

## **NOTES ON MEDIATION IN LABOUR CASES**

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### **INDUSTRY**

Under **Section 2(j) of the Industrial Disputes Act, 1947**, “**Industry**” means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen.

A constitution bench of 7 Judges of the Hon’ble Supreme Court in the case of **The Bangalore Water Supply and Sewerage Board Vs. A. Rajappa (1978) 2 SSC 213 – AIR 1978 SC 548**, has held

‘Industry’ as defined in **S.2(j)** has a wide import.

(a) Where (i) Systematic activity, (ii) organized by co-operation between employer and employee the direct and substantial element is commercial,

(iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss i.e. making, on a large scale, of Prasad or (food), prima facie, there is an 'industry' in that enterprise.

(b) Advance of profit motive or gainful objective is irrelevant, be the venture in public, joint, private or other sector.

(c) The true focus in functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

(d) If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking.

II. Although Section 2(j) uses words of the widest amplitude in its two limbs, their meaning cannot be magnified to over-read itself.

(a) 'undertaking' must suffer a contextual and associational shrinkage as explained in Banerji and in this judgement, so also, service, calling and the like. This yields the inference that all organized activity possessing the triple elements in I (supra) although, not trade or business, may still be 'industry' provided the nature of activity, viz. the employer-employee basis, bears resemblance to what we find in trade or business. This takes into the fold of 'industry' undertakings, calling or

services adventures 'analogous to the carrying on of trade or business'. All features, other than the methodology of carrying on the activity viz. in organizing the co-operation between employer and employee may be dissimilar. It does not matter, if on the employment terms there is analogy.

III. Application of these guidelines should not stop short of their logical reach by invocation of creeds, cults or inner sense of incongruity or outer sense of motivation for or resultant of the economic operations. The ideology of the Act being industrial peace, regulation and resolution of industrial disputes between employer and workman, the range of this statutory ideology must inform the reach or of the statutory. Nothing less, nothing more.

(a) The consequences are (i) professions (ii) clubs (iii) educational institutions (iv) co-operatives (v) research institutes (vi) charitable projects and (vii) other kindred adventures, if they fulfil the triple tests list listed in I (supra), cannot be exempted from the scope of section 2(j).

(b) A restricted category of professions, clubs, co-operatives and even gurukulas and little research labs, may qualify for exemption if, in simple ventures, substantially and, going by the dominant nature criterion, substantively, no employees are hired without destroying the non-employee character of the unit.

(c) If, in a pious or altruistic mission many employ themselves, free or for small honoraria or like return, mainly drawn by sharing in the purpose or cause, such as lawyers volunteering to run a free legal services clinic or doctors serving in their spare hours in a free medical centre or ashramites working at the bidding of the holiness, divinity or the like central personality, and the services are supplied free or at nominal cost and those who serve are not engaged for remuneration or on the basis of master and servant relationship, then, the institution is not an industry even if stray servants, manual or technical, are hired. Such eleemosynary or like undertakings alone are exempt – not other generosity, compassion, developmental passion or project.

#### **IV. The Dominant Nature Test:**

(a) Where a complex of activities, some of which qualify for exemption, others not, involves employees on the total undertaking, some of whom are not ‘workmen’ as in the University of Delhi Case (supra) or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the Corporation of Nagpur (supra), will be the true test. The whole undertaking may

be 'industry' although those who are not 'workmen' by definition may not benefit by the status.

(b) Notwithstanding the previous clauses, sovereign function, strictly understood, (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by government or statutory bodies.

(c) Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within Section 2(j).

(d) Constitutional and competently enacted legislative provisions may well remove from the scope of the Act categories which otherwise may be covered thereby.

A five judge constitution bench, in the case of **State of U.P. Vs. Jai Bir Singh (2005) 5 SCC 1**, after inter alia observing that the I D Act could not be looked at only as a worker-oriented statute and its main aim is to regulate and harmonise relationships between employers and employees and the definition clause of industry read with other provisions of the Act under consideration deserves interpretation keeping in view interests of the employer, who has put his capital and expertise into the industry and the workers who by their labour equally contribute to the growth of the industry. In interpreting therefore, the industrial

law, which aims at promoting social justice, interests both of employers, employees and in a democratic society, people who are the ultimate beneficiaries of the industrial activities, have to be kept in view and that in response to the Bangalore Water Case, parliament intervened and substituted the definition of industry by including within its meaning some activities of the Government and excluding some other specified governmental activities and 'public utility services' involving sovereign functions. For the past more than 23 years, the amended definition has remained unenforced on the statute book. The government has been experiencing difficulty in bringing into effect the new definition. Issuance of notification as required by sub-section (2) of section 1 of the Amendment Act, 1982 has been withheld so far. It is therefore high time for the court to re-examine the judicial interpretation given by it to the definition of "industry" and accordingly the matter was ordered to be placed before the Hon'ble Chief Justice of India for constituting a suitable larger Bench for reconsideration of the judgement of this Court in the case of Bangalore Water Supply.

However, as per available information, larger bench has still not decided whether the Bangalore Water Supply judgment requires reconsideration and if so, what should be the correct interpretation of the definition of 'industry'.

## **Section 2(s) – Workman.**

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

- (i) Who is subject of the Air Force Act, 1950, or the Army Act, 1950, or the Navy Act, 1957; or
- (ii) Who is employed in the police service or as an officer or other employee of a prison; or
- (iii) Who is employed mainly in a managerial or administrative capacity; or
- (iv) Who, being employed in a supervisory capacity draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of

duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

A five judge Constitution bench of the Supreme Court, in **H.R. Adyanthaya and Others Vs. Sandoz (India) Ltd. And Others (1994) 5 SCC 737**; has held that the position in law as it obtains today is that a person to be a workman under the I.D. Act must be employed to do the work of any of the categories viz., manual, unskilled, skilled, technical, operational, clerical or supervisory. It is not enough that he is not covered by either of the four exceptions to the definition.

A workman may be performing multiple nature of duties, but, it is the main and substantial duties actually performed by the workman, which are required to be considered for deciding whether they are of the nature mentioned in the main part of the definition or whether they are of the excluded categories.

Sales promotion employees, teachers, legal assistants performing professional nature of duties and artists and employees whose main work involves use of creativeness, intelligence, initiative, have been held to be not workmen as their

work does not fall within the main part of the definition even though their work is not of the excluded category. Even apprentices, who are not actually required to mainly perform the duties mentioned in the main part, have been held to be not workmen.

### **Section 2 (oo) – Retrenchment**

Retrenchment means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include –

- (a) Voluntary retirement of the workman; or Retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (b) Termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
- (c) Termination of the service of a workman on the ground of continued ill-health.

A 5 judge constitution bench of the Supreme Court in the case of **Punjab Land Development and Reclamation Corporation Limited Vs. Labour Court Chandigarh, (1990) 3 SCC 681**, has held that “retrenchment means the termination by the employer of the service of a workman for any reason whatsoever except those expressly excluded by the section.

**Section 25(f)** provides the conditions precedent for retrenchment, of a workman who has been in continuous service for not less than one year. First condition is giving of one months notice indicating reasons for retrenchment or payment in lieu of notice. Second is payment of retrenchment compensation equivalent to fifteen days average pay for every completed year of service or any part thereof in excess of 6 months. Third is notice in the prescribed manner, to be served on the appropriate government or its specified authority. The first two are mandatory pre-condition, non-compliance of which renders the termination null and void.

As per **section 25B(2)(a)** a workman shall be deemed to be in service for a period of one year, if, during a period of 12 calendar months preceding the date with reference to which calculation is to be made, he has actually worked with the

employer for 240 days except in case of workmen employed below ground in a mine where the requirement is of 190 days.

Under **section 25 G**, in the absence of any agreement between the employer and the workman in that 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.

Under **Section 25 H**, a retrenched workman, is required to be given an offer of re-employment in case the employer proposes to employ any person and the retrenched workman shall have preference over any other person.

Under **Section 25N**, no workman employed in any industrial establishment to which **Chapter V B** applies, i.e. a factory under section **2(m) of the Factories Act, 1948**, a mine or plantation as defined under the **Mines Act, 1952 or Plantation Labour Act, 1951**, respectively, wherein not less than 100 workmen were employed on an average per working day for the preceding 12 months, (not being an establishment of a seasonal character or in which work is performed only

intermittently) **refer 25K and 25L**, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until:-

- (a) The workman has been given three months notice in writing indicating the reasons for retrenchment or has been paid wages in lieu of such notice,
- (b) The prior permission of the appropriate government or its specified authority has been obtained on an application, made in this behalf.

Under **Section 25N(7)** where permission is refused or no application is made, retrenchment shall be deemed to be illegal from the date on which notice was given and workman shall be entitled to all benefits under any law in force as if no notice was given to him. Under **sub section (9)** where permission is granted or is deemed to be granted, the retrenched workman shall be entitled to receive, at the time of retrenchment 15 days average pay for every year of continuous service or any part thereof in excess of 6 months, as retrenchment compensation.

Under **Section 25N(8)** the appropriate government may if satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or like, it is necessary so to do, by order, direct that provisions of **sub section (1)** shall not apply in relation to such establishment for such period as may be specified.

Termination of service on account of closure of the undertaking or transfer of ownership or management of the undertaking does not amount to retrenchment.

**Refer AIR 1957 SC 129.** However sum equivalent to retrenchment compensation and notice or notice pay has to be paid in accordance with **Section 25F** as if the workman has been retrenched, although as such payment is not a pre-condition, as in the case of retrenchment.

### **Section 2(kkk): Lay Off**

“lay-off” (with its grammatical variations and cognate expressions means the failure, refusal or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the breakdown of machinery or natural calamity or for any other connected reason to give employment to a workman whose name is borne on the muster rolls of his industrial establishment and who has not been retrenched.

Explanation.—Every workman whose name is borne on the 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 on-half of that day:

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

**Chapter VA** is only applicable to certain industrial establishments and it provides for lay off compensation etc. Only in case of those industrial establishments. In case of industrial establishments not covered under **Chapter VA, or chapter VB,**

the right to lay off only on payment of compensation, must be provided under the term of contract of service and if it is not so provided, the employer will be bound to pay compensation for the period of lay off equal to the full wages of the concerned workmen. However, as held by the Hon'ble Supreme Court in the case of the **Workmen of Firestone Tyre and Rubber Co. of India (P) Ltd. (1976) 3 SCC 819**, if during adjudication of a reference under **section 10(1)**, relating to lay off, which means temporary unemployment of the workman in the establishment, the industrial tribunal/labour court holds that the lay off was justified, it is open for the tribunal to award a lesser amount of compensation than the full wages.

**25A. Application of section 25C to 25E.-**

(1) **Sections 25C to 25E** inclusive shall not apply to industrial establishments to which Chapter VB applies, or-

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

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

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

Explanation.—In this section and in sections **25C, 25D and 25E**, “industrial establishment” means-

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

(ii) a mine as defined in **clause(j) of section 2 of the Mines Act, 1952** (35 of 1952); or

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

### **25C. Right of workmen laid-off for compensation.-**

Whenever a workman (other than a badly workman or a casual workman) whose name is borne on the muster rolls of an industrial establishment and who has

completed not less than one year of continuous service under an employer is laid-off, whether continuously or intermittently, he shall be paid by the employer for all days during which he is so laid-off, except for such weekly holidays as may intervene, compensation which shall be equal to fifty percent of the total of the basic wages and dearness allowance that would have been payable to him had he not been so laid-off:

Provided that if during any period of twelve months, a workman is so laid-off for more than forty-five days, no such compensation shall be payable in respect of any period of the lay-off after the expiry of the first forty-five days, if there is an agreement to that effect between the workman and the employer:

Provided further that it shall be lawful for the employer in any case falling within the foregoing proviso to retrench the workman in accordance with the provisions contained in section 25F at any time after the expiry of the first forty-five days of the lay-off and when he does so, any compensation paid to the workman for having been laid-off during the preceding twelve months may be set off against the compensation payable for retrenchment.

**25D. Duty of an employer to maintain muster rolls of workmen.**

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

**25E. Workmen not entitled to compensation in certain cases.-**

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

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

(iii) If such laying-off is due to a strike or slowing-down or production on the part of workmen in another part of the establishment.

**Section 25M** contained in **Chapter VB**, which is applicable to certain industrial establishments employing not less than 100 workmen, prohibits lay off without permission of the appropriate government and under **sub section (10)** the provisions of **section 25C** (other than the second proviso thereto) shall apply to cases of lay off referred to in **section 25M** and as per Explanation, for the purposes of this section, a workman shall not be deemed to be laid-off by an employer if such employer offers any alternative employment (which in the opinion of the employer does not call for any special skill or previous experience and can be done by the workman) 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 such distance from the establishment to which he belongs that the transfer will not involve undue hardship to the workman having regard to the facts and circumstances of his case, provided that the wages which would normally have been paid to the workman are offered for the alternative appointment also.

## **DISMISSAL/DISCHARGE**

Where the services of a workman are terminated as a punishment inflicted by way of disciplinary action, it would amount to dismissal/discharge. The difference between dismissal and discharge being that dismissal is a harsher punishment, for which no notice or notice pay is payable whereas in case of discharge notice or notice pay may be payable by the employer.

In case of dismissal/discharge by way of punishment, the employer is expected to issue a proper charge sheet detailing the misconduct(s) and in case charges are denied, to hold a proper domestic enquiry and if the enquiry findings is of guilt, to give an opportunity of representation against the enquiry report to the workman and after considering the same, if submitted, to decide as to whether to accept the finding of the Enquiry Officer or not and in case the finding is accepted, then, keeping in view the gravity of the proved misconduct(s) and the aggravating and extenuating circumstances, in the service record of the workman, the punishment of dismissal/discharge can be imposed.

Even in case where enquiry is held, the employer in its Written Statement in case of a reference, and in its application for approval or permission under section 33, as the case may be, can request the industrial adjudicator, in case of objection to the enquiry by the workman, to treat the controversy relating to the validity of the enquiry, as a preliminary issue and in case the said issue is decided against the employer, to grant an opportunity to the employer to lead evidence in Court to prove the misconduct(s) and justify the imposed punishment. Even in case no request is made at the initial stage, the industrial adjudicator still retains the power, in case interest of justice so demands, to permit the employer to lead evidence in Court to justify its action.

## **BURDEN OF PROOF:**

The burden of proof is always upon the party which seeks to establish a fact or facts so as to invite a decision in its favour. One who asserts must prove his assertion. Principles regarding burden of proof are stipulated in **Chapter VII of Indian Evidence Act (Sections 101 to 104A)**. General principle which is laid down in these sections, particularly **section 101 and 102** is that burden of proof is the obligation to adduce evidence to the satisfaction of the tribunal or Court, to establish the existence or non-existence of a fact contended to by a party. Burden of proving a fact rests on the party who substantially asserts the affirmative of the issue and not upon the party who denies it. (**Refer UCO Bank Vs. Presiding Officer 1999 V AD (Delhi) 514.**)

Although the evidence Act does not apply to the industrial adjudications but even so the principle of law enunciated on the burden of proof and onus is a basic principle of law which the industrial adjudicators are also required to follow. IF there is no sufficient evidence on the part of the claimant to prove the existence of

facts which would entitle him to the reliefs prayed for, it is held that he has failed to discharge the burden of proof in pleading, which lay on him only.

When after the entire evidence is adduced, the industrial adjudicator feels that it cannot make up its mind as to which of the versions is true, the question of burden of proof becomes important and it is liable to be held that the party on whom the burden lies has not discharged the burden but if on the adduced evidence of the parties, there is no difficulty in arriving at a definite conclusion then the burden of proof recedes into the background.

Accordingly, where the workman raises a claim before the industrial adjudicator, the burden of proving his such claim, is upon the workman. However, where the employer files an application for approval/permission under **section 33** of the Act, the burden is upon the employer to prove its claim.

In case it is disputed, the burden of proving employment or the factum of being a workman as defined under **section 2(s)** of the Act, or of proving working for 240

days, in a period of 12 months preceding the date of termination, for attracting **section 25F**, is upon the workman.

The Hon'ble Supreme Court in its recent judgements has reversed the earlier view that the burden of proving that the workman was not unemployed, from the date of termination of his service, was upon the employer, has held that the burden is upon the workman to allege and prove, giving details, that he has remained unemployed.

## **REINSTATEMENT, CONTINUITY OF SERVICE, ASSESSMENT OF COMPENSATION, BACK WAGES**

In cases where the industrial adjudicator, in a reference under **section 10** of the Act, relating to termination of service, holds that the termination of service is illegal and/or unjustified, the next question to be decided is as to what relief is to be awarded to the workman.

In its earlier judgements, the Hon'ble Supreme Court and various High Courts had held that, unless some exceptional circumstances existed, which made the such relief inequitable, the normal relief to be granted was reinstatement in service and if employment was not proved by the employer, of back wages also.

However, this trend of decisions rendered till the 1970s and 1980s, has been differed from subsequently and the current view is that neither reinstatement in service nor full back wages, is the natural consequence of a finding of termination of service being bad and under certain circumstances, instead of granting the relief of reinstatement in service and any back wages, compensation has been considered

to be the adequate relief. In some other cases where reinstatement in service has been held to be proper, full back wages have not been awarded and either only some back wages have been awarded or no back wages have been awarded.

Some of the circumstances, under which only compensation has been awarded, are:

1. where the appointment was of a casual or daily wages nature and/or the period of service put in was short.
2. where, in public employment, the workman had not been employed in accordance with the applicable service rules.
3. where number of years had elapsed in adjudication of the dispute.
4. Where the industry had closed down or the department where the workman was employed had stopped working or the post had been abolished.
5. where the workman was on the verge of retirement or was old or infirm and disabled from properly working.
6. where the relationship between the employer and the workman was bitter or there were valid reasons for loss of confidence by the employer.
7. where the workman had raised the dispute after considerable delay.

8. where the workman was proved to have obtained suitable alternate employment.
9. where despite the employer subsequently having offered to provide duties to the workman, he refused the such offer.
10. where the post held by the workman was very sensitive and confidential and employer had lost trust in him.

In certain circumstances, although relief of reinstatement has been granted, but full wages have not been awarded and only part back wages have been awarded:

1. where the workman has not pleased and proved that he remained unemployed.
2. where the employer has proved gainful employment either during the entire period after termination or part of the period, in which case the amount received from gainful employment has been ordered to be deducted from the back wages or only some percentage of back wages has been awarded.
3. where the workman was also partly to be blamed for the action of the employer.
4. where the workman had raised the dispute after considerable delay.

5. on consideration that during the long period of adjudication, the workman had not contributed in any manner to the establishment of the employer.
6. where grant of full back wages would put intolerable burden on the employer, due to its poor financial condition.

In case of dismissal/discharge for misconduct, the industrial adjudicator under **section 11A** cannot normally interfere with the punishment awarded by the employer. However, if the punishment imposed is shockingly disproportionate to the misconduct proved against the workman, lesser punishment can be substituted by the adjudicator and in very minor misconducts, the workman can even be reinstated in service, with lesser penalty and he can be denied full or part back wages, in view of his proved misconduct.

The assessment of compensation, where reinstatement and back wages are not considered appropriate, would depend upon various factors like the last drawn wages, the period of service, the length of delay in adjudication, the period of service which was left, had the service not been illegally terminated, the amount of retrenchment compensation which would have been payable or the shortfall in the amount of retrenchment compensation, which led to violation of **section 25F**. The

factum of the workman having not pleaded and proved unemployment or of the management having proved alternate employment, would also be relevant for assessing compensation. In some cases some percentage of back wages have been awarded, while in other cases, compensation ranging from Rs.20000 p.a. to Rs.5000/- p.a., from the date of termination to the date of decision has been granted.

The quantum of assessment is basically addressed to the discretion of the industrial adjudicator, to be unexercised, after considering all the relevant circumstances and no hard and fast rule or straight jacket formula has been provided in this regard.

## **SOME RECENT TRENDS IN LAW**

The earlier trend of judgements rendered prior to 1980, of only adopting worker oriented view and frequently interfering with the punishment imposed by the employer, has seen change in the recent judgements, where a more moderate view, keeping in view the interests of both the employer and the workman, has been taken, in a pragmatic manner, so as to balance the equities between the parties and regard has been given to the changes in the policy decision of the government in the wake of prevailing market economy, globalisation, privatisation and out sourcing.

The Supreme Court has held that not only the burden of proving 240 days working, is upon the workman but also that his mere affidavit in support of his such contention, in the absence of any corroborating material, is not sufficient for discharging the burden, it being his own self serving statement.

The earlier norm of automatically granting the relief of reinstatement in service with full back wages, unless exceptional circumstances for departing from such norm were proved by the employer, has seen recent changes and it has been held that neither the relief of reinstatement in service nor of full back wages is the natural consequence of a finding of termination of service being bad and the adjudicator is required to consider the peculiar circumstances of a case before deciding the appropriate relief, which may be of compensation only.

The earlier view of the burden of proving that the workman was gainfully employed during the interregnum, has been reversed and now the burden of proving that he has remained unemployed has been placed upon the workman, who has not only to plead but also prove the such contention, with details.

The earlier view that the industrial adjudicator, after introduction of **section 11A**, could act as an appellate court, with regard to the punishment imposed and substitute one possible punishment with a lesser punishment, has seen a subtle change as in recent judgements it has been held that the industrial adjudicator can interfere with the punishment only if it is shockingly disproportionate to the judicial conscience, having regard to the nature of the proved misconduct.

The recent judgments have shown the approach of zero tolerance to acts of violence or abusive conduct in the establishment and even in cases of financial impropriety, where the amount was small, on account of loss of confidence, punishment of dismissal/discharge from service has been held to be appropriate.

## **DIFFICULTIES FACED IN LABOUR LAWS:**

Parliament, while enacting the Industrial Disputes Act, 1947, under **section 36(3)** disallowed any party from being represented by a legal practitioner unless the legal practitioner was an office bearer of a registered trade union, of which the workman was a member or was an officer of an association of employers etc., probably because it was considered that industrial disputes under the Act, were simple matters which did not involve complex questions of law.

However time has shown, that nearly each and every provision of the Act has received different interpretations from the High Courts and even the Apex Court, which has rendered it difficult for laymen, to properly understand the complexities involved in understanding the Judge made law and even the industrial adjudicators, who are not specially trained in labour laws, have difficulty in coming to grips with the intricacies of the various labour laws, without the assistance of Advocates having practical experience of various labour laws.

The plethora of labour laws has also rendered it difficult for the workmen, for whose benefit the such laws have been made, to understand the rights provided to them under the various laws, so as to seek implementation of the same.

The presence of multiple authorities, under the various Acts, has led to chaos and mal-administration and small establishments cannot afford to employ legally trained personnel for fulfilling the various obligations, under the various Acts, before the multiple authorities.

The applications for permission/approval under **section 33** of the Act, during the pendency of industrial disputes, were visualised to be decided by the industrial adjudicators in a summary manner, on a prima facie view, within the shortest possible period. However experience has shown that such applications are also being decided after considerable period of time, running into years.

The provision for conciliation, before referring an industrial dispute for adjudication under **section 10** of the Act, has not yielded the desired result as even if the employer does not take part in conciliation, it does not face any adverse

consequences and the only result is that the dispute is referred for adjudication. Besides, the conciliation officers are not properly trained and equipped in the art of conciliation and are required to perform various other duties also and thus cannot solely concentrate on bringing about conciliation between the parties.