provisions inconsistent with other enactments :-

Any rule or order made or deemed to be made under this Act shall have effect notwithstanding anything inconsistent therewith

contained in any other enactment or in any instrument having effect by virtue of any other enactment.

18. Attempt and abetment :-

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

19. Publication, affixation and defacement of notice :-

(1) Save as otherwise expressly provided in an order made under this Act, every authority, officer or person who makes any order in writing in pursuance of this Act 1 [other than an award] shall in the case of an order of a general nature or affecting a class of persons, publish notice of such order in such manner as may in the opinion of such authority, officer or person, be best adapted for informing persons whom the order concerns and in the case of an order affecting an individual corporation or firm serve or cause the order to be served in the manner provided for the service of a summons in Order XXIX, Rule 2, or Order XXX, Rule 3, of the Code of Civil Procedure, 1908 as the case may be, and in the case of an order affecting an individual person (not being a corporation or firm) serve or cause the order to be served on that person--

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

(ii) by post; or

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

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

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

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

(3) Any police officer and any other person authorised by the 2 [State Government] in this behalf may, for any purpose connected with the purposes mentioned in Section 3 for the administration of this Act affix any notice to, or cause any notice to be displayed on

any premises, vehicle or vessel and may, for the purpose of exercising the power conferred by this Act, enter any premises, vehicle, or vessel at any time.

(4) Any person authorised by the 2 [State Government] in this behalf may, for any purpose mentioned in sub-section (3) by order direct the owner or other person in possession or control of any premises, vehicle or vessel to display, any notice on, or in, the premises, vehicle or vessel in such manner as may be specified in the order.

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

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

2. Subs. by the A.O. 1950 for "Provincial Government".

20. Offence by a corporation :-

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

21. Saving :-

(1) The provisions of Section 6 of the United Provinces General Clauses Act, 1904, shall apply upon the expiry or withdrawal of the United Provinces Industrial Disputes Ordinance, 1947, and the United Provinces Industrial Disputes (Second) Ordinance, 1947, as if they had then been repealed by a 1 [Uttar Pradesh] Act; and any order or appointment made or deemed to be made under the said Ordinances and in force immediately before the commencement of this Act shall continue in force and be deemed to be an order or appointment made under this Act.

(2) No order made in exercise of any power conferred by or under this Act or the said Ordinances shall be called in question in any court.

(3) When any order purports to have been made and signed by any authority in exercise of any power conferred by or under this Act or

the "said Ordinances, a court shall, within the meaning of Indian Evidence Act, 1872, presume that such order was so made by that authority.

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1. Subs. by the A.O. 1950 for "Provincial Government".

22. Protection :-

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

(2) No suit or legal proceedings shall lie against the¹[Government] for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made or deemed to be made thereunder

23. Rule-making power :-

[(1)] The³[State Government] may make rules consistent with this Act for giving effect to the provisions of this Act.

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

(a) the manner of appointment of Presiding Officer of Labour Courts and Tribunals and the conditions of their employments;

(b) the manner in which reference shall be made to a Labour Court of a Tribunal;

(c) the manner of appointment of Conciliation Officers and the conditions of their employment;

(d) the procedure to be followed in conciliation proceedings;

(e) the manner of remission of award by the State Government to the adjudicating authority;

(f) the manner of registration of settlements;

(g) the manner and the form in which muster-rolls of workmen shall be maintained; and

(h) the matter which are to be and may be prescribed.

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

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1. Subs. By the A.O. 1950, for "Crown".

2. Re-numbered by Section 14 of U.P. Act No. 1 of 1957.

3. Subs. by the A.O. 1950 for "Provincial Government".

4. Added by Section 14 of U.P. Act No. 1 of 1957.

SCHEDULE 1

FIRST SCHEDULE

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1[THE FIRST SCHEDULE]

[See Section 4-A]

(Matters within the jurisdiction of Labour Courts)

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

1. Inserted by Section 15 of U.P. Act No. 1 of 1957.

SCHEDULE 2

SECOND SCHEDULE

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1[THE SECOND SCHEDULE]

[See Section 4-B]

(Matters within the jurisdiction of Industrial Tribunal)

1. Wages, including the period and mode of payment.
2. Compensatory and other allowances.
3. Hours of work and rest intervals.
4. Leave with wages and holiday.
5. Bonus, profits sharing, provident fund and gratuity.
6. Shift working otherwise than in accordance with standing orders.
7. Classification by grades.
8. Rules of discipline.
9. Rationalization.
10. Retrenchment of workmen and closure of establishment.

2[10-A. Any matter relating to the closure of the undertaking of an industrial establishment.]

11. Any other matter that may be prescribed

1. Inserted by Section 10 of U.P. Act No. 1 of 1957.

2. Inserted by U.P. Act No. 26 of 1983 (w.e.f. 3-8-1983).

SCHEDULE 3

THIRD SCHEDULE

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1[THE THIRD SCHEDULE]

[See Section 4-I]

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

1. Wages, including the period and mode of payment.
2. Contribution paid or payable, by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force.
3. Compensatory and other allowances.
4. Hours of work and rest intervals.
5. Leave with wages and holidays.
6. Starting, alteration 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 in so far as they are provided in standing orders.
10. Rationalization, standardization or improvement of plant or technique which is likely to lead to retrenchment of workmen.
11. Any increase or reduction (other than casual) in the number of persons employed, or to be employed in any occupation or process or department or shift, not due to forced matters.]

1. Inserted by Section 10 of U.P. Act No. 1 of 1957.