seniority rules. The parties are left to bear their own costs. Copy of this order be given *dasti* on payment of usual charges.

R.N.R.

Before Hon'ble G. S. Singhvi & S. S. Sudhalkar, JJ.

PUNJAB ANAND LAMP EMPLOYEES UNION,—*Petitioners*

versus

M/S PUNJAB ANAND LAMP INDUSTRY LTD. AND ANOTHER,—*Respondents.*

C.W.P. No. 594 *of* 1996.

22nd February, 1996.

Industrial Disputes Act, 1947—*Ss.* 2(*k*), 2-*A*, 10, 11-*A* & 12—*Reference—Workmen dismissed after inquiry for proved misconduct—Government declining reference on the ground that misconduct was of serious nature—Government cannot go into the merits and demerits of the dispute and usurp the adjudicatory function—If reference is refused in cases of dismissal after inquiry it would take away the power of the Labour Court u/s* 11-*A to interfere with the punishment imposed by the employer—Section* 11-*A gives power to Tribunal to go into the quantum of punishment—Appropriate Government cannot deprive workmen of their remedy under the Act by refusing reference—General instructions issued to Punjab, Haryana and U.T. Chandigarh Governments to deal with references in accordance with the law and decline them only in rare and appropriate cases.*

Held, that Sections 10 & 12 nowhere indicate that the Government is required to exercise power of making or not making a reference in a judicial or *quasi judicial* manner. Similarly, there is no requirement of hearing the parties before taking a decision to refer or not to refer a dispute. However, what the Government is required to see is whether there exists an industrial dispute or there is an apprehension of an industrial dispute. The Government cannot decide for itself whether the demand made by an employee or the employer or by the Union is justified or not. The irresistible conclusion is that the Government cannot go into the merits or demerits of the dispute and make an adjudication of it directly or indirectly.

(Para 26)

Further held, that a civil servant or an employee of a statutory body or agency or instrumentality of the State can challenge the termination of his service by directly approaching the High Court or Civil Court. The Court cannot only declare the termination invalid on the ground of violation of the provisions of law or procedure established by law, but, can in an appropriate case interfere with the quantum of punishment awarded by the employer. If this be the position regarding a civil servant or an employee of an agency or instrumentality of the State in whose favour declaration of invalidity regarding termination of the service can be granted there is no reason or justification to accept a proposition of law which would deprive a workman of his right to seek remedy against the wrongful action taken by the employer. There does not appear to be any ground to differentiate cases of first category of employees, namely, civil servants etc. and the second category of employees i.e. the workmen on the issue to their entitlement to seek remedy against wrong done to them because all of them have treated at par in so far as the Court's power to grant a declaration of nullify as regards the termination of their services is concerned.

(Para 64)

Further held, that their Lordships have issued a command to the Parliament and the State Legislatures to make provision in order to enable the workmen to approach the Labour Court/Industrial Tribunal directly without reference by the Government in case *Rajasthan State Road Transport Corporation* v. *Krishan Kant,* 1995 (4) RSJ 374 covered by Section 2-A of the Act. This another reason why it should be held that the Government cannot deprive a workman of his remedy under the Act by refusing reference.

(Para 64)

Further held, that :—

(1) While exercising power under Section 10 read with Section 12 of the Act, the power of the appropriate Government is administrative and not judicial or *quasi judicial.*

(2) In exercising the power, the Government is only required to examine whether an industrial dispute exists or is apprehended. For this purpose, the Government can *prima facie* examine the matter to find out whether a dispute exists or not.

(3) The Government can refuse to make a reference only if it finds that the dispute sought to be raised is frivolous or vexatious or that the dispute sought to be raised, if referred for adjudication, will have grave adverse consequences on the entire industry in the region.

(4) In the garb of examination of *prima facie* issue of existence or apprehension of the dispute, the Government

cannot delve into merits of the dispute and make an adjudication of the merits or demerits of the action of the employer. The Government cannot usurp the jurisdiction of the Labour Court/Industrial Tribunal to adjudicate the dispute.

(5) In cases of termination of the services of the workmen on the basis of an enquiry by the employer, the Government cannot decline to make reference on the ground that a proper domestic/departmental enquiry has been made by the employer or that the charge has been proved or that the allegation found proved in serious in nature or that the punishment awarded to the workman is just and proper. The Government also cannot refuse to make reference on the ground that the action taken by the employer does not suffer from lack of *bona fides* or that the workman is guilty of a grave misconduct. All these matters lie in the exclusive doman of the Labour Courts/ Industrial Tribunals which can exercise their power under Section 11-A of the Act as interpreted in workmen of *M/s Firestone Tyre and Rubber Co.* v. *The Management.*

(6) The Government cannot refuse to make a reference merely because the employer pleads that the relations between the parties are strained. This is again an issue which has to be examined by the Labour Court/Industrial Tribunal while considering the question of relief to be granted to the workman in case the action of the employer is found to be illegal or unjustified.

(7) The Government is duty bound to apply its mind to the demand made by the workman, the reply of the employer and the failure report and is under a statutory obligation to record reasons and communicate the same to the parties where it declines to make reference and if the Court finds that the reasons are extraneous or irrelevant, the decisions of the Government will be liable to be nullified.

(Para 65)

Further held, that the order passed by the Labour Commissioner is based on a wholly extraneous reason, namely that the dismissal of the workman is justified because he has been found guilty of serious misconduct. Thus, the Government has made an adjudication on the merits of the dispute raised by the union against the dismissal of the workman. The Government has recorded a finding that the dismissal of the workman is justified. In this manner, the Government has usurped the jurisdiction which vests in the Labour Court/Industrial Tribunal to adjudicate upon a dispute under the

Act, with particular reference of Section 11-A. The assertion of the Government that the notice should have been served under Section 2-A, instead of Section 2(k) of the Act is also besides the point. Reference to a particular provision does not have any bearing on the substance of the demand raised on behalf of the workman, namely, that the termination of his service is illegal and unjustified. Even if no reference to Section 2-A or Section 2(k) was made in the notice of demand, the Government could not refuse to refer the dispute only on that ground.

(Para 71)

Further held, that it is high time for the Government officers to realise their obligation to make reference in the normal course and decline it only in the rarest cases. Secondly, we deem it proper to remined the officers that in future the Court will take a seriously adverse view of the inciduous habit developed by the officers of the Labour Departments of the Governments of Punjab and Haryana as well as the Union Territory of Chandigarh of ignoring the law laid down by the Supreme Court and this Court and of passing cryptic and whimsical orders of refusing reference of the disputes. By their actions, the officers of the Labour Departments encourage unnecessary litigation in the High Court. In defending such frivolous and at times vexations orders, the Government is put to substantial expenditure. Therefore, in future the concerned officers may be saddled with examplary costs and expenses if the Court finds that the order has been passed ignoring the law laid down by the Supreme Court and by this Court.

(Para 75)

Further held, that we direct that in all future cases, the officers of the Labour Departments of the Government of Punjab and Haryana should strictly act in accordance with the law laid down by the Supreme Court and by this Court, which has been reiterated in this case. Copies of this order be sent to the Chief Secretarties of the Governments of Punjab and Haryana and to the Secretaries, Labour Departments of the Punjab and Haryana, for issuing necessary guidlines to the officers of the Labour Departments, who are entrusted with the task of passing orders under Section 10 of the Act.

(Para 76)

G. S. Bal, Advocate for Arvind Deman Singh, Advocate, *for the Petitioner.*

Arun Nehra, Advocate for Respondent No. 1.

Charu Tuli DAG, Punjab, for Respondent No. 2.

R. N. Raina, DAG, Haryana.

JUDGMENT

G. S. Singhvi, J.

(1) The issue raised in this writ petition relates to the scope of power vesting in the Government under Section 10 read with Section 12 of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') and although the Apex Court and various High Courts have rendered several judgments on the issue, it has become necessary to examine the matter in detail keeping in view the fact that the functionaries of the Labour Departments of the Governments of Punjab and Haryana as well as the Union Territory of Chandigarh have consistently ignored the law laid down by the Apex Court while deciding whether a dispute raised by the workman or the workers' union should be referred for adjudication by the Industrial Tribunal or Labour Court or not. Looking to the importance of the issue, we gave notices to the Advocates General of Punjab and Haryana and called upon them to assist the Court in deciding the issue.

(2) In the writ petition, the petitioner has challenged order Annexure P3 passed by the Labour Commissioner, Punjab refusing to refer the dispute relating to the termination of the service of workman-Kuldeep Singh on the ground that he has been dismissed for serious misconduct and after complying with all the legal provisions.

(3) Before proceeding further, brief reference to the facts is necessary.

(4) Workmen-Kuldeep Singh, Madan Lal and Shakti Chand who claim themselves to be active office bearers/members of the Punjab Anand Lamp Employees Union were subjected to a domestic enquiry conducted by one Shri P. P. Sukla, retired Joint Labour Commissioner, Punjab, on the allegation of their having assaulted the Production Manager and the Assistant Quality Manager. The enquiry Officer held them guilty of the charges. An additional charge levelled against Kuldeep Singh that he had gone on illegal strike in violation of the settlement was also held proved against him. All of them were dismissed from service with effect from 2nd December, 1992 by the management of respondent No. 1. The petitioner-union served a notice of demand for justice upon the management challenging the unlawful dismissal of the workmen. The

employer did not accept the demand. During the course of conciliation proceedings, two of the workmen, namely, Madan Lal and Shakti Chand settled their accounts and withdraw their dispute. Thereafter, the Union represented before the Additional Labour Commissioner, Punjab, that the dispute be referred on behalf of workman-Kuldeep Singh. The employer contested the claim made by the Union and by the impugned order dated 26th September, 1995, the Labour Commissioner, Punjab, refused to make a reference.

(5) The petitioner has challenged the impugned order on the ground of arbitrariness and non-application of mind and disregard of the Government with the principles laid down by the Supreme Court for exercise of the power of making reference. It has been pleaded by the petitioner that the dispute relating to termination of the service of workman-Kuldeep Singh falls within the ambit of Section 2(k) of the Act in-as-much as there is a dispute between the parties relating to termination/non-employment of the workman and the disputes relates to a person employed in an industrial establishment.

(6) In its written statement, respondent No. 1 has challenged the *locus standi* of the petitioner by alleging that Kuldeep Singh is not the General Secretary of the petitioner-Union. In support of this assertion, Annexure R1 has been filed along with the reply. On merits, it has been pleaded that the workman has been dismissed from service on the basis of proved misconduct of a serious nature, namely, physical assaulting of two officers and causing injuries to them as also of having gone on illegal strike in violation of the settlement. It has also been pleaded that the workmen-Madan Lal and Shakti Chand have voluntarily accepted their involvement in the misconduct along with Kuldeep Singh and after a due enquiry, the workman has been removed from service and, therefore respondent No. 2 has rightly refused to make reference of the dispute. In his separate reply, respondent No. 2 has pleaded that during the course of conciliation proceedings, respondent No. 1 offered to settle the matter by paying a sum of Rs. 4,000 as *ex gratia* in order to avoid litigation but the workman was exploiting the situation and demanded a huge amount from respondent No. 1 in spite of having been found guilty along with his two colleagues, and if reference is made by the Government, it will disturb the discipline of the company and such a situation will adversely affect the industrial relations in the State. Reliance has been placed by respondent No. 2 on the observations made by the Supreme Court in *Bombay Union*

of Journalists and others v. *State of Bombay* (1), *and M. P. Irrigation Karamchari Sangh* v. *State of M.P. and another* (2). Reliance has also been placed on a judgment of this Court in *Rajinder Singh Lamba* v. *State of Haryana and another* (3), and on a judgment of learned single Judge of Karnataka High Court in *My-Power Mazdoor Welfare Union* v. *Secretary and Commissioner* (4), in support of the plea that the Government has discretion to refuse to refer the dispute despite the insertion of Section 11-A in the Act.

(7) Before dealing with the scope of Sections 10 and 12 read with Sections 2(k), 2-A and 11-A of the Act, we deem it proper to advert to and consider another important aspect relating to Master and Servant relationship. The question as to when the under what circumstances, a relief in the form of declaration that the order of disimissal is void with a further direction to continue the employee in service can be given has attracted the attention of the Courts the world over.

(8) We may refer to some decisions of the English Courts as well as of the Apex Court.

(9) In *Vine* v. *National Dock Labour Board* (5), the case which arose for consideration by the House of Lords related to termination of service of the plaintiff who was employed in a reserve pool by the National Dock Labour Board. The Court of first instance granted a declaration as well as damages but the Court of Appeal struck down the declaration granted by the Court of first instance. In appeal, the House of Lords held that the declaration granted by the trial Judge was correct as the order of dismissal was a nullity because the local Board could not delegate its discretionary function. In the course of the judgment, Lord Kaith of Avonholm observed :—

> "This is not a straight forward relationship of master and servant. Normally, and a part from the intervention of statute there would never be a nullity in terminating an

(1) A.I.R. 1964 S.C. 1617.
(2) A.I.R. 1985 S.C. 960.
(3) 1995 (2) S.L.R. 675.
(4) 1996 S.L.R. 104.
(5) 1956 (3) All E.R. 989.

ordinary contract of master and servant. Dismissal might be in breach of contract and so unlawful but could only sound in damages. Here we are concerned with a statutory scheme of employment. The scheme gives a dock worker a status. Unless registered, he is deprived of the opportunity of carrying on what may have been his life-long employment as a dock worker, and he has a right and interest to challenge any unlawful act that interferes with this status."

(10) The Apex Court considered this issue in *S. R. Tiwari* v. *The District Board, Agra now the Antarim Zila Parishad, Agra through its Secretary and another* (6). In that case, the service of the appellant who was appointed as Engineer under the respondent-Board was terminated after giving him salary for three months. The High Court dismissed the writ petition holding that the termination of service was proper. The employee appealed before the Supreme Court. On behalf of the employer, it was contended that remedy of appellant was only to institute a suit for wrongful termination of employment and that he was not entitled to a declaration that the termination of employment was unlawful and, therefore, no order for restoration in service should be passed. Rejecting the aforesaid contention, the Supreme Court stated the legal position in the following words :—

"Under the common law, the Court will not ordinarily force and employer to retain the service of an employee whom he no longer wishes to employ, but, this rule is subject to certain well recognised exceptions. It is open to the Court in an appropriate case to declare that a public servant who is dismissed from service in contravention of Article 311 continues to remain in service, even though by so doing the State is in effect forced to continue to employ the servant whom it does not desire to employ. Similarly, under the industrial law, jurisdiction of the labour and industrial tribunals to compel the employer to employ a worker, whom he does not desire to employ, is recognized. The Courts are also invested with the power to declare invalid the act of a statutory body, if by doing the act the body has acted in breach of a mandatory obligation imposed by statute, even if by making the declaration the body is compelled to do something which it does not desire to do."

(6) A.I.R. 1964 S.C. 1680.

(11) In *U.P. Warehousing Corporation, Lucknow* v. *C. K. Tyagi* (7), and in *Indian Airlines* v. *Sukhdev Rai* (8), their Lordships held that the regulations framed in exercise of statutory power do not confer a status on the employee on the basis of which he could seek declaration of nullity *qua* an order of termination of service but in *Sirsi Municipality* v. *Cecilia Francis Tellis* (9), a declaration of invalidity granted in favour of the employee was unheld by the Supreme Court after considering the two decisions in *U.P. Warehousing Corporation* v. *C. K. Tyagi* (supra) and *Indian Airlines* v. *Sukhdev Rai* (supra).

(12) The apparent conflict of judgments has been set at rest by a Constitution Bench of the Supreme Court in *Sukhdev Singh and others* v. *Bhagatram Sardar Singh Raghuvanshi and another* (10).

(13) From these decisions, the legal position which has emerged in regard to the right of an employee to seek a declaration of nullity *qua* dismissal/termination of his service is that no declaration to enforce the contract of personal service will normally be granted, but, there are certain well recognised exceptions to this rule, namely, a public servant who has been dismissed from service in contravention of Article 311 of the Constitution of India : (ii) reinstatement of the dismissed worker under the industrial law by the Labour Court/Industrial Tribunal and (iii) a statutory body when it has acted in breach of mandatory obligation imposed by the Statute.

(14) After the judgment of the Constitution Bench of the Supreme Court in *Sukhdev Singh and others* v. *Bhagatram Sardar Singh Raghuvansi and another* (supra), the law has taken a long forward march.

(15) In *Ajay Hasia etc.* v. *Khalid Mujib Sehravardi and others* (11), *Central Inland Water Transport Corporation* v. *Brojo Nath Ganguly* (12), and a number of other decisions, the Supreme Court

(7) A.I.R. 1970 S.C. 1244.
(8) A.I.R. 1971 S.C. 1828.
(9) A.I.R. 1973 S.C. 855.
(10) A.I.R. 1975 S.C. 1331.
(11) A.I.R. 1981 S.C. 486.
(12) A.I.R. 1986 S.C. 1571.

has held that even where the employee is employed by a non-statutory body, he can seek declaration of nullity regarding termination of his service if it is found that the employer is an instrumentality/agency of the State and falls within the definition of 'State' under Article 12 of the Constitution of India. Therefore, now we shall have read a fourth exception, a well recognised rule to which reference has been made above. The fourth exception will be 'whether the agency or instrumentality of the State has acted in breach of constitutional provisions or the principles of natural justice.

(16) The above discussion was necessary in order to emphasise the fact that an industrial worker who has been dismissed or discharged from service or whose service has been terminated in contravention of law or the principles of natural justice can seek declaration of nullity of the action taken by the employer by availing remedy under the Act. In this manner, he is placed at par with the civil servants as well as the employees of the statutory bodies, who can seek declaration of nullity in case the termination of service is found to be contrary to the provisions of the Constitution of India or a statutory enactment or rule or regulations.

(17) We shall now examine the scheme of the Act and determine whether the Court should interpret the provisions of the Act in such a manner that may lead to a situation in which an industrial worker altogether deprived of his right to avail the remedy.

(18) Section 2 (k), 2-A, 10, 11-A and 12 of the rule. read as under :—

> "2(k) 'industrial dispute' means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms or employment or with the conditions of labour, of any person.
>
> 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 service 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.

10. *Reference of disputes to Boards, Courts or Tribunals* :— (1) Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing :—

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

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

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

(d) refer the dispute or any matter appearing to the connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication :

Provided that where the dispute relates to any manner specified in the Third Schedule and is not liable to effect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under Clause (c) ;

Provided further that where the dispute relates to a public utility service and a notice under Section 22 has been given, the appropriate Government shall, unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make a reference under this sub-section notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced ;

Provided also that where the dispute in relation to which the Central Government is the appropriate Government, it shall be competent for that Government to

refer the dispute to a Labour Court or an Industrial Tribunal as the case may be, constituted by the State Government.

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

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

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

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

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

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

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

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

(5) Where a dispute concerning any establishment or establishments has been or is to be, referred to a Labour Court, Tribunal or National Tribunal under this section and the appropriate Government is of opinion, whether on an application made to it in this behalf or otherwise, that the dispute is of such a nature that any other establishment, group or class of establishments of a similar nature is likely to be interested in, or affected by, such dispute, the appropriate Government may, at the time of making the reference or at any time thereafter but before the submission of the award, include in that reference such establishment, group or class of establishments, whether or not at the time of such inclusion any dispute exists or is apprehended in that establishment, group or class of establishments.

(6) Where any reference has been made under sub-section (IA) to a National Tribunal, then notwithstanding anything contained in this Act, no Labour Court or Tribunal shall have jurisdiction to adjudicate upon any matter

which is under adjudication before the National Tribunal, and accordingly,—

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

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

(*Explanation* :—In this sub-section, "Labour Court" or "Tribunal" includes any Court or Tribunal or other authority constituted under any law relating to investigation and settlement of industrial dispute in force in any State).

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

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

11. A *Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen* :—Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as if thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require :

Provided that in any proceeding under this section the Labour Court Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.

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

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

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

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

(5) If, on a consideration of the report referred to in sub-section (4), the appropriate Government is satisfied that there is a case for reference to a Board, Labour Court, Tribunal or National Tribunal, it may make such reference. Where the appropriate Government does not make such a reference, it shall record and communicate to the parties concerned its reasons therefor.

(6) A report under this section shall be submitted within fourteen days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate Government :

Provided that subject to the approval of the conciliation officer the time for the submission of the report may be extended by such period as may be agreed upon in writing by all the parties to the dispute."

(19) Till 1957, there was a divergence of opinion amongst the High Courts and the Industrial Tribunals on the question whether an individual dispute can be regarded as an industrial dispute. Some High Courts and Tribunals took the view that a dispute between the employer and a single workman cannot be an industrial dispute whereas others took the view that it can be an industrial dispute. Some of the Courts took the view that although a dispute relating to an individual workman cannot *perse* be treated as an industrial dispute but it may become an industrial dispute if espoused by the Trade Union or a large number of workmen.

(20) In *Central Provinces Transport Services* v. *Raghunath Gopal Patwardhan* (13), their Lordships of the Supreme Court examined this controversy and accepted the third view as laying down a correct law and held :—

"that an individual dispute cannot ordinarily be treated as industrial dispute, but if such dispute is espoused by

(13) A.I.R. 1957 S.C. 104.

the Union or a substantial number of workman employed in the establishment, such dispute will be treated as an industrial dispute."

(21) Similarly, in *Workman of M/s Dharam Pal Prem Chand (Saugandhi)* v. *M/s Dharam Pal Prem Chand (Saugandhi)* (14), a Constitution Bench of the Supreme Court after examining the various provisions of the Act held as under :—

"Section 2 (K) of the Act defines an 'industrial dispute'. When literally construed, this definition may include within its scope a dispute between a single workmen and his employer, because the plural, in the context, will include the singular. However, having regard to the broad policy which underlines the Act and in order to safeguard the interests of the working class in this country, the Supreme Court and indeed marjority of Industrial Tribunals are inclined to take the view that in spite of the width of the words used by the Act in defining an 'industrial dispute', it would be expedient to require that a dispute raised by a dismissed employee unless it is supported either by his Union or, in the absence of a Union, by a number of workmen, cannot become an industrial dispute. If such a limitation was not introduced, claims for reference may be made frivolously and unreasonably by dismissed employees, and that would be relevant in dealing with a dispute relating to an industrial employee's dismissal, would not be material in dealing with a case of dismissal on the same day of a large number of employees. These employees can raise a dispute by themselves in a formal manner."

(22) These decisions caused great hardship to individual workmen in the matters relating to dismissal, discharge, retrenchment etc. because the individual workman could not avail the remedy under the Act without the espousalm of his cause by the Union or by a substantial number of employees of the establishment. Therefore, the Parliament amended the Act by Industrial Disputes (Amendment) Act, 1965 which was brought into force with effect from 1st December, 1965. By this amendment, Section 2-A came to

(14) A.I.R. 1966 S.C. 182.

be inserted in the Act. By virtue of this section, any dispute or difference between a workman and his employer in relation to dismissal, discharge, retrenchment or termination of his service is now deemed to be an industrial dispute even though such dispute may not be covered by Section 2(k). Thus, by legislative fiction, an individual dispute has been converted into an industrial dispute. Thus, after insertion of section 2-A, Section 2(k) and Section 2-A will have to be read together while determining whether a dispute raised by the workman including a dispute raised by an individual workman in relation to termination of his service is an industrial dispute for the purposes of the Act.

(23) A careful analysis of section 2(k) shows that where there is a dispute or difference between the parties as contemplated or by the definition contained in section 2(k) and the dispute or difference is connected with the employment or non-employment or terms of employment or conditions of labour of any person, an industrial dispute comes into existence. The Act does not are contemplate that the dispute would come into existence in any particular manner. The words 'dispute' or 'difference' are crucial.

(24) In *Beetham* v. *Trinidad Cement Ltd.* (15), Lord Denning examined the definition of expression "trade dispute" as defined in the Trade Disputes (Arbitration and Inquiry) Ordinance of Trinidad and observed :—

> "by definition a 'trade dispute' exists whenever a 'difference' exists and a difference can exist long before the parties became locked in a combat. It is not necessary that they should have come to blows. It is sufficient that they should be speering for an opening."

(25) In *Shambu Nath Goyal* v. *Bank of Baroda* (16), their Lordships of the Supreme Court considered the scope of Section 10 of the Act. We shall refer to the observations made with reference to Section 10, a little later, but it would be profitable to refer to the following observations made by the Apex Court in regard to the definition of term 'industrial dispute :—

> "Thus, the term 'industrial dispute' connotes a real and substantial difference having some element of persistency

(15) (1960)1 All.E.R. 274 (at P. 279).
(16) 1978(1) L.L.J. 484.

and continuity till resolved and likely if not adjusted to endanger the industrial peace of the undertaking or the community. When parties are at variance and the dispute or difference is connected with the employment, or non-employment or the terms of employment or with the conditions of labour, there comes into existence an industrial dispute. To read into definition the requirement of written demand for bringing into existence an industrial dispute would tantamount to re-writing the section."

(26) Section 10 of the Act says that where the appropriate Government is of the opinion that an industrial dispute exists or is apprehended, it may refer the dispute at any time by issuing an order in writing. Such reference may be made to a Board for settlement thereof. It may also refer any matter connected or related to a dispute to a Court of Inquiry or refer the dispute or any matter appearing to be connected with the dispute to a Labour Court for adjudication if it pertains to any matter specified in Second Schedule or the Tribunal if it relates to any matter specified in Second Schedule or the Third Schedule. Section 12(1) makes it obligatory for the conciliation officer to hold conciliation proceedings in the prescribed manner where any industrial dispute exists or is apprehended. Section 12(2) requires the conciliation officer to investigate the dispute and all matters affecting the merits and right settlement thereof and shall make all attempts to bring about a fair and amicable settlement of the dispute. If the settlement of the dispute or any of the matters in dispute is arrived at in the course of conciliation proceedings, a report to that effect is required to be sent to the appropriate Government together with a memorandum of settlement signed by the parties to the dispute. If the parties fail to arrive at a settlement, the conciliation officer should send a full report of the steps taken by him for ascertaining the facts and circumstances relating to the dispute and efforts made by him for bringing about the settlement and the circumstances and reasons on account of which, in his opinion, the settlement could not be arrived at. The approrpriate Government may thereafter make a reference if it is satisfied that there is a case for reference. Where the Government does not make a reference, it is obliged to record and communicate to the parties concerned the reasons for not making the reference. Section 11-A relates to the powers of the Labour Courts/Industrial Tribunals and National Tribunal to give appropriate relief in case of the discharge or dismissal of a workman. However, we shall deal with this section a little later. Here we

shall deal with the ambit and scope of the power of the Government to refer or not to refer the industrial dispute. In this context, it is necessary to bear in mind that the power conferred upon the Government to make reference is not confined to an industrial dispute which has already come into existence but the Government is also possessed with the power to make a reference if any industrial dispute is apprehended. Moreover, the Government can exercise this power at any time. While exercising the power to make or not to make a reference of an industrial dispute which exists or which is apprehended, the Government has to take into consideration the failure report of the conciliation officer submitted to it under Section 12(4) and it is the duty of the Government to record reasons and communicate the same to the parties for not making a reference. These two Sections nowhere indicate that the Government is required to exercise power of making or not making a reference in a judicial or *quasi judicial* manner. Similarly, there is no requirement of hearing the parties before taking a decision to refer or not to refer a dispute. However, what the Government is required to see is whether there exists an industrial dispute or there is an apprehension of an industrial dispute. The Government cannot decide for itself whether the demand made by an employee or the employer or by the Union is justified or not. The irresistible conclusion is that the Government cannot go into the merits or demerits of the dispute and make an adjudication of it directly or indirectly.

(27) The provision of Sections 10 and 12 were examined in *State of Bombay* v. *K. P. Krishnan and others* (17). After examining the scheme of the two Sections, their Lordships held :—

> "Even if the appropriate Government may be acting under section 12(5) the reference must ultimately be made under section 10(1). Section 12(5) by itself and independently of Section 10(1) does not confer power on the appropriate Government to make a reference. While deciding whether a reference should be made under Section 12(5) it would be open to the appropriate Government to consider, besides the report of the Conciliation Officer, other relevant facts which may come to its knowledge or which may be brought to its notice. Just as discretion conferred on the Government under Section 10(1) can be exercised by it in dealing with industrial

(17) A.I.R. 1960 S.C. 1223.

disputes in regard to non-public utility services even when Government is acting under Section 12(5), so too the provisions of the second proviso to Section 10(1) can be pressed into service by the Government when it deals with an industrial dispute in regard to a public utility service under Section 12(5)."

In *Bombay Union of Journalists and others* v. *The State of Bombay and another* (18), their Lordships again examined the scope of Section 10 read Section 12 of the Act and held :

"When the appropriate Government considers the question as to whether a reference should be made under Section 12(5); it has to act under Section 10(1) of the Act, and Section 10(1) confers discretion on the appropriate Government either to refer the dispute, or not to refer it, for industrial adjudication according as it is of the opinion that it is expedient to do so or not. In other words, in dealing with an industrial dispute in respect of which a failure report has been submitted under Section 12(4), the appropriate Government ultimately exercises its power under Section 10(1), subject to this that Section 12(5) imposes an obligation on it to record reasons for not making the reference when the dispute has gone through conciliation and a failure report has been made under Section 12(4)."

Their Lordships further held :

"But it would not be possible to accept the plea that the appropriate Government is precluded from considering even *prima facie* the merits of the dispute when it decides the question as to whether its power to make a reference should be exercised under section 10(1) read with Section 12(5), or not. If the claim made is patently frivolous, or is clearly belated, the appropriate Government may refuse to make a reference. Likewise, if the impact of the claim on the general relations between the employer and the employees in the region is likely to be adverse, the appropriate Government may take that into account in deciding whether a reference should be made

(18) A.I.R. 1964 S.C. 1617.

or not. *It must, therefore, be held that a* prima facie *examination of the merits cannot be said to be foreign to the enquiry which the appropriate Government is entitled to make in dealing with a dispute under Section* 10(1)" (Underlining is ours).

(28) In *Nirmal Singh* v. *State of Punjab and others* (19), the Supreme Court quashed an order passed by the Government refusing to make a reference on the ground that the bank employee was not a workman within the meaning of Section 2(s) of the Act. Their Lordships held :—

'that by recording a bald conclusion that the employee was not a workman, the Government cannot refuse to make a reference."

While doing so, the Supreme Court reversed an order passed by this Court which had upheld the refusal to make a reference.

(29) In *M.P. Irrigation Karamchari Sangh* v. *State of M.P. and another* (20), the Supreme Court drew a demarcation between functions of reference and adjudication, which vest in Government and the Tribunal/Labour Court respectively. Their Lordships referred to the judgment in *Bombay Union of Journalists* v. *State of Bombay* (supra) and then held :

"While conceding a very limited jurisdiction to the State Government to examine patent frivolousness of the demands, it is to be understood as a rule, that adjudication of demands made by workman should be left to the Tribunal to decide. Section 10 permits appropriate Government to determine whether dispute "exists or is apprehended" and then refer it for adjudication on merits. *The demarcated functions are* (1) *reference;* (2) *adjudication. When a reference is rejected on the specious plea that the Government cannot bear the additional burden, it constitutes adjudication and thereby usurpation of the power of a* quasi judicial *Tribunal by an administrative authority, namely, the Appropriate Government.* There may be exceptional cases in which the State Government may on a proper examination of the demand come to a

(19) A.I.R. 1984 S.C. 1619.
(20) A.I.R. 1985 S.C. 860.

conclusion that the demands are either perverse or frivolous and do not merit a reference. Government should be very slow to attempt an examination of the demand with a view to decline reference and *Courts will always be vigilant whenever the Government attempts to usurp the powers of the Tribunal for adjudication of valid disputes. To allow the Government to do so would be to render Section 10 and 12(5) of the Industrial Disputes Act nugatory.*" (Underlining is ours).

(30) In *Ram Avtar Sharma and others* v. *State of Haryana and another* (21), their Lordships reiterated the settled law that in making a reference under Section 10(1), the Government is doing an administrative act and the fact that it has to form an opinion as to the factual existence of an industrial dispute as a preliminary step for discharge of its function does not make it any less in administrative character, but, held that while performing an administrative act, the Government cannot delve into the merits of the dispute and taken upon itself the determination of lis. The Court held :

"the appropriate Government may *prima facie* examine the matter to find out whether the industrial dispute exists or claim is frivolous or bogus or put forward for extraneous or irrelevant reasons and not for justice or industrial peace or harmony."

That was a case in which the Government of Haryana had passed order dated 1st August, 1984 to the effect that it does not consider the case of the workman to be fit for reference to the Tribunal because his service was terminated only after charges against him were proved in a domestic enquiry. While quashing the order of the Government, their Lordships observed :

"The assumption underlying the reasons assigned by the Government is that the enquiry was consistent with the rules and the standing orders, that it was fair and just and that there was unbiased determination and the punishment was commensurate with the gravity of the misconduct. *The last aspect has assumed considerable importance after the introduction of Section 11-A in the Industrial Disputes (Amendment) Act, 1971 with effect from*

(21) A.I.R. 1985 S.C. 915.

December 15, 1971. *It confers power on the Tribunal not only to examine the order of discharge or dismissal on merits as also to determine whether the punishment was commensurate with the gravity of the misconduct charged. In other words, Section 11-A confers power on the Tribunal/Labour Court to examine the case of the workman whose service has been terminated either by discharged or dismissal qualitatively in the matter of nature of enquiry and quantitatively in the matter of adequacy or otherwise of punishment.* The workmen questioned the legality and validity of the enquiry which aspect the Tribunal in a quasi judicial determination was required to examine. *A bare statement that a domestic enquiry was held in which charges were held to be proved, if it is considered sufficient for not exercising power of making a reference under Section* 10(1), *almost all cases of termination of services cannot go before the Tribunal. And it would render Section 2-A of the Act denuded of all its contents and meaning. The reasons given by the Government would show that the Government examined the relevant papers of enquiry and the Government was satisfied that it was legally valid and that there was sufficient and adequate evidence to hold the charges proved.* It would further appear that the Government was satisfied that the enquiry was not biased against the workman and the punishment was commensurate with the gravity of the misconduct charged. *All these relevant and vital aspects have to be examined by the Industrial Tribunal while adjudicating upon the reference made to it.* In *other words, the reasons given by the Government would tantamount to adjudication which is impermissible.* That is the function of the Tribunal and the Government cannot arrogate to itself that function. *Therefore, it the grounds on which or the reasons for which the Government declined to make a reference under Section* 10 *are irrelevant, extraneous or not germane to the determination, it is well settled that the party aggrieved thereby would be entitled to move the Court for a writ of mandamus.*" (Underlining is ours).

(31) In *Workmen of Syndicate Bank, Madras* v. *Government of India and another* (22), the Supreme Court quashed the order passed

(22) A.I.R. 1985 S.C. 1667.

by the Government of India refusing to make reference on the ground that the charges of misconduct against the worker were proved during a duly constituted domestic enquiry and the penalty was imposed upon the workman after following the procedure. While quashing the order of the Government, their Lordships held :—

> "If such a ground were permissible it would be the easiest thing for the management to avoid a reference to adjudication and to deprive the worker of the opportunity of having the dispute referred for adjudication even if the order holding the charges of misconduct proved was unreasonable or perverse or was actuated by *mala fides* or even if the penalty imposed on the worker was totally disproportionate to the offence said to have been proved."

(32) In *Telco Convey Driver Mazdoor Sangh* v. *State of Bihar and others* (23), the Supreme Court held :—

> "that formation of opinion as to whether an industrial dispute exists or is apprehended is not the same thing as to adjudicate the dispute itself on its merits and that an order by the Government refusing to refer the dispute on the ground that persons raising the dispute are not the workmen would amount to adjudication of the dispute and such an order of the Government is liable to be set aside."

(33) These are the main decisions of the Supreme Court dealing with the scope of the power of the Government under Section 10 read with Section 12 of the Act.

(34) Now, we shall refer to some of the recent decisions of this Court.

(35) In *Kehar Singh* v. *State of Haryana* (24), a Division Bench (S. S. Grewal and J. L. Gupta, JJ.) of this Court upheld the refusal of the Government to refer the dispute because the workman was found to have served only for a period of four months, viz. from 17th February, 1992 to June, 1992.

The Court held that :—

> "the termination is not even *prima facie* shown to have been made in violation of any of the provisions of the Act

(23) A.I.R. 1989 S.C. 1565.
(24) 1993 (3) R.S.J. 165.

and, therefore, the Government has not committed any illegality in refusing to make a reference."

(36) In *Viney Vir Singh* v. *State of Haryana* (25), a learned Single Judge (J. L. Gupta, J.) of this Court allowed the writ petition filed by the workman and quashed the order of the Government refusing to make a reference on the ground that the workman had left the job on his own J. L. Gupta, J. held :

"it is not the function of the Government to adjudicate upon the dispute and come to the conclusion that the workman had himself abandoned the job."

He further held that :

"appreciation of the evidence is not the function of the Government."

Therefore, a direction was issued to the Government to reconsider the matter.

(37) In *Saraswati Industrial Syndicate Ltd.* v. *State of Haryana* (26), a learned Single Judge (J. L. Gupta, J.) of this Court held :

"that the reference of the dispute can be made by the Government even without hearing the management."

(38) In *Jaynath Mondal* v. *State of Haryana* (27), a learned Single Judge (V. K. Bali, J.) of this Court quashed an order passed by the Government refusing to make reference on the ground that the workman had lost his right due to giving resignation at his own will. Bali, J. held :

"that the Government at its end cannot decide the controversy between the parties because it was not an admitted case of the parties that the petitioner has resigned voluntarily."

In taking this view, Bali, J. relied upon the observations made by the Supreme Court in *Telco Convoy Driver Mazdoor Sangh* v. *State of Bihar* (supra).

---

(25) 1994 (1) R.S.J. 210.
(26) 1994 (2) R.S.J. 498.
(27) 1996 (4) R.S.J. 346.

(39) In *Dharampal* v. *State of Haryana* (28), a Division Bench (A. P. Chowdhri and H. S. Brar, JJ.) of this Court held :

> "that the Government is not required to act as a post office but it cannot derive into merits of the dispute and where it is found that a dispute exist or is apprehended the State Government is required to make a reference unless reference is not considered necessary on the ground that it is patently frivolous or clearly belated or making of reference will have an impact on the industrial relations in the region."

(40) In *Ramdia* v. *State of Haryana* (29), a Division Bench (R. S. Mongia and J. L. Gupta, JJ.) of this Court quashed an order passed by the Government refusing to make a reference. The Government had refused to make reference on the ground that the workman had been dismissed from service after serious charges of misbehaviour with the seniors had been proved and it was necessary to maintain industrial peace. The Division Bench held :—

> "A perusal of the above observations shows that the State Government has not come to the conclusion that no industrial dispute exists. On the other hand, the authority appears to have investigated the matter and come to the conclusion that serious charge of misbehaviour with the seniors had been proved against the workman. Assuming it to be so, the questions still remain to be answered. are :—(i) was there an industrial dispute, (ii) was there a fair and proper enquiry and (iii) was the dismissal of the workman justified.
>
> While the State Government has not addressed itself to the first question, the others are to be essentially answered by the Labour Court."

(41) In *Ramphal* v. *State of Haryana* (30), a Division Bench (J. B. Garg and N. K. Sodhi, JJ.) of this Court examined the legality of the order dated 16th September, 1993 passed by the Government

---

(28) 1994 (4) R.S.J. 178.
(29) 1995 (1) R.S.J. 278.
(30) 1995 (1) R.S.J. 826.

refusing to make a reference on the ground that the workman was in the habit of remaining absent and the employer terminated his service after enquiry. The Division Bench examined the issue in the light of Section 11-A and observed as under :—

> "The question that now arises is whether after the coming into force of Section 11A when the workman has been given a right to have a finding of misconduct scrutinised by a Labour Court or an Industrial Tribunal and also to have the punishment reduced even if misconduct is held to be proved on a judicial assessment, can the State Government in the exercise of its powers under section 10 decline to refer the dispute and thereby deprive the workman of these rights. In our opinion, the answer has to be in the negative. *In a case where a domestic enquiry has been held and the alleged misconduct proved, the State Government has, in our opinion, no option but to refer the dispute for adjudication so that the workman can have the findings of misconduct and the quantum of punishment examined by the adjudicating authority which will satisfy itself whether misconduct is really proved or not and even if it is proved what is the appropriate punishment in the circumstances of a particular case since the punishment must not be arbitrary and should be commensurate with the charge proved. If the reference is declined the industrial dispute cannot be adjudicated upon and the workman would be denied the rights as given to him by* Section 11A. We are, therefore, of the considered view that in cases where mis-conduct is alleged and the workman is discharged or dismissed from service, the State Government has no option but to refer the industrial dispute raised by the workman under Section 10(1) of the Act so as to enable him not only to challenge the validity of the enquiry but also to prove before a judicial Tribunal that he is not guilty of any misconduct and even if the charge is proved the punishment imposed on him by the management is disproportionate to the gravity of the charge. No doubt, section 10 confers on the State Government a wide discretionary power to refer or not to refer an existing or an apprehended industrial dispute but in certain cases this discretion has been curtailed. For instance, in the case of a public utility service where a notice has been given under section 22, the State Government, unless it finds the notice to be frivolous or vexatious, it is left

with no choice but to refer the dispute to an appropriate adjudicating authority. *Similarly, by enacting Section 11A, the Legislature has in cases where a workman has been dismissed or discharged from service for misconduct and an industrial dispute raised on that account, impliedly taken away the discretion of the State Government so as to enjoin upon it to make a reference as otherwise the provisions of section 11A will be rendered nugatory* and the workman deprived of the rights conferred on him by it." (Underlining is ours).

(42) The Division Bench expressed its disagreement with the judgment of the Karnataka High Court in *D. Minichowdappa* v. *State of Karnataka and two others* (31), and held that :—

"the exercise of power under Section 11A cannot be made to depend on discretion of the Government not to make a reference."

(43) In *Shiv Dayal* v. *State of Haryana* (32), a Division Bench of which we were parties, quashed the order of the Government refusing to make reference. The Government had refused to make reference on the ground that the workman had settled the accounts. The Division Bench held that :—

"the refusal of the Government to make reference is based on wholly irrelevant consideration, namely, the workman had settled the accounts."

The Court found that the settlement of accounts after termination of service cannot lead to an inference that there existed no dispute.

(44) In *Partap Singh* v. *State of Haryana* (33), a learned Single Judge (N. K. Sodhi, J.) of this Court quashed an order passed by the Joint Secretary, Government of Haryana on 9th September, 1993 refusing to make reference. The Government had given reason that the service of the workman had been terminated for misconduct which stood proved in a domesic enquiry conducted by his employer

(31) 66 P.J.R. 84.
(32) 1995 (2) R.S.J. 586.
(33) 1995 (3) R.S.J. 105.

and, therefore, the termination was valid. N. K. Sodhi, J. referred to the two unreported judgments and held :—

> "that where provisions of Section 11A of the Act would come into play and it is open to the workman to plead before the Labour Court that the enquiry held by the management was not fair and proper and the punishment was disproportionate to the proved charges, the Government has no option but to refer the dispute for adjudication to an appropriate authority."

(45) In *Chander Parkash* v. *State of Haryana* (34), a Division Bench (A. P. Chowdhri and H. S. Brar, JJ.) of this Court again reiterated the same principle and quashed the order passed by the Government refusing to make a reference only on the ground that the workman had not complied with the direction given by the employer.

(46) In *Jagdish* v. *State of Haryana* (35). *Rampati* v. *State of Haryana* (36). *Satbir Singh* v. *State of Haryana* (37). a learned Single Judge (N. K. Sodhi, J.) of this Court held :

> "that except in a case where the demand made by the workman is frivolous or his highly belated, the Government cannot refuse to make a reference by entering into the merits of the dispute."

In all these cases, the Government had refused to make reference on the ground that the termination of the services brought about after holding enquiry was justified and, therefore, the dispute could not be referred.

(47) In *C. S. Sandhu* v. *State of Punjab* (38), a Division Bench (H. S. Brar and M. L. Koul, JJ.) of this Court quashed the order passed by the Government on 19th September, 1992 refusing to make a reference. The Government had passed the order on the ground that the workman did not attend his duties upto 23rd September,

(34) 1995 (3) R.S.J. 135.
(35) 1995 (3) R.S.J. 187.
(36) 1995 (3) R.S.J. 775.
(37) 1995 (3) R.S.J. 530.
(38) 1995 (1) R.S.J. 685.

1991 inspite of reminders sent by the management many a times and through newspapers. The Division Bench held :

> "that the Government had no power to decide whether the workman was justified in not attending the duty or not."

(48) In *Sukhram* v. *Labour Commissioner and others* (39), a Division Bench (R. P. Sethi and N. K. Sodhi, JJ.) of this Court quashed the order passed by the Government refusing to make a reference on the ground of pendency of C.W.P. No. 14277 of 1993. The Division Bench held that the Government is to ascertain as to whether here is a *prima facie* case for reference and it has no option except to make reference in case there exists a dispute. The Division Bench also found that the pendency of C.W.P. No. 14277 of 1993 had nothing to do with the reference of the dispute as the same pertained to an order under the Payment of Wages Act.

(49) There is one more aspect which deserves to be dealt with in relation to the cases involving termination of services of the workmen by way of punishment.

(50) Till the insertion of Section 11-A in the Act,—*vide* Industrial Disputes (Amendment) Act, 1971, the Labour Court and the Tribunals had limited jurisdiction to interfere with the action taken by the employer after holding disciplinary enquiry.

(51) In *Indian Iron and Steel Co. Ltd.* v. *Their Workmen* (40), *Punjab National Bank Ltd.* v. *Their Workmen* (41), *Management of Ritz Theatre (P) Ltd.* v. *Its Workmen* (42), and *M/s Hind Construction and Engineering Co. Ltd.* v. *Their Workmen* (43), the Supreme Court had broadly laid down the area of interference by the Labour Courts/Industrial Tribunals while adjudicating the disputes relating to dismissal or discharge of workmen and held :—

> "undoubtedly the management concerned has power direct its own internal administration and discipline but the power

---

(39) 1996 (1) Revenue Law Reporter 72.
(40) A.I.R. 1958 S.C. 130.
(41) A.I.R. 1960 S.C. 160.
(42) A.I.R. 1963 S.C. 295.
(43) A.I.R. 1965 S.C. 917.

is not unlimited and where a dispute arises, the Labour Courts/Industrial Tribunals have been given power to see whether the termination of service is justified and to give appropriate relief. In cases of the dismissal on misconduct, the Tribunal does not, however, act as a Court of Appeal and substitute its own judgment for that of the management. It will interfere (i) when there is lack of *bona fide* ; (ii) when there is victimisation or unfair labour practice : (iii) when the management is guilty of basic error or violation of principles of natural justice and (iv) when on material the finding is completely baseless or perverse."

In *M/s Hind Construction and Engineering Co. Ltd.* v. *Their Workmen*, (supra), the Supreme Court further observed :—

"The award of punishment for misconduct under the Standing Orders, if any, is a matter for the management to decide and if there is any justification for the punishment imposed the Tribunal should not interfere. The Tribunal is not required to consider the propriety or adequacy of the punishment or whether it is excessive or two severe. But where the punishment is chockingly disproportionate, regard being had to the particular conduct and the past record or is such, as no reasonable employer would ever impose in like circumstances, the Tribunal may treat the imposition of such punishment as itself showing victimization or unfair labour practice."

(52) In order of confer wider powers on the Labour Courts/ Industrial Tribunals, the Parliament amended the Act. The Statement of objects and reasons incorporated in the Bill by which Section 11-A was introduced, reads as under :—

"In Indian Iron and Steel Company Ltd. *versus* Their Workmen (A.I.R. 1958 S.C. 130 P. 138), the Supreme Court while considering the Tribunal's power to interfere with the management's decision to dismiss, discharge or terminate the service of a workman, has observed that in case of dismissal on misconduct the Tribunal does not act as a court of appeal and substitute its own judgment for that of the management and that the Tribunal will interfere only when here is want of good faith, victimisation, unfair labour practice etc. on the part of the management."

"The International Labour Organisation in its recommendation (No. 119) concerning termination of employment at the initiative of the employer, adopted in June, 1963, has recommended that a worker, aggrieved by the termination of his employment should be entitled to appeal against the termination among others, to a neutral body such as an arbitrator, a court, an arbitration committee or a similar body and that the neutral body concerned should be empowered to examine the reasons given in the termination of employment and the other circumstances relating to the case and to render a decision on the justification of the termination. The international Labour Organisation has further recommended that the neutral body should be empowered (if it finds that the termination of employment was unjustified) to order that the worker concerned unless reinstated with unpaid wages, should be paid adequate compensation or afforded some other relief. In accordance with these recommendations, it is considered that the Tribunal's power in an adjudication proceeding relating to discharge or dismissal of a workman should not be limited and that the Tribunal should have the power in cases wherever necessary to set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions if any, as it thinks fit or given such other reliefs to the workman inculding the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may warrant. For this purpose, a new S. 11A is proposed to be inserted in the Industrial Disputes Act, 1947."

(53) The ambit and scope of Section 11-A came to be considered by the Supreme Court in *Workmen of M/s Firestone Tyre and Rubber Co.* v. *The Management* (44). In that case, the Apex Court in the first place referred to the law laid down by the Court in respect of the jurisdiction of the Indusrtial Tribunal/Labour Court. It also referred to the statement of objects and reasons and proceeded to say :—

"The object is stated to be that the Tribunal should have power in cases where necessary, to set aside the order of

(44) A.I.R. 1973 S.C. 1227.

discharge or dismissal and direct reinstatement or award any lesser punishment.'

Their Lordships further held that :

"Even a mere reading of the section, in our opinion, does not indicate that a change in the law as laid down by this Court has been effected."

Their Lordships then took notice of the rival contentions raised on behalf of the employees and employers and then referred to some principles or interpretation of welfare legislations and held :

"that even after Section 11-A has been inserted the employer and employee can adduce evidence regarding legality and validity of the domestic enquiry, if one had been held by an employer."

The Court further held:—

"that the Tribunal has to consider the evidence and come to the conclusion one way or the other. Even in cases where an enquiry has been held by an employer and a finding of misconduct arrived at, the Tribunal can now differ from that finding in an appropriate case and hold that no misconduct is proved."

The Court further observed :—

'It has to be remembered that a Tribunal may hold that the punishment is not justified because the misconduct alleged and found proved is such that it does not warrant dismissal or discharge. The Tribunal may also hold that the order of discharge or dismissal is not justified because the alleged misconduct itself is not established by the evidence. To come a conclusion either way, the Tribunal will have to reappraise the evidence for itself. Ultimately, it may hold that the misconduct itself is not proved or that the misconduct proved does not warrant the punishment of dismissal or discharge. That is why, according to us, section 11-A now gives full power to the Tribunal to go into the evidence and satisfy itself on both these points. Now the jurisdiction of the Tribunal to reappraise the evidence and come to its conclusion ensures to it when it

has to adjudicate upon the dispute referred to it in which an employer relies on the findings recorded by him in a domestic enquiry. Such a power to appreciate the evidence and come to its own conclusion about the guilt or otherwise was always recognised in a Tribunal when it was deciding a dispute on the basis of evidence adduced before it for the first time. Both categories are now put on par by Section 11-A."

(54) On the question of quantum of punishment their Lordships held that prior to Section 11-A, the Tribunal had no power to interfere with the punishment imposed by the Management and it had to sustain the order of punishment imposed on the basis of proved misconduct unless it was harsh indicating victimisation, but, under Section 11-A, even if misconduct is held to be proved, the Tribunal may be of the opinion that the order of discharge or dismissal for the particular act of misconduct does not import punishment by way of discharge or dismissal and it can under such circumstances, award to the workman lesser punishment.

(55) In para 45 of the judgment their Lordships of the Supreme Court took notice of the departure made by the Legislature in certain respects in the law laid down by the Supreme Court by observing that, for the first time power has been given to the Tribunal to satisfy itself whether misconduct is proved. This is particularly so even when findings have been recorded by an employer in an inquiry properly held. The Tribunal has also been given power to interfere with the punishment imposed by an employer. The proviso to Section 11-A emphasizes that the Tribunal has to satisfy itself one way or the other regarding misconduct, punishment and the relief to be granted to the workman only on the basis of material on record before it.

(56) In para 48, their Lordships further observed that if a proper enquiry is conducted by an employer and a correct finding is arrived at regarding misconduct even though, it now has power to differ from the conclusion arrived at by the Management it will have to give very cogent reasons in not accepting the view of the employer.

(57) In para 58 of the judgment, their Lordships again reiterated this position by making the following observations :—

"We have already expressed our view regarding the interpretation of Section 11-A. We have held that the previous

law, according to the decisions of this Court, in cases where a proper domestic enquiry had been held, was that the Tribunal had no jurisdiction to interfere with the findings of misconduct except under certain circumstances. The position further was that the Tribunal had no jurisdiction to interfere with the punishment imposed by an employer both in cases where the misconduct is established in a proper domestic enquiry as also in cases where the Tribunal finds such misconduct proved on the basis of evidence adduced before it. These limitations on the powers of the Tribunals were recognised by this Court mainly on the basis that the power to take disciplinary action and impose punishment was part of the managerial functions. That means that the law, as laid down by this Court over a period of years, had recognised certain managerial rights in an employer. We have pointed out that this position has now been changed by Section 11-A. The section has the effect of altering the law by abridging the rights of the employer in as much as it gives power to the Tribunal for the first time to differ both on a finding of misconduct arrived at by an employer as well as the punishment imposed by him."

(58) After the judgment in *M/s Firestone Tyre and Rubber Co.'s* case (supra), the Supreme Court examined the scope of power under Section 11-A of the Act in a large number of cases and held :—

"that the Labour Courts and Industrial Tribunals are empowered not only to examine the fairness of enquiry but also differ with the findings of the management in regard to the allegations levelled against the workman and also to award lesser punishment on the workman even if he is found guilty of misconduct or allegation is held to be proved."

(59) Even in respect of civil servants and the employees of the statutory bodies as well as agencies and instrumentalities of the State, the power of the Courts to interfere with the punishment awarded by a public employer is well recognised.

(60) In *Bhagat Ram* v. *State of Himachal Pradesh* (45), the Supreme Court held :—

"where the employer acted arbitrarily in awarding punishment the Court will be justified to draw an inference of violation of Article 14 of the Constitution of India."

(45) 1983 (2) S.L.R. 626.

(61) In *Union of India* v. *Tulsiram Patel* (46), a Constitution Bench of the Supreme Court was dealing with the scope of Article 311(2) of the Constitution of India. The Court examined various aspects of the concept of 'reasonable opportunity of hearing' embodied in Article 311 and observed :—

> "Whether the Court finds that the penalty imposed by the impugned order of punishment is arbitrary or grossly excessive or out of proportion to the offence committed or is not warranted by the facts and circumstances of the norms relevant to that particular government service, the court will strike down the impugned order."

(61-A) In *Shankar Das* v. *Union of India* (47), their Lordships of the Supreme Court were dealing with a case of an employee who was dismissed from service on the basis of conviction for a criminal offence. After observing that the competent authority did possess the power to make an order of punishment under Clause (a) of proviso of Article 311(2) of the Constitution, the Apex Court further observed :—

> "But that power like every other power, has to be exercised fairly, justly and reasonably. The right to impose penalty carries with it the duty to act justly."

(62) In *Ranjit Thakur* v. *Union of India* (48), as well as in *Sardar Singh* v. *Union of India* (49), their Lordships of the Supreme Court applied the principle of proportionality even in the cases of members of Armed Forces and declared the orders of punishment to be arbitrary on the ground that the punishment was highly disproportionate. Some of the observations made in *Ranjit Thakur's* case are extremely relevant in the context and therefore, it will be useful to refer to them. These are :—

> "The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court-martial. But the sentence has to suit the offence and the offender.

(46) 1985-II L.L.J. 206.
(47) 1985-II L.L.J. 184.
(48) 1988-I L.L.J. 256.
(49) A.I.R. 1992 S.C. 417.

> It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court-martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review."

(63) Although from the two decisions of the Supreme Court in *Union of India* v. *Parmanand* (50), and in *State Bank of India* v. *Samertnder Kumar* (51), some doubts were created about the powers of the High Courts etc. to interfere with the punshment awarded by the employer to the employees, the position has been clarified in a recent decision in *B. C. Chaturvedi* v. *Union of India* (52), wherein the Supreme Court has held :—

> "that the High Couts etc. do possess with the power to interfere with the punishment but this power should be exercised with care and circumspection."

(64) It is, thus, clear that a civil servant or an employee of a statutory body or agency or instrumentality of the State can challenge the termination of his service by directly approaching the High Court or Civil Court. The Court cannot only declare the termination invalid on the ground of violation of the provisions of law or procedure established by law, but, can in an appropriate case interfere with the quantum of punishment awarded by the employer. If this be the position regarding a civil servant or an employee of an agency or instrumentality of the State in whose favour declaration of invalidity regarding termination of the service can be granted there is no reason or justification to accept a proposition of law which would deprive a workman of his right to seek remedy against the wrongful action taken by the employer. There does not appear to be any ground to differentiate cases of first category of employees namely, civil servants etc. and the second category of

(50) A.I.R. 1989 S.C. 1185.
(51) J.T. 1994 (1) S.C. 217.
(52) J.T. 1995 (8) S.C. 65.

employees i.e. the workmen on the issue to their entitlement to seek remedy against wrong done to them because all of them have been treated at par in so far as the Court's power to grant a declaration of nullify as regards the termination of their services is concerned. It is also necessary to bear in mind that in a recent decision i.e. *Rajasthan State Road Transport Corporation* v. *Krishan Kant* (53), their Lordships of the Supreme Court have, while commenting upon the power of the Government to make or not to make reference of the dispute, observed that this power is to be exercised by the Government to factuate the object of the enactment and the rule is to make a reference except where the dispute raised is totally frivolous on the face of it. Their Lordships have issued a command to the Parliament and the State Legislatures to make provision in order to enable the workmen to approach the Labour Court/Industrial Tribunal directly without reference by the Government in the cases covered by Section 2-A of the Act. This is another reason why it should be held that the Government cannot deprive a workman of his remedy under the Act by refusing reference.

(65) From the above referred decisions of the Supreme Court and of this Court, the following propositions emerge :—

(1) While exercising power under Section 10 read with Section 12 of the Act, the power of the appropriate Government is administrative and not judicial or *quasi judicial.*

(2) In exercising the power, the Government is only required to examine whether an industrial dispute and exists or is apprehended. For this purpose, the Government can *prima facie* examine the matter to find out whether a dispute exists or not.

(3) The Government can refuse to make a reference only if it finds that the dispute sought to be raised is frivolous or vexatious or that the dispute sought to be raised, if referred for adjudication, will have grave adverse consequences on the entire industry in the region.

(4) In the garb of examination of *prima facie* issue of existence or apprehension of the dispute, the Government cannot

(53) 1995 (4) R.S.J. 374.

delve into merits of the dispute and make can adjudication of the merits or demerits of the action of the employer. The Government cannot usurp the jurisdiction of the Labour Court/Industrial Tribunal to adjudicate the dispute.

(5) In cases of termination of the services of the workman on the basis of an enquiry by the employer, the Government cannot decline to make reference on the ground that a proper domestic/departmental enquiry has been made by the employer or that the charge has been proved or that the allegation found proved is serious in nature or that the punishment awarded to the workman is just and proper. The Government also cannot refuse to make reference on the ground that the action taken by the employer does not suffer from lack of *bona fides* or that the workman is guilty of a grave misconduct. All these matters lie in the exclusive doman of the Labour Courts/ Industrial Tribunals which can exercise their power under Section 11-A of the Act as interpreted in *Workmen of M/s Firestone Tyre and Rubber Co.* v. *The Management* (supra).

(6) The Government cannot refuse to make a reference merely because the employer pleads that the relations between the parties are strained. This is again an issue which has to be examined by the Labour Court/Industrial Tribunal while considering the question of relief to be granted to the workman in case the action of the employer is found to be illegal or unjustified.

(7) The Government is duty bound to apply its mind to the demand made by the workman, the reply of the employer and the failure report and is under a statutory obligation to record reasons and communicate the same to the parties where it declines to make reference and if the Court finds that the reasons are extraneous or irrelevant, the decisions of the Government will be liable to be nullified.

(66) Before parting with this aspect of the case, we may refer to the decision of a learned Single Judge of the Karnataka High Court in *Mypower Mazdoor Welfare Union* v. *Secretary and Commissioner* (supra) on which much reliance has been placed by the learned counsel for respondent No. 1 and the learned Deputy

Advocate General, Punjab. That was a case in which the employees' union raised a demand that on the basis of the qualifications possessed by the workmen they were entitled to be appointed on higher posts of Operative (General) and Operative (Works) and Junior Assistants and that the employer had unjustifiedly designated them as helpers. The management contested their demand on the ground that the employees were found unsuitable for the higher posts. The Government refused to make a reference by giving detailed reasons. A learned Single Judge of the Karnataka High Court, who dealt with the issue in a writ petition filed by the union, held as under :—

> "The law envisages that the Government should apply its mind to the nature of the so-called dispute and come to a conclusion on the question of appropriateness of making a reference. This is a delicate area insofar as the Courts have held that the Government is not to act as the adjudicating authority for purposes of examining the dispute in question insofar as it is performing administrative functions and the decision on the dispute being a judicial function has to be left to the Authority designated under the Industrial Disputes Act. This does not *ipso facto* mean that the Government is to act almost like a post office or a conveyor belt and that every case in which the conciliation has failed must be mechanically referred to the Court. The legislative intent behind routing the case through the Government at this point of time is in order to ascertain whether there is any scope left for referring the case further."

(67) A perusal of the judgment shows that the learned Single Judge himself examined the reasons assigned by the Government and found the reasons assigned by the Government quite relevant.

(68) Insofar as the observations made by the learned Single Judge on the scope of the power and function of the Government are concerned, we do not find anything which can support the case of the respondents. The observations made by the learned Single Judge will have to be read as confined to the facts of the case before him and have no bearing on the cases involving termination of services of the workmen as a measure of punishment. If those observations are to be applied to cases like the one before us, we would with great respect say that the observations of the learned Single Judge are contrary to the law laid down by the Supreme Court and do not represent the correct position of law.

(69) We may also notice a judgment of a learned Single Judge of this Court (N. K. Sodhi, J.) in *Sushila Mittal* v. *Labour Commissioner, Chandigarh and others* (54). That was a case in which the reference was declined by the Government on the ground that the petitioner was not a workman within the meaning of Section 2(s) of the Act. N. K. Sodhi, J. held that :

> "the Government was entilted to *prima facie* examine whether the dispute raised amounted to an industrial dispute or not."

The learned Judge further held that

> "the petitioner who was getting Rs. 2,850 and was discharging supervisory duties has rightly been held to be outside the definition of 'workman'."

Therefore, that position will have to be confined to the facts of that case. Some of the other observations made by Sodhi, J. regarding cases of resignation etc. can at the best be treated as obiter and cannot be treated as lying down a proposition of law that the Government is empowered to enter into the merit of the dispute raised by the parties and make an adjudication of the same.

(70) Now, we shall revert to the impugned order. That order has the following features :

(1) It simply conveys the decisions of the Government refusing to make the reference of the dispute on the ground that the workman has been dismissed on account of serious misconduct and after complying with the legal provisions.

(ii) The workman should have served a notice under Section 2-A instead of Section 2(k) of the Act.

(71) In our opinion, the order passed by the Labour Commissioner is based on a wholly extraneous reason, namely, that the dismissal of the workman is justified because he has been found guilty of serious misconduct. Thus, the Government has made an adjudication on the merits of the dispute raised by the union against the dismissal of the workman. The Government has recorded a

---

(54) (1994) 85 F.J.R. 183.

finding that the dismissal of the workman is justified. In this manner, the Government has usurped the jurisdiction which vests in the Labour Court/Industrial Tribunal to adjudicate upon a dispute under the Act, with particular reference of Section 11-A. The assertion of the Government that the notice should have been served under Section 2-A, instead of Section 2(k) of the Act is also besides the point. Reference to a particular provision does not have any bearing on the substance of the demand raised on behalf of the workman, namely, that the termination of his service is illegal and unjustified. Even if no reference to Section 2-A or Section 2(k) was made in the notice of demand, the Government could not refuse to refer the dispute only on that ground.

(72) We have also gone through the facts incorporated in Annexure RI to which our attention was drawn by the Deputy Advocate General, Punjab. In Annexure RI also the Additional Labour Commissioner has referred to the fact that some workers have assaulted officers of the management and charges have been proved as per the enquiry report. He then referred to the offer made by the employer and observed that the workman demanded Rs. one lac in the first instance but subsequently expressed his willingness to accept Rs. 60,000 and this was an indication of black-mailing by the workman and exploiting the management by dragging them into litigation. In our opinion, all these observations are irrelevant. If the employer made an offer for the purpose of settlement of the dispute and the workman made counter offer. it can, by no stretch of imagination, be termed as black-mailing or exploitation of the management by its workman. Apparently the Additional Commissioner has looked upon the facts with coloured glasses and his tilt towards the employer is writ large on the canvass of Annexure RI as also the contents of the reply filed by him. The tenor of the reply of respondent No. 2 sounds as if it was he who was contesting the writ petition on behalf of the employer. This is unfortunate. The lack of unbiased attitude of the authorities of the Labour Department leaves much to be desired.

(73) We shall now deal with two arguments of Shri Nehra. His first contention is that the demand under Section 2(k) of the Act cannot be made by a Union in an individual dispute. Learned counsel argued that where the dispute relates to termination of service of a workman by way of punishment, it is only he who can raise the dispute and not the Union. In our opinion, this contention of Shri Nehra is mis-conceived. Section 2-A of the Act does nothing

more than to declare an individual dispute to be an industrial dispute. It does not in any manner amend the definition of the term 'industrial dispute' set out in Section 2(k) of the Act. Both these provisions will have to be considered in tandem while determining whether a dispute is an industrial dispute or not. We are of opinion that after coming into force of Section 2-A, the dispute relating to an individual workman can be raised by the workman himself or by a registered Trade Union, recognised or un-recognised or by a substantial number of workmen and there is nothing in the Act, which indicates that a Union is debarred from raising a dispute relating to an individual workman.

(74) The second contention of Shri Nehra is that the Union could not file a writ petition through the workman with his designation as Joint Secretary. We find that initially a demand was raised by the Union on behalf of the workman and the employer did not object to the locus standi of the Union to raise the demand. The proceedings before the conciliation officer were also initiated at the instance of the Union. Even the communication containing refusal of the Government to refer the dispute was addressed to the workman through the Union. Therefore, even if at a subsequent point of time, the workman may not have remained the Joint Secretary of the Union, it cannot be said that the Union had not espoused the cause of the workman. In a case where a written notice of demand has been served upon the employer and the conciliation proceedings have been initiated at the behest of the Union, it cannot be held that no dispute has been raised in the eye of law.

(75) Before parting with the case, it is necessary to observe that in view of the various pronouncements of the Supreme Court including the recent one in the case of *Rajasthan State Road Transport Corporation* (supra) and of this Court, it is high-time for the Government officers to realise their obligation to make reference in the normal course and decline it only in the rarest cases. Secondly, we deem it proper to remind the officers that in future the Court will take a seriously adverse view of the inciduous habit developed by the officers of the Labour Departments of the Governments of Punjab and Haryana as well as the Union Territory of Chandigarh of ignoring the law laid down by the Supreme Court and this Court and of passing cryptic and whimsical orders of refusing reference of the disputes. By their actions, the officers of the Labour Departments encourage unnecessary litigation in the High Court. In defending such frivolous and at times vexatious orders, the Government is put to substantial expenditure. Therefore, in future the

concerned officers may be saddled with exemplary costs and expenses if the Court finds that the order has been passed ignoring the law laid down by the Supreme Court and by this Court.

(76) For the reasons mentioned above, the writ petition is allowed. Order Annexure P3 is quashed. The Government of Punjab in the Labour Department is directed to refer the dispute relating to the dismissal of the workman-Kuldeep Singh to an appropriate Court/Tribunal within a period of one month of the receipt of a certified copy of this order. We also direct that in all future cases, the officers of the Labour Departments of the Governments of Punjab and Haryana should strictly act in accordance with the law laid down by the Supreme Court and by this Court, which has been reiterated in this case. Copies of this order be sent to the Chief Secretaries of the Government of Punjab and Haryana and to the Secretaries, Labour Departments of the Governments of Punjab and Haryana, for issuing necessary guidelines to the officers of the Labour Departments, who are entrusted with the tasks of passing orders under Section 10 of the Act. The parties at present are left to bear their own costs.

R.N.R.

Before Hon'ble G. S. Singhvi & T. H. B. Chalapathi, JJ.

DHARAM SINGH & OTHERS,—*Petitioners.*

versus

STATE OF PUNJAB & OTHERS,—*Respondents.*

C.W.P. No. 17813 of 1995

15th December, 1995

Punjab Police Rules, 1934—*Rls.* 13.8 & 13.9—*Punjab Government circulars/memoes dated* 16*th October*, 1987 *and dated* 19*th November*, 1991—*Fortuitous en masse out of turn promotions of Head Constables effected by DIG to the post of ASI—DIG making such promotions after issuance of his own transfer orders but before handing over charge—New DIG on recommendations of DGP on reviewing promotions passing orders of reversion on the basis of inquiry report submitted by the IGP—Such promotions made in utter disregard of the rules and guidelines and based on extraneous reasons—Non-hearing*