

Section 7-C // Disqualification

A person cannot be appointed or continue in the office of the Presiding Officer of the ~~Adjudicating~~ Adjudicating authorities i.e. Labour Court, Industrial Tribunal or National Industrial Tribunal if -

- (1) He is not an independent person.
- (2) He has attained the age of 65 years.

~~Section 11~~ → Powers, Procedures & Duties of Authorities

Section 11 → Procedure and powers of Authorities.
[Board of Conciliation, Conciliation officers, Courts and Tribunals].

- (1) The Authorities [except the works Committee] shall follow the procedure as the concerned authority or an arbitrator may think fit.
- (2) The Authorities for the purpose of inquiry into the matter can enter into the premises where the industrial dispute has arisen or apprehend for an industrial dispute, but a reasonable notice has to be served to the concerned parties.

(3) The Adjudicating Authorities shall have the same power as vested in the ~~code~~ Civil Court under the Code of Civil Procedure. [CPC] when trying a suit in respect of the following matters :-

- (i) Enforcing the attendance of any person and examining him on oath.
- (ii) Compelling the person to produce any documents and material objects.
- (iii) Issuing Summons to the witness to produce before the Authority.
- (iv) Any other power which is related to the matters.

(4) The Adjudicating authorities may appoint one or more person having special knowledge of the matter under consideration as an assessor or assessors to advise it in the proceedings.

(5) The Adjudicating Authorities shall be deemed to be a Public ~~Servant~~ ^{Servant} with the meaning of Section 21 of IPC.

Section 9-A

- (i) Every award made, order issued or settlement arrived at by or before the Adjudicating authorities shall be executed in accordance with the procedure laid down for execution of orders and decree of a Civil Court under O. 21 of CPC.

- (ii) The Adjudicating Authorities shall transmit any award, order or settlement to a Civil Court having jurisdiction and such Civil Court shall execute the award, order or settlement as if it were a decree passed by it.

Section 11-A → Power of Adjudicating Authorities to give relief in case of discharge or dismissal of workmen.

If a workman is dismissed or discharged from his duties and such dispute is pending before the Adjudicating Authorities, then the Adjudicating authorities will inquire into the matter and will find that such dismissal or discharge is not fair and proper then the order of dismissal or

discharge can be cancelled by the authorities and can direct the employer to reinstate the workmen from back date with back wages. (14)

OR

Provide Relief to the workmen including the award of lesser punishment in lieu of discharge or dismissal.

Provided that in any proceeding ~~under~~ the Adjudicating Authorities shall rely upon only the material on record and shall not take any fresh evidence in relation to the matter.

Section 12 → Duties of Conciliation officers.

- (1) If the Industrial Dispute is in existence or apprehension of such kind of dispute or a notice has been received under Section 22 [strike or lockout] then the Conciliation officer should act immediately without any delay and should try for the settlement amicably.
- (2) If the parties are convinced by such Conciliation officer and they have agreed upon

⑤ certain terms and Conditions related to such dispute then a Report should be prepared by the officer and such report along with the memorandum of settlement has to be submitted to the Appropriate Government or to the concerned Authority.

(3) The memorandum of settlement should be signed by both the concern parties of the dispute.

(4) If the settlement is not arrived between the parties, then such failure report has to be prepared and submitted to the Appropriate Government or the Concern Authority.

(5) The Conciliation officer should mention in his failure report regarding the step taken by him for resolving the dispute and also mentioned the reason why settlement has not arrived between the parties.

(6) If on consideration of the report, the Appropriate Government is satisfied that there is a case for reference to a Board or Adjudicating authorities, it may make such reference. Where the appropriate govt. does

not make a reference, it shall record and communicate to the parties concerned its reasons thereof.

(4) A Report shall be submitted within 14 days of the Commencement of the Conciliation proceedings.

Section 13 → Duties of Board of Conciliation.

(1) When a dispute has been referred to a Board of Conciliation, it shall act immediately without any delay in that matter.

(2) If the parties are convinced by such board of Conciliation and have agreed upon certain terms and conditions related to such dispute then a report shall be prepared by the officer and such report along with the memorandum of settlement has to be submitted to the Appropriate Govt. or the Concern Authority.

(3) The memorandum of settlement must be signed by both the concern parties of the dispute.

(4) If the settlement is not arrived between the parties, then such failure report has to be prepared and submitted to the Appropriate

Government or the concern authority.

(5) The Board of Conciliation should mention in the failure report about the step taken for resolving the dispute and the reason of why settlement has not arrived between the parties.

(6) Such Report has to be submitted within 2 months to the Appropriate Government.

(7) The Appropriate Government after receiving the failure report by such board will refer the dispute to the Adjudicating Authorities and if matter has not been referred within the time period then reason have to be recorded in writing by the Appropriate Govt.

Section 14 → Duties of Court of Inquiry.

(1) Once the matter has been referred to the Court of Inquiry by the Appropriate Govt. then it is the duty of the Court of inquiry to inquire into the matter. And after completing the inquiry a report has to be prepared and must be submitted within Six (6) months to the Appropriate Govt.

2) The period of Submission can be further extended by the Govt. on valid and reasonable reason.

Section 15 → Duties of Adjudicating Authorities (8)

- (1) The matter or industrial dispute will be referred by the Appropriate Government to Labour Court, Industrial Tribunal or National Tribunal. After such reference the concern authority should adjudicate upon the matter expeditely without any delay.
- (2) The Award should be submitted within the prescribed time to the Appropriate Court and this period of submission of award should be mentioned in the order or reference given by the Appropriate Court.
- (3) The period can be extended by the Appropriate Government on valid and reasonable reason.

Case Laws

- (1) Madras Match Industries
VLS
Labour Tribunal, Madras.

The quantum of wages payable under the Award is not within the purview of the High Court jurisdiction.

(2) Baldev Singh

v/s

Presiding officer

Where the Tribunal found a punishment harsh and ordered to reinstate the workmen, it acted within the jurisdiction.

(3) workmen

v/s

Fire Stone Tyre & Rubber Co.

The expression "material or record" occurring in the provision to Section 11-A taking the evidence which is taken by the management at the inquiry. The above evidence and in addition any further evidence laid before the tribunal or expected during the proceedings and the tribunal should give valid reason for deferring from finding of inquiry.

(4) Gujarat Steel Tubes

v/s

Mazdoor Sabha.

Where no inquiry was held prior to the dismissal of a workman by the management then

Section 9-A → Notice of Change

- (i) This section prohibits the employer to make any changes in the conditions of service of any workman in respect to the matters specified under Schedule IV.
- The matters in respect of which notice of change is required are as follows :-
- (i) Wages including the period and mode payment.
 - (ii) 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.
 - (iii) Compensatory Allowances.
 - (iv) Hours of work and Rest intervals.
 - (v) Leave with wages and holidays.
 - (vi) Starting, alteration or discontinuance of shift, - working, otherwise then in accordance with Standing orders.
 - (vii) Classification by grades.
 - (viii) Withdrawal of any customary concession or privilege or change in usage.
 - (ix) Introduction of new rules of disciplines or alteration of existing rule, except in so far as may be provided in the Standing Order.
 - (x) Rationalisation, Standardisation or improvements of plant or technique which is likely to lead to retrenchment of workmen.
 - (xi) Any increase or reduction (other than casual)

in the number of person employed or to be employed in any occasion or process or department or shift not occasioned by circumstances over which the employer has no control.

(2) However, an employer can make changes in the conditions of services applicable to the workman if two conditions are fulfilled:-

(a) The employer should give notice to the workman who are likely to be affected by such changes and the notice should be served in the prescribed manner.

(b) The employer can make changes after the expiry of 21 days from the date of notice and if he makes any changes before the expiry of such period then such changes are invalid.

(3) The notice under this Section is not required by the employer in the following cases:-

(a) where the changes are in pursuance of any settlement or award.

(b) when the workmen is likely to be affected and governed under fundamental and supplementary rules, Civil Services rules, civil service regulations, revised leave rules or any other rules or regulations that may be notified by appropriate Govt. in the official Gazette.

The object of this section is to afford an opportunity to the workman to consider the effect of proposed changes and if necessary then such workman can present their views on such proposals.

Case Laws

(1) Tata Iron & Steel Co.
v/s
Workmen.

The Court held that for effecting any changes in week rest of a notice under Section 9-A is necessary and change without such notice would be ineffective.

(2) Oil and Natural Gas Communication
v/s.
Workmen.

The Court held that when there is nothing to show either in the condition of service or in the Appointment Letter that he would work for certain hours then any increase in the working hours within the limits prescribed under the Statute will be within the competence of the management.

Section 9-B → Power of Government to Exempt

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where the Appropriate Government is of the opinion that the Application of Section 9-A to any class of establishment or any class of workman is going to be affected then the Appropriate Government in public interest by notification in the official Gazette may direct that the provision of Section 9-A will not be applicable or will be applicable but subject to certain specified conditions.



Tribunals

(I) The Appropriate Government if its of the opinion that the Industrial Dispute exist or apprehended then the Appropriate Government (AG) by order in writing can refer the dispute to:-

(a) To the Board of Conciliation in case of promoting settlement.

(b) To the court of inquiry in case of investigation or inquiry into the matter.

(c) To the labour court for adjudication if such matter is specified under Schedule II.

(d) To the industrial Tribunal if the matter is specified under Schedule III.

→ If the dispute relates to any matter specified in III and is not likely to affect more than 100 workmen the appropriate govt can make a reference to the Labour Court.

where the dispute is related to public utility service and a notice under Section 22 has been given then the AG shall make reference of such dispute to the concern authority.

II A reference can be made to the National Tribunal if the Central Government is of the opinion that such dispute involves question of National importance or two or more than two states are involved in such dispute. [Section 10(1-A)]

III Where the parties to an industrial dispute apply in the prescribed manner for reference of a dispute whether jointly or separately and the appropriate Govt. is satisfied that the person represent the majority of each party then accordingly reference shall be made to the Authorities. (Section 10(2))

(IV) If the matter is referred to the Labour Court, industrial tribunal or national tribunal then the appropriate govt. should specify the period within which such authorities should submit the awards. [Section 10(2-A)]

(1) Provided where such dispute is connected with an individual workmen then such period should not exceed 3 months.

(2) Such period of submission of award can be further extended if the govt. is satisfied with the reason of such delay.

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Appoint. 1
(i) Where an industrial dispute has been referred to the Adjudicating authority then the Appropriate Government by order may prohibit the continuance of strike or lockout, if it is directly related to the matter which is pending before the authority. (Section 10(3))

(ii) Where an industrial dispute has been referred to the Adjudicating Authority then the Appropriate Govt. should specify the points of dispute for adjudication and the concerned ~~of~~ adjudicating authorities shall confine its adjudication to those points only. [Section 10(4)]

(iii) Where the Appropriate Government is of the opinion that the dispute is of such matter that other groups or establishment are likely to be interested or affected then the Appropriate Government at the time of making reference but before submission of its awards can include all those establishment or groups with that matter. [Section 10(5)]

(iv) When the Central Govt. has referred the dispute to the National Tribunal then the National Tribunal should adjudicate upon the matters as early as possible. [Section 10(6)] and accordingly.

(1) if the matter of under adjudication before the National Tribunal is pending before a Labour Court or

Industrial Tribunal, then the proceedings before the Labour Court or Industrial Tribunal shall be quashed on such reference to the National Tribunal.

(2) It shall not be lawful for the Appropriate Govt. to refer the matter for adjudication before the National Tribunal to any Labour Court or Industrial Tribunal for adjudication during pendency of the proceedings.

(IX) No proceeding shall lapse merely on the reason or ground of death of any of the parties to the dispute and the Adjudicating authorities shall complete the proceedings and submit its awards to the Appropriate Govt. [Section 10(8)].

Section 10-A → Voluntary Reference of Dispute to Arbitration.

(I) Where any Industrial Dispute exist or apprehend to exist then the employer and the workmen can refer this dispute to Arbitration at any time before the dispute has been referred to Adjudicating Authorities under section 10. Such reference will be made by a written Agreement by the parties and the reference shall be made to the Presiding Officer of the Labour or Industrial Tribunal or National Tribunal as an arbitrator.

The number of Arbitrators should be mentioned in the Arbitration Agreement. 5

(II) If even numbers of Arbitrators are appointed in such agreement then the Appointment of an Umpire also should be mentioned in the Agreement. The umpire shall enter if the arbitrators are equally divided in their opinion. In such cases, the decision of an Umpire shall be final and binding.

(III) The Arbitration Agreement should be signed by both the parties and a copy of the Agreement shall be forwarded to the Appropriate Government. ~~[10-A(2)]~~ and the

~~(IV)~~ Conciliator officer and the Appropriate Govt. shall within one month shall publish in the official gazette from the date of receipt.

[10-A(2)(3)]

(IV) Where an industrial dispute has been referred to the Arbitration and the ~~person~~ Appropriate Govt. is satisfied that the person making the reference represent the majority of each party, then the appropriate Govt. may issue a notification and the employer and workmen who are not parties to the Agreement but concern in the dispute shall be given of opportunity of presenting their case.

(V) The Arbitrator or Arbitrators shall investigate ⁽⁶⁾ the dispute and to the Appropriate Government the Arbitration Award signed by the Arbitrator or arbitrators.

(VI) Where an industrial dispute as been referred to the Adjudicating authority then the Appropriate Govt. by order may prohibit the continuance of strike or lockout, if it is directly related to the matters which is pending before the authority.

C.L :-

(A) 90 days from the date
Settlement And Award
[Section 16-24]

(7)

Section 16 - Form of Report and Award.

(1) The report of Board or Court of Inquiry shall be in writing and should be signed by all the members of such board or court. The dissenting view should also be mentioned in the report.

(2) The Award of Labour Court of Tribunals shall be in writing and signed by the Presiding officer of that Authority.

Section 17 and 17-A

Section 17 { Settlement and Award
↓ within 30 days from the date of receipt by the appropriate Govt
Publication
↓ After expiry of 30 days.

Section 17-A { Enforcement

Enforceable (if not enforceable due to national economy or in the interest of the nation).
↓
Order + copy of the settlement or award laid before the Parliament or State Legislature as the case may be.
↓ after expiry of 15 days from such laid before Parliament or State Legislature.

Enforceable

Section 17 → Publication of Report and Award. (8)

- (1) The Report or Award should be published by the Appropriate Government within 30 days of its receipt. [The dissent should also get published] of the Board.
- (2) The Award published shall be final and shall not be called in question by any court in any manner whatsoever.

Section 17-A → Commencement of the Award.

- (1) An award (including an Arbitration award) become enforceable on the expiry of 30 days from the date of its publication under Section 17.
- (2) Non-Enforceable of the Award.
The normal provision regarding the enforceability of awards is subject to the fact that the Appropriate Government consider that it will be inexpedient on public grounds affecting national economy or social justice to give effect to the whole or part of the Award — the Appropriate Govt. or as the case may be by notification in the Official Gazette declare that the award will not become enforceable on the expiry of the said period of 30 days.
- (3) Where any declaration has been made in relation to an Award under the Proviso, the

Appropriate Govt. or the Central Govt. may within 90 days from the date of publication of the award, make an order of rejecting or modifying the award and on the first available opportunity, lay the award together with a copy of the order, before the legislature of the state if the order has been made by a state Government or before the Parliament, if the order has been made by the Central Govt. (4)

(4) Where an award is rejected or modified by an order, such award shall become enforceable on the expiry of 15 days from the date on which ~~was~~ it is laid in the State legislature or Parliament.

(5) The Award shall become enforceable on the expiry of 90 days under pt (2).

(6) The Award shall come into operation on such date which is specified therein and if no date is specified then such award shall come into operation on such date when the award becomes enforceable under Section 17(A).

Section 17-B → Payment of Full wages to Workmen Pending Proceedings in Higher Courts.

(1) Where the Labour Court or Tribunal's through its award direct reinstatement of workmen and the employers refer to go for an appeal against

Such Award then the employer shall be liable to pay such workmen the wages lastly drawn by him during the period of such Appellate proceeding provided the workmen had not been employed with any other employer during such period.

(2) If the Court is of the opinion that such workmen had been employed and receiving adequate remuneration during the period then the Court shall order no wages shall be payable to such workmen as the case may be.

Section 18 → Person on Whom Settlement and Awards are Binding

(1) If settlement has arrived at between the parties without conciliation proceeding then it is binding upon the parties who have signed the settlement.

(2) In case of Arbitration Award it is binding upon the parties who have signed the agreement to refer such dispute before the Arbitration.

(3) Award by the Adjudicating Authorities for settlement through Conciliation Proceedings.
OR

(4) Arbitration Award where notification has been issued by the Appropriate Govt. then it shall be binding on:-

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to. All the parties of industrial dispute.

(ii) To all the person to whom summons have been issued to appear in the proceedings.

(iii) In case of workmen binding upon all the person who are employed in the establishment or subsequently employed in such employment.

(iv) In case of ~~workmen~~ employer binding upon employer, his legal heir, successors or assigns in respect of the establishment to which the disputes relates.

Section 19 → Period of operation of Settlement and Award.

(1) A Settlement will come into operation on such date as agreed upon by the parties and if no date has been fixed then it will come into operation on such date when such memorandum of settlement is signed by the parties to the dispute.

(2) Such settlement shall be binding for a period of ~~Six (6) months~~ as agreed upon by the parties but if no period as been fixed then it will be binding for a period of Six (6) months from the date of memorandum of settlement signed by the parties. Such settlement shall continue to be binding after the expiry of such period until the expiry of two months from the date on notice has been given in writing to terminate the settlement.

(3) An award will be binding from the date on which the Award becomes enforceable and it will remain in operation for a period of one year. (12)

(4) The Appropriate Government before expiry of above mentioned period can extend the period of operation but such extension should not exceed one year at a time as it thinks fit and total period of operation of any award should not exceed 3 years the date on which it came into operation.

(5) The Award shall continue to be binding on the parties until the period of 2 months have elapsed from the date on which notice is given by any party bound by the award to the other party or parties intimating its intention to terminate the award.

C.L.:- Thungabhadra Industries

v/s

Workmen

[AIR 1973 SC 2272]

The Award does not lose its effect after the expiry of ~~oper~~ a period of operation and continues to have its effect as a contract between the parties.