machine on account of fluctuation in the exchange rate. The cost of the machine increased due to change in exchange rate only.

(23) This view finds support from the view taken by the other High Courts as discussed above.

(24) Question No. 3 in assessee's reference is answered in the affirmative i.e. in favour of the revenue and against the assessee.

R.N.R.

Before H.S. Brar, K.S. Kumaran & Swatanter Kumar, JJ

RADHEY SHYAM & ANOTHER.—*Petitioners*

versus

STATE OF HARYANA & ANOTHER.—*Respondents*

CWP No. 94 of 1993

24th November, 1997

Industrial Disputes Act, 1947—Ss.2-A, 10, 11-A and 12(5)—Reference of industrial disputes—Power of appropriate Government to make or decline reference is administrative in nature—Appropriate Government cannot usurp judicial function—only patently frivolous or clearly belated claims can be declined by the appropriate Government in exercise of its discretionary power—S. 11-A does not take away power of appropriate Government to refer or not to refer an industrial dispute for adjudication—Scope of reference, delineated.

(Ramphal v. State of Haryana, 1995 (1) RSJ 826 (D.B.), overruled)

Held that, (1) the appropriate Government can go into the merits of the dispute *prima facie* for the purpose of finding out whether an industrial dispute exists or is apprehended and whether the Government should make a reference or not.

(2) But in doing so, the appropriate Government cannot delve into the merits of the dispute and take upon itself the determination of the lis.

(3) If the claim is patently frivolous and vexatious then the appropriate Government may refuse to make the reference.

(4) In deciding whether to make a reference or not, the Government may take into consideration whether the impact of

the claim on the general relations between the employer and the employees in the region is likely to be adverse disturbing industrial harmony understood in its larger sense.

(5) While the appropriate Government can examine the patent frivolousness of the demands, it shall not itself adjudicate on the demands made by the workman, which should be left to the Labour Court/Tribunal concerned. The Government should be very slow to attempt an examination of the demand with a view to decline the reference.

(Para 39)

Further held, that we respectfully disagree with the findings of the Hon'ble Single Judge and the Hon'ble Judges of the Division Bench in case 'Ramphal *v.* State of Haryana' 1995(1) RSJ, 826, so far as they hold that by enacting Section 11-A, the Legislature has taken away the power of the State Government under Section 10 of the Act to refer an industrial dispute relating to the discharge or dismissal of a workman to a Labour Court/Tribunal or National Tribunal for adjudication. They are, thus, overruled to that extent.

(Para 63)

Further held, that the provisions of Section 11-A come to play only after the dispute is referred to by an appropriate Government u/s 10 to the Labour Court, Tribunal or National Tribunal for adjudication. But it cannot be held that by enacting Section 11-A, the legislature has taken away the power of the State Government u/s 10 of the Act to refer an industrial dispute relating to the discharge or dismissal of a workman to the Labour Court, Tribunal or the National Tribunal for adjudication. If it were the intention of the legislature to take away the powers of making reference u/s 10 by the Government then no body could stop them from providing such type of proviso in S. 10 itself which has not been so done and we are not ready to infer from the insertion of S. 11-A in the statute that Section 10 of the Act stands amended or repealed and particularly, as it has been referred to above provisions of Section 11-A come to play only after an industrial dispute is referred to the Labour Court/Tribunals u/s 10 of the Act.

(Para 64)

Further held, that an appropriate Government still has the power to refuse to refer an industrial dispute to the Labour Court or the Tribunal, subject, of-course, to the limitations put on it. Both the judgments of the learned Division Bench and the Single Bench so far as they have held that by enacting S. 11-A the legislature has taken away the power of the State Government u/s 10 of the Act to refer an industrial dispute relating to the discharge or

dismissal of a workman to the Labour Court, Tribunal or the National Tribunal for adjudication are over-ruled.

(Para 65)

Further held, that insertion of S. 11-A has not taken away the powers of the appropriate Government to refer or not to refer an industrial dispute to the Labour Court or the Tribunals as the case may be.

(Para 67)

Further held, that the only way of getting a reference made is by resorting to the power given u/s 10(1). Section 11-A deals only with the powers of the adjudicating authority deciding the dispute on a reference made to it u/s 10.

(Para 68)

Further held, that the appropriate Government is not precluded from considering the *prima facie* merits of the dispute and to refuse to refer the dispute u/s 10 read with S. 12(5), if the claim made is patently frivolous or is clearly belated even after the insertion of S. 2-A and S. 11-A in the Act.

(Para 70)

Further held, that even combined operation of Section 2-A and 11-A of the Act does not have the effect of taking away the power of the Government to make a reference or to refuse a reference so long as there is no amendment to the provisions of either Section 2-A or Section 10 of the Act.

(Para 76)

Gobind Goel Advocate, *for the petitioners*

R.S. Chahar and P.K. Mutneja Addl. A.G. (Haryana), *for respondent No. 1*

S.S. Saini Advoicate, *for respondent No. 2.*

JUDGMENT

Harphul Singh Brar, J

(1) The petitioners in this writ petition under Article 226/227 of the Constitution of India have prayed for issuance of an appropriate writ, order or direction in the nature of *Certiorari* quashing the impugned orders Annexures P-1, P-2 and P-8 annexed

with this writ petition whereby their demand for reference of the matter to the labour Court has been rejected and the appropriate Government has refused to reconsider the matter. They have further sought an appropriate writ, order or direction in the nature of *Mandamus* direcing the respondent State of Haryana to refer the dispute regarding dismissal of their service to the Labour Court for adjudication in accordance with law or any other such writ, order or direction as may be deemed fit and appropriate in the circumstances of the case.

(2) Brief facts as stated in the petition are that petitioner No. 1, Radhey Shyam, was appointed on 11th December, 1966 and was working as PVC Operator while petitioner No. 2, Jaswant Singh, was working as Operator from 1st November, 1970. It is further stated in the petition that while there were some differences between the employer and the workmen with respect to certain allowance, the respondent-management with a view to victimise the workers resorted to illegal and unjustified dismissal vide identical orders passed in the case of both the petitioners on 7th November, 1990, copy of the order addressed to the petitioner No. 1 is annexed as Annexure P-3 with the petition.

(3) It is then stated in the petition that a perusal of the order shows that the said order purports to be chargesheet-cum-dismissal order and on the face of it, reveals that no enquiry was held before passing the order of dismissal. To seek redressal of their grievances against the illegal and unjustified dismissal without holding an enquiry, the petitioners served demand notice on 11th October, 1997, copies of which are annexed as Annexures P-5 and P-6 with the petition respectively, wherein it is stated that the management had been troubling the office bearers and active workers of their union, with a view to weaken the negotiating capability of the union. The management also indulged into the registration and filing of cases against the employees including the petitioners so as to pressurise them to resign from service. Ultimately, the management has dismissed the petitioners-employees illegally and without holding an enquiry which is unjustified and unsustainable.

(4) After failure of conciliation proceedings, the State Government rejected the demand notice vide impugned orders Annexure P-1 and P-2 attached with this petition, by holding that since the dismissal of the petitioners was based on misconduct and their reinstatement was not in the interest of industrial peace and the matter did not deserve to be referred to the Labour Court.

(5) The petitioners approached the Government for reconsideration of the rejection order by making identical representations dated the 17th August, 1991.

(6) The representation of the petitioners was rejected vide a common order dated the 30th December, 1991 by the Joint Secretary, Government of Haryana which is annexed as Annexure P-8 with the petition.

(7) The petitioners have impugned these orders i.e. Annexures P-1, P-2 and P-8 on the following grounds :—

(i) The appropriate Government exercising powers under section 10 (1) (c) of the Industrial Disputes Act, 1947 (hereinafter called as 'the Act') is an administrative authority. The appropriate Government did not have any judicial power. It was not within the purview of the State Government to delve into the merits of the dispute or to give findings as to whether dismissal of the employees is legal or not. The appropriate Government has, thus, exceeded its jurisdiction by giving its findings that the dismissal of the petitioners being based on mis-conduct could not be a subject matter of the industrial dispute. Such a finding is wholly incompetent and without jurisdiction. The petitioners have relied upon the decisions of the Supreme Court in AIR 1985. SC. 960 and AIR 1989 SC 1565.

(ii) The orders passed by the appropriate Government are perverse and without application of mind inasmuch as it has not been adverted to that the dismissal of the petitioners has been made without holding any enquiry. The allegations made by the management have not been proved before any judicial or quashi judicial authority or even before the adjudicatory authority. In such circumstances, it was incumbent upon the State Government to refer the matter for adjudication to the Labour Court.

(8) Written statement has been filed by Shri Chet Ram, Joint Labour Commissioner, Haryana on behalf of respondent No. 1. In reply to para No. 2 of the petition, it has been submitted by respondent No. 1 that as per the comments/documents supplied by the representative of the management, it was found that the services of the petitioners were terminated due to creation of violence in the factory. The petitioners along with other co-workers

indulged in acts of instigation and incitement and created violence in the factory premises and physically assaulted/beaten up the factory Manager Shri Avtar Singh as a result of which Avtar Singh received injuries and a case under section 323, 325, 148 and 149 was registered against them but the representative of the petitioners failed to submit any documentary proof that the charges levelled against them were baseless and unfounded. It has further been reiterated in the reply which reads as under :—

> "It has been held by the Hon'ble Supreme Court of India in a case reported as AIR 1964 SC 1617 that likewise if impact of the claim are general relationship between the employer and employees in the region is likely to be adverse, the appropriate Government may take that into account in deciding the reference. The same view has also been taken by the Hon'ble Supreme Court of India in a case reported as 1975 LLJ (II) 418. It has been well settled by the Hon'ble Supreme Court of India as well as various High Courts in cases reported as AIR 1964 SC 1617, LIC 1976 (SC) 1028, LIC 1978 (Gujrat) 1513, LIC 1979 page 1341, LLJ (I) 1985 (SC) 519, LLJ (1) 1986 (Bombay) 329 and 1988 LLJ (1) 177 that appropriate Government is competent to examine *prime facie* merits of the case and if after such an examination it comes to the conclusion that the dispute is not worth reference, it can rightly reject the same on merits and this action of the appropriate Government cannot be said to be foreign while dealing with the dispute under section 10 (1) of the Industrial Disputes Act. In the present case, it was established that the petitioners along with co-workers have created violence in the factory and beaten up the factory Manager Avtar Singh on 12th October, 1990 and as a result of this Sh. Avtar Singh received injuries consisting of grievous hurt. As such the answering respondent has rightly rejected the demand notice of the petitioners in the interest of industrial peace and harmony in the factory".

(9) In reply to para No. 5 of the writ petition, it has been submitted that as per the report of the Conciliation Officer/Deputy Labour Commissioner the services of the petitioners were terminated by the management because the petitioners along with co-workers had created the violence in the factory premises and physically assaulted/beaten up the factory Manager Avtar Singh

on 12th December, 1990 as a result of which Avtar Singh received grievous injuries and as such the answering respondent keeping in view the industrial peace and harmony had rightly rejected the demand notice of the petitioners.

(10) The contents of para No. 10 of the writ petition have been denied as wrong. In the end, it has been submitted that no point of law is involved in this petition and in view of the averments made in the written statement, the petition is liable to be dismissed.

(11) Written statement has also been filed on behalf of respondent No. 2 separately. Reply has been given in similar terms as has been submitted by respondent No. 1 and ultimately a prayer for dismissal of the writ petition has been made.

(12) It is not necessary to refer both the orders of the Government in refusing to refer the matter in the case of the petitioners to the Labour Court and the dismissal of the appeal of the petitioners for reconsideration of the orders of the State Government but we consider it appropriate to reproduce hereunder an order passed in the case of petitioner No. 1 Radhey Shyam which is annexed as Annexure P-1 with the petition and which is similar to the other order i.e. Annexure P-2 conveyed to petitioner No. 2 Jaswant Singh.

"From

Joint Secretary;
Haryana Government,
Labour Department,

To

Shri Radhey Shyam,
Bhartiya Mazdoor Sangh Karliya,
Vishkarma Bhawan, Neelak Bata Road,
Faridabad.

Memo. No. I.D./43—91/26868 dated the 23rd July, 1991.

Sub : Demand notice dated 10th November, 1990 which is against M/s Skytone Electricals (India), 42-43, Industrial Area, Faridabad.

On the subject cited above, you are informed that the Government do not consider your case fit for reference to the Labour Court, because the enquiries reveal that your services were

dismissed on account of grave misconduct and your reinstatement is not considered proper in the interest of Industrial peace.

(Sd)...,

for Joint Secretary,
Haryana Government Labour Department."

(13) A Division Bench of this Court *vide* its order dated 6th May, 1993 ordered that the matter be placed before the Hon'ble Chief Justice to pass appropriate orders for constituting a Larger Bench. We would like to re-produce the reference order of the Division Bench dated 6th May, 1993 which reads as under :

"Present :

Mr. Govind Goel, Advocate.

Mr. D.D. Vasudeva, DAG (H).

Mr. S.S. Saini, Advocate.

Learned Counsel for the petitioners submitted that the appropriate authority can neither go into the merits of the dispute nor determine the nature of misconduct nor whether the reference of the dispute would be in the interest of industrial peace or not. In support of his contentions he placed reliance on *The M.P. Irrigation Karmchari Sangh* v. *State of M.P. and another,* AIR 1985 SC. 860 and *Telco Convoy Drivers Mazdoor Sangh and another* v. *State of Bihar and others* AIR 1989 SC. 1565. On behalf of the respondents it is submitted that competent authority for reference of a dispute has to apply its mind and has to come to a conclusion that there is an industrial dispute and further find that it is a fit case or is in the interest of industrial peace that the dispute be referred to the Labour Court. The appropriate authority can go into the factual position with respect to the dispute. Learned Counsel for the respondents relied upon CWP No. 998 of 1993 decided on 21st January, 1993.

Since the question involved is of public importance and is likely to arise in large number of cases, the matter is required to be examined by a larger Bench. Accordingly, the writ petition is admitted to Full Bench.

The matter be placed before Hon'ble the Chief Justice to pass appropriate orders for constituting a larger Bench".

(14) This is how this writ petition has been admitted to a Full Bench and has been placed before us for final decision.

(15) No specific questions of law, though, have been referred to us for adjudication but after going through the record of the case and after hearing the learned counsel for the parties, we have decided to pronounce upon the following broad propositions of law upon which both the counsel for the petitioners as well as the respondents have argued at strength :

"Whether to exercise power under section 10 read with section 12 of the Act, the appropriate Government is entitled to examine the merits of the case and form an opinion as to the existence or apprehension of an industrial dispute and reach a satisfaction whether there is a case for reference and it is expedient to make it ?

What is the meaning and effect of the words mentioned in section 2-A of the Act saying that where any employer discharges, dismisses, retrences or otherwise terminates the services of an individual workman any dispute or difference between that workman and his employer connected with or arising out of such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute, notwithstanding that no other workman or any union of workmen with a party to the dispute ?

Has the language used in Section 2-A of the Act makes it obligatory for the appropriate Government to refer all disputes or differences between the workmen and their employers connected with or arising out of their discharge, dismissal, retrenchment or termination under Section 10 of the Act to the Tribunal or the Labour Court ?

What is the effect of Section 11-A on the powers of the appropriate Government to refer an industrial dispute relating to discharge or dismissal of a workman under Section 10 of the Act, particularly, when under Section 11-A powers have been conferred on the Labour Court,

Tribunal or the National Tribunal as the case may be 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 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 ?

What is the cumulative effect of the newly added Sections 2-A and 11-A of the Industrial Disputes Act on the power of the Government to make a reference of the industrial dispute to the appropriate authority for adjudication ?

Whether the observations of the Supreme Court in *Bombay Union of Journalists and others* v. *State of Bombay and another, AIR. 1964 SC 1617* wherein it has been ruled that the appropriate Government is not precluded from considering the *prima facie* 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 are still applicable after the insertion of Sections 2A and 11A in the Act ?

Whether it is necessary by the appropriate Government tc give reasons for not referring the dispute under section 10 of the Act to a Labour Court or the Tribunal etc. ?

(16) Before we proceed to examine the matter it shall be necessary to refer to the relevant provisions of Sections 2(k), 2A, 10, 11A and 12 of the Act which are re-produced hereunder :

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

2A.— Dismissal etc. of an individual workman to be deemed to be an industrial dispute..... Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding

that no other workman nor any union of workmen is a party to the dispute.

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

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

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

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

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

Provided that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under clause (c) :

Provided further that where the dispute relates to a public utility service and a notice under section 22 has been given, the appropriate Government shall, unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make a reference under this 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 the relation to which the Central Government is the appropriate Government, it shall be competent for the Government to refer the dispute to a Labour Court or an Industrial Tribunal, as the case may be, constituted by the State Government.

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

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

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

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

Provided further that where the parties to an industrial dispute apply in the prescribed manner, whether jointly or separately, to the Labour Court, 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 expedient to extend such period, he may for reasons to be recorded in writing, extend such period by such further period as he may think fit :

Provided also that no proceedings before a Labour Court, Tribunal or National Tribunal shall lapse merely on the

ground that any period specified under this sub-section had expired without such proceedings being completed.

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

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

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

(6) Whether any reference has been made under sub-section (1A) to a National Tribunal then notwithstanding anything contained in this Act, no Labour Court or Tribunal shall have jurisdiction to *adjudicata* 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 disputes 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, 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 Court, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.—Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National

Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require :

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

12. Duties of conciliation officers.—"(1) Where any 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 right settlement thereof and may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

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

(4) If no such settlement is arrived at, the conciliation officer shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the steps taken by him for

ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances and the reasons on account of which, in his opinion, a settlement could not be arrived at.

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

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

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

(17) Section 10 is of basic importance in the scheme of the Act. Its operative Part sub-section (1) provides that where the appropriate Government is of opinion that if any industrial dispute either exists or is apprehended it may at any time by order in writing refer the dispute to one or other of the authorities mentioned in clause (a) and (b). Clause (a) empowers the appropriate Government to refer the dispute to the Board for promoting settlements and clause (b) empowers the appropriate Government to refer any matter appearing to be connected or relevant to the dispute to a Court of enquiry. The court of enquiry as provided in Section 14 of the Act shall enquire into the matter referred to it and report thereon. Clause (c) of section 10 empowers the appropriate Government to refer the dispute or any matter appearing to be connected with or relevant to the dispute to the Labour Court. The jurisdiction of the Labour Court is confined to matters specified in the second Schedule appended to the Act. Clause (d) empowers the appropriate Government to refer the dispute or any matter connected with, or relevant to the dispute to a Tribunal for adjudication. The scope of jurisdiction of a Tribunal is larger than that of Labour Court in as much as the matters whether they relate to second or third Schedule fall within the

purview of its jurisdiction.

(18) Two provisos are appended to sub-section (1). First proviso enacts that if the dispute relates to third Schedule this also may, in the discretion of the Government, be referred to the Labour Court provided that the workmen affected by the dispute are not likely to exceed one hundred. The second proviso deals with disputes relating to public utility service, and it provides that where a notice under section 22 of the Act has been given in respect of such a class of dispute, the appropriate Government shall unless it considers that the notice has been frivolous or vexatiously given or that it would be in-expedient so to do, make a reference under this sub-section notwithstanding that any other proceedings under the Act in respect of the dispute may have commenced.

(19) Sub-section (1A) deals with disputes concerning industrial establishments situated in more than one State and of disputes involving national importance. This sub-section empowers the Central Government, irrespective of the fact whether it is the appropriate Government in regard to such dispute or not, to refer the dispute to the National Tribunal for adjudication. Sub-section (2) provides that when the parties to an industrial dispute apply in the prescribed manner, whether jointly or separately, for a reference of the dispute to the 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. Sub-section (2A) provides for the period within which the award shall be given by the Labour Court, Tribunal or National Tribunal. It is further provided in this sub-section 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.

(20) Sub-section (3) empowers the appropriate Government to prohibit the continuance of any strike or lock out in connection with a dispute which has been referred to the Board, Labour Court, Tribunal or National Tribunal. Sub-section (4) lays down the scope of adjudication of the Tribunal or the Labour Court. It provides that the jurisdiction of the Labour Court, Tribunal or the National Tribunal as the case may be would be confined to those points and matters in dispute specified by the order of reference or by a subsequent order and the matters incidental to the said dispute may also be taken into consideration.

(21) Sub-section (5) empowers the appropriate Government to add to the reference other establishments or classes of establishments of a similar nature if it is satisfied that these establishments are likely to be interested or affected by such dispute either at the time when the reference is made or during the pendency of such proceedings but in every case such addition can be made before the award is made. Sub-section (6) provides that upon a dispute being referred to the National Tribunal any proceeding so far as it relates to matter referred to above shall be deemed to be quashed. It also prohibits any Government to refer any matter in dispute covered by sub-section (1A) under adjudication before the Tribunal to any labour Court or Industrial Tribunal. Tribunal includes any Court or Tribunal or other authority constituted under law relating to investigation and settlement of industrial disputes in force in any State. Sub-section (7) clarifies the position that where a dispute is referred to the National Tribunal, the Central Government with reference to Sections 15, 17 19, 33-A, 33-B and 36-A shall be construed to the appropriate Government unless otherwise expressly provided.

(22) Section 12 of the Act prescribes the duties of conciliation Officers. It is provided under sub-section (1) of Section 12 that where an industrial dispute exists or is apprehended, the Conciliation Officer may, or where the disputes relate to public utility service and a notice under section 22 has been given shall hold conciliation proceedings in the prescribed manner. The effect of section 12(1) is that where as in regard to an industrial dispute not relating to public utility service, the conciliation Officer is given the discretion either to hold conciliation proceedings or not, in regard to a dispute in respect of public utility service, where notice has been given, he has no discretion but to hold conciliation proceedings. sub-section (2) of Section 12 makes it obligatory on the part of the Conciliation Officer to investigate the dispute without delay with the object of bringing about settlement, and during the course of his investigation he may examine all matters affecting the merits and the right settlement of the dispute and of all such things he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement. If the Conciliation Officer succeeds in his mediation efforts then section 12(3) requires him to make a report of such settlement together with memorandum of settlement signed by the parties to the dispute and send it to the appropriate Government or an officer authorised in this behalf by the appropriate Government. If the conciliation Officer is not succeeded

in his efforts at conciliation, he has to send his report to the appropriate Government under section 12(4). This report must set-forth the steps taken by the officer for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof together with a full statement of full facts and circumstances and reasons on account of which in his opinion the settlement could not be arrived at Sub-section (5) of Section 12 provides that if on consideration of the report referred to in sub-section (4) the appropriate Government is satisfied that there is a case for reference to the 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 reason therefor. Sub-section (6) of Section 12 provides that 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. It is further provided in this-sub section that subject to the approval of the conciliation officer time for submission of the report may be extended by such period as may be agreed upon in writing by all the parties to the dispute.

(23) The ambit, scope and scheme of Sections 10 and 12 of the Act vis-a-vis the powers of the appropriate Government under Section 10 to refer or not to refer an industrial dispute to the Labour Court or Tribunal has been examined by the Supreme Court and the High Courts in various cases.

(24) Let us first note down the case of *State of Madras* Vs *C.P. Sarathy* (1) a constitution Bench of the Supreme Court wherein it has been observed as under :—

> "But, it must be remembered 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 to the discharge of its function does not make it any the less administrative in character. The Court cannot, therefore, canvass the order of reference closely to see if there was any material before the Government to support its conclusion, as if it was a judicial or quasi-judicial determination.

Explaining the ratio of the decision in Sarathy's case, in

1. 1953 SCR 334 = (AIR 1953 SC 53)

Western India Match co. Ltd. V Western India Match Co. Workers Union (1970)3 SCR 370 : (AIR 1970 SC 1205) it was observed as under (at page 1209) :

> "In the State of Madras V C.P. Sarathy, this Court held on construction of Section 10(1) of the Central Act that the function of the appropriate Government thereunder is an administrative function. It was so held presumably because the Government cannot go *into the merits of the dispute its function being only to refer such a dispute for adjudication so that* the industrial relations between the employer and his employees may not continue to remain disturbed and the dispute may be resolved through a judicial process as speedily as possible." (Emphasis supplied).

After referring to the earlier decisions on the subject in Shambu Nath Goyal *v.* Bank "of Baroda, Jullundur (1978) 2 SCR 793 : (AIR 1978 SC 1088) it was held that" in making a reference under section 10(1), the appropriate Government performs 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 to the discharge of its function does not make it any the less administrative in character." Thus, there is a considerable body of judicial opinion that while exercising power of making a reference under Section 10(1), the appropriate Government performs an administrative act and not a judicial or quasi-judicial act."

(25) The scope and scheme of Section 10 and 12 of the Act were also examined by the Supreme Court in *State of Bombay* V *K.P. Krishnan & ors.* (2). It was held therein as under :

> "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

2. AIR 1960 SC 1223

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 disputes in regard to non-public utility "services even when Government is acting under Section 12(5), so too the provisions of the second provison 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)."

(26) It was further held by the Supreme Court that "whether Section 12(5) is construed as making it obligatory on the Government to make a reference when it is satisfied that there is a case for reference or as only conferring a discretion, if in refusing to make a reference Government is influenced by reasons which are wholly extraneous or irrelevant or which are not germane, ther its decision may be open to challenge in a court of law. though considerations of expediency cannot be excluded when Government considers whether or not it should exercise its power to make a reference it would not be open to the Government to introduce and rely upon wholly irrelevant or extraneous considerations under the guise of expediency."

(27) Again in *Bombay Union of Journalists and others* V *The State of Bombay and another,* (3) which has been relied upon by both the parties, the relevant scheme of the Act as disclosed by Section 12 viz. a viz. the powers of the appropriate Government under Section 10 was discussed. It was held therein as under :—

"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

3. AIR 1964 SC 1617.

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)."

(28) However, it was further held by the Supreme Court which also needs re-production and it is re-produced hereunder :—

"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 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)."

(29) A reference to a Supreme Court ruling in *The M.P. Irrigation karamchari Sangh* V *State of M.P. and another* (4) is also very much relevant. In an appeal before the Supreme Court it was contended that the High Court had failed to properly delineate the jurisdiction of the Government under Section 10 read with Section 12(5) of the Act. It was contended before the Supreme court that question raised by the appellant had to be decided by the Tribunal on evidence to be adduced before it and it could not be decided by the Government on a *prima facie* examination of the facts of the case. This submission was met with the plea that the Government had in appropriate cases at least a limited jurisdiction to consider on a *prima facie* examination of the merits of the demands, whether they merited a reference or not.

4. AIR 1985 SC 860

(30) After considering the rival contentions of the parties the Hon'ble Supreme Court observed as under :

> "....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 or not."

(31) It was then held by the Supreme Court as under :

> "We find that the approach made by the High Court was wrong and the reliance on the above passage on the facts of this case, is misplaced and unsupportable. This Court had made it clear in the same Judgment in the sentence preceding the passage quoted above that it was the province of the Industrial Tribunal to decide the disputed questions of fact.....similarly, on disputed questions of fact, the appropriate Government cannot purport to reach final conclusions, for that again would be the province of the Industrial Tribunal....."

(32) It was then finally held by the Supreme Court as under

> "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 workmen 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 usurption 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 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."

(33) The observations of the Supreme Court in *Ram Avtar Sharma and others* V *State of Haryana & Another.* (5) that making or refusing to make a reference under section 10(1), the Government cannot delve into the merits of the dispute also needs attention. The relevant portion of the judgment reads as under :

"Now if the Government performs an administrative act while either making or refusing to make a reference under Section 10(1), it cannot delve into the merits of the dispute and take upon itself the determination of lis. That would certainly be in excess of the power conferred by Section 10. Section 10 requires the appropriate Government to be satisfied that an industrial dispute exists or is apprehended. This may permit the appropriate Government to determine*prima facie* whether an industrial dispute exists or the claim is frivolous or bogus or put forth for extraneous and irrelevant reasons not for justice or industrial peace and harmony. Every administrative determination must be based on grounds relevant and germane to the exercise of power. If the administrative determination is based on grounds irrelevant, extraneous or not germane to the exercise of power it is liable to be questioned in exercise of the power of judicial review."

(34) The relevant portion of the judgment of the Supreme

5. AIR 1985 SC 915

Court in *Workmen of Syndicate Bank, Madras* v. *Government of India and another* (6) which is also very much relevant for throwing light on the powers of the Government under Section 10 of the Act is re-produced hereunder :

> "We are of the view that the ground on which the Government of India has refused to refer the dispute relating to the imposition of punishment of stoppage of three increments of Shri Murugavelu to the Industrial Tribunal is not a valid ground. It would not be right for the Government of India to refuse to make the reference on the ground that the charges of misconduct against the worker were proved during a duly constituted departmental enquiry and penalty was imposed on the worker after following the required procedure. 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. The management has simply to show that it has held a proper inquiry after complying with the requisite procedure and that would be enough to defeat the worker's claim for adjudication. Such a situation cannot be countenanced by law. We must, therefore, set aside the order dated 2nd April, 1981 passed by the Government of India declining to make a reference of the industrial dispute for adjudication to the Industrial Tribunal."

(35) Again the observations of the Supreme Court in *Telco Convoy Drivers Mazdoor Sangh and another* v. *State of Bihar and others* (7) which are relevant for the proposition under consideration are re-produced as under :

> "While exercising power under Section 10(1) the function of the appropriate Government is an administrative function and not a judicial or quasi judicial function, and that in performing this administrative function the

6. AIR 1985 SC 1667
7. AIR 1989 SC 1565

Government cannot delve into the merits of the dispute and take upon itself the determination of the lis, which would certainly be in excess of the power conferred on it by section 10. It is true that in considering the question of making a reference under section 10(1), the Government is entitled to form an opinion as to whether an industrial dispute exists or is apprehended". But the 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."

(36) In *Dharam Pal* v. *State of Haryana and another* (8), a Division Bench of this court in which I was a party along with A.P. Chowdhri, J, it was held that :

"Whereas the appropriate Government is not required to act as a post office, it is at the same time equally settled that the State Government cannot delve into the merits of the dispute and where it is found or is not disputed, as in the present case, that a dispute exists or is apprehended, the State Government is required to make a reference, unless the reference is not considered necessary on the ground that it is patently frivolous or clearly belated or that making the reference will have an adverse impact on the general relations between the employer and the employees in the region etc."

(37) In *Mohd. Ahmed Livas* v. *Haryana Tourism Corporation* (9) A division Bench of this court (A.L. Bahri and N.K. Kapoor, JJ) while directing the respondent Government of Haryana to refer the dispute for adjudication before an appropriate Labour Court held that :

"Government has to consider the matter as to whether a reference sought is to be granted or declined, i.e. it has to record reasons for not making the reference while deciding the reference, the appropriate Government cannot decide the disputed question of fact. All that is envisaged by Section 10(1) is as to whether the dispute raised *prima facie* merits adjudication or the same is patently frivolous or clearly belated."

(38) In *Punjab Anand Lamp Employees Union* v. *M/s Punjab Anand Lamp Industry Ltd. and another,* (10) A division Bench of

8. 1994 (4) RSJ 178
9. 1995 (2) RSJ 299
10. 1996 (4) RSJ 250

this Court (G.S. Singhvi and S.S. Sudhalkar, JJ), after considering the various judgments of the Supreme Court and the High Court held as under :

"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 exercise 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 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 domain of the Labour Courts/Industrial Tribunals which can exercise their power under Section 11-A of the Act as interpreted in Workman 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."

(39) On the analysis of the entire matter, our answer to the first question is as hereunder (however, subject to our answer to the other questions) which have been enumerated above.

(1) The appropriate Government can go into the merits of the dispute *prima facie* for the purpose of finding out whether an industrial dispute exists or is apprehended and whether the Government should make a reference or not.

(2) But in doing so, the appropriate Government cannot delve into the merits of the dispute and take upon itself the determination of the lis.

(3) If the claim is patently frivolous and vexatious then the appropriate Government may refuse to make the reference.

(4) In deciding whether to make a reference or not, the Government may take into consideration whether the impact of the claim on the general relations between the employer and the employees in the region is likely to be adverse disturbing industrial harmony understood in its larger sense.

(5) While the appropriate Government can examine the patent frivolousness of the demands, it shall not itself adjudicate on the demands made by the workman, which should be left to the Labour Court/Tribunal concerned.

The Government should be very slow to attempt an examination of the demand with a view to decline the reference.

(40) Let us now analyse the ambit and scope of Sections 2-A in particular after its insertion in the Act w.e.f. 1st December, 1965 and its impact on the extent of the powers of the appropriate Government to go into the existence or apprehension of an industrial dispute and its further reference under section 10 of the Act.

(41) Industrial dispute is defined in Section 2K to mean any dispute or difference (i) between the employers and employers; (ii) between employers and workmen, and (iii) between workmen and workmen, provided such dispute is connected with the employment, no employment, terms of employment or conditions of labour of any person. In construing the scope of an industrial dispute it was very well settled by several decisions of the Supreme Court that a dispute between the employer and an individual workman did not constitute an industrial dispute unless the cause of the workman was espoused by a body of workmen. (See *Bombay Union of Journalists* v. *The HINDU* (11), and *Workmen of M/s Dharam Pal Prem Chand (Saugandhi)* v. *M/S Dharam Pal Prem Chand (Saugandhi)* (12). In view of various decisions of the Supreme Court, cases of individual dismissals and discharges could not be taken up for conciliation or arbitration or referred to adjudication under the Industrial Disputes Act, unless they were sponsored by a union or a number of workmen.

(42) It is precisely for this reason that the Parliament amended the Act by the Industrial Disputes (Amendment) Act, 1965 which was brought into force w.e.f. 1st December, 1965. By this amendment, Section 2-A was engrafted in the Act. As has already been reproduced above, Section 2-A says "where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman or any union of workmen is a party to the dispute." By virtue of this provision, the scope of the concept of industrial dispute has been widened. Though it is limited to a dispute or a difference

11. AIR 1963 SC 318
12. AIR 1966 SC 182

between the workman and his employer connected with and arising out of his discharge, dismissal, retrenchment or termination notwithstanding that no other workman or any union of workmen is a party to the dispute. It does not cover every type of dispute between an individual workman and employer. The newly enacted Section 2-A enables the individual worker to raise industrial dispute notwithstanding that no other workman or any union of workmen is a party to the dispute or differences connected with or arising out of discharge, dismissal, retrenchment or otherwise termination of service of an individual workman. This section applies only to the disputes and the differences relating to discharge, dismissal, retrenchment or termination of service of an individual workman and not to other kind of disputes such as bonus, wages. leave facilities etc. This section does not alter the definition of industrial dispute given in Section 2K but on the contrary the object is to widen the scope and the ambit of existing provision found in section 2K of the Act.

(43) By introducing a legal fiction in inserting the deeming provision that the dispute of an individual workman connected with or arising out of his discharge, dismissal, retrenchment or otherwise termination of his services by his employer will constitute an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(44) Let us now note down a few relevant authorities.

(45) In *Ram Avtar Sharma and others* v. *State of Haryana and another* (13), the Supreme Court has thrown light on the scope and effect of Sections 2-A and 11-A on the power of the appropriate Government under section 10 of the Act. The relevant observations are reproduced hereunder :

> "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 11A in the Industrial Disputes (Amendment Act, 1971 with effect from December 15, 1971. It confers power on the Tribunal not only to examine the order of discharge or

13. AIR 1985 SC 915

dismissal on merits as also to determine whether the punishment was commensurate with the gravity of the misconduct charged. In other words, Section 11A confers power on the Tribunal/Labour Court to examine the case of the workman whose service has been terminated either by discharge 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 2A 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 workmen 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 tentamount to adjudication which is impermissible. That is the function of the Tribunal and the Government cannot arrogate to itself that function. Therefore, if 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."

(46) In The *Rajasthan State Road Corporation and another* v. *Krishna Kant etc.*(14), it has been held that by virtue of Section 2-A the scope of the concept of industrial dispute has been widened.

14. AIR 1995 SC 1715

The relevant portion of the judgment is re-produced as under :

> "By virtue of this provision, the scope of the concept of industrial dispute has been widened, which now embraces not only section 2(K) but also Section 2-A."

(47) With regard to the scope of Section 2-A, it has further been ruled in this judgment that though the power to make a reference is conferred on the Government; but the rule is to make the reference unless, of course, the dispute raised is a totally frivolous one ex-facie. In this connection rather the Supreme Court has commended to the Parliament and the State Legislature to make a provision enabling a workman to approach the Labour Court/Industrial Tribunal directly—i.e. without the requirement of the reference by the Government—in case of industrial disputes covered by Section 2-A of the Act.

(48) The learned counsel for the petitioners wants us to construe the meaning of the words deemed to be an industrial dispute that any dispute which falls under Section 2-A when deemed to be an industrial dispute must be referred by the appropriate Government to the Labour Court/Tribunal, Learned counsel submits that the appropriate Government is not left with any discretion except to refer the dispute to the relevant Tribunal for adjudication.

(49) We are unable to agree with the above contention of the learned counsel.

(50) As stated above, by introducing a legal fiction in inserting the deeming provision that the dispute of an individual workman connected with or arising out of his discharge, dismissal, retrenchment or otherwise termination of his services by his employer will constitute an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute. In enacting this section, the intention of legislature was that an individual workman, who was discharged, dismissed or retrenched or whose services were otherwise terminated, should be given relief without its being necessary for the relationship between the employer and the whole body of employees being attracted to that dispute and the dispute being generalised one between the labour on the one hand and the employer on the other. Section 2-A contemplates nothing more than to declare an individual dispute to be an industrial dispute. it merely enlarges the scope of Section 2k and in no case amends the definition of

term industrial dispute set out in section 2k of the Act. After coming into force of Section 2-A, we are of the opinion that nothing more can be read in the section except that 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, though there is nothing in the Act which indicates that a union is debarred from raising a dispute relating to an individual workman. It is nothing more to suggest that by insertion of section 2-A by legislative fiction an individual dispute has been converted into an industrial dispute and the scope of Industrial dispute has been widened. It does not in any way affect the power of the appropriate Government to make or not to make a reference of the dispute under section 10(1) or under section 10(1) read with section 12 of the Act.

(51) After going through the statutory provisions and the various decisions of the Supreme Court as well as of the High Courts, our answer to the second and third propositions is that by insertion of section 2-A by legislative fiction an individual dispute has been converted into an industrial dispute and the scope of Industrial dispute has been widened. It does not in any way affect the power of the appropriate Government to make or not to make a reference of the dispute under Section 10(1).

(52) We will now discuss the effect of Section 11-A after its insertion in the Act on the powers of the appropriate Government under section 10 read with section 12 to refer an industrial dispute to the Labour Court or to the Tribunals for adjudication.

(53) Section 11-A was incorporated in the Act by Section 3 of the Industrial Dispute (Amendment) Act, 1971. It came into force w.e.f. December 15, 1971.

(54) Regarding Section 11-A in the statement of objects and reasons it is stated as follows :

> "In Indian Iron and Steel Co. Ltd. *Vs* Their Workmen, (AIR 1958 SC 130 at page 138) the Supreme Court, while considering the Tribunal's decision to dismiss, discharge or terminate the services 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 there 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 give such other reliefs to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. For this purpose, a new Section 11-A is proposed to be inserted in the Industrial Disputes Act, 1947....."

(55) Section 11-A in our view has only enlarged the jurisdiction and the powers of the Labour Courts and the Tribunals. It has not effected the power of the Government under Section 10(1) to refer or not to refer the industrial dispute to the Labour Court or the Tribunals.

(56) In order to understand this proposition, let us first note down the legal position as on 15th December, 1971 before the insertion of Section 11 in the statute regarding powers of a Labour

Court or the Tribunal when deciding a dispute arising out of dismissal or discharge of a workman before insertion of Section 11-A of the Act.

(57) In the Workmen of *M/s Firestone Tyre & Rubber Co. of India Private Limited* v. *The Management and others*(15), their Lordships of the Supreme Court after exhaustively referring to the various decisions of that Court gave a very clear picture of the principles governing the jurisdiction of the Tribunal when adjudicating disputes relating to dismissal or discharge before the insertion of Section 11-A in the Act. The following principles were laid down by the Hon'ble Supreme Court which need immediate reference :—

"1. The right to take disciplinary action and to decide upon the guantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power to see if action of the employer is justified.

2. Before imposing the punishment, an employer is expected to conduct a proper enquiry in accordance with the provisions of the Standing Orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.

3. When a proper enquiry has been held by an employer, and the finding of misconduct is plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse of the management is guilty of victimisation, unfair labour practice or *mala fide.*

4. Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee

15. AIR 1973 SC 1227

to adduce evidence contra.

5. The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a prima *facie case*. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.

6. The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.

7. It has never been recognised that the Tribunal should straightway, without anything more, direct, reinstatement of a dismissed or discharged employee, once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.

8. An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before the Tribunal is in the interest of both the management and the employee and to enable the Tribunal itself to be satisfied about the alleged misconduct.

9. Once the misconduct is proved either in the enquriy conducted by an employer or by the evidence placed before a Tribunal for the first time, punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is so harsh as to suggest victimisation.

10. In a particular case, after setting aside the order of dismissal, whether a workman should be re-instated or paid compensation is, as held by this Court in the Management of Panitole Tea Estate *v* The workmen, 1971-1 SCC 742=(AIR 1971 SC 2171) within the judicial decision of a Labour Court or Tribunal."

(58) Thereafter in the same judgment their Lordships of the Supreme Court noted down the changes which were brought about by Section 11-A of the Act with regard to the jurisdiction and powers of the Labour Court and the Tribunals. A ready reference of the observations of the Supreme Court shall be adviseable to be noted down.

"Previously the Tribunal had no power to interfere with its finding of misconduct recorded in the domestic enquiry unless one or other infirmities pointed out by this Court in Indian Iron and Steel Co. Ltd. 1958 SCR 667=AIR 1958 SC 130 existed. The conduct of disciplinary proceeding and the punishment to be imposed were all considered to be a managerial function which the Tribunal had no power to interfere unless the finding was perverse or the punishment was so harsh as to lead to an inference of victimization or unfair labour practice. This position, in our, view, has now been changed by Section 11-A. The words "in the course of the adjudication proceeding, the Tribunal is satisfied that the order of discharge or dismissal was not justified." Clearly indicate that the Tribunal is now clothed with the power to reappraise the evidence in the domestic enquiry and satisfy itself "whether the said evidence relied on by an employer established the misconduct alleged against a workman. What was originally a plausible conclusion that could be drawn by an employer from the evidence, has now given place to a satisfaction being arrived at by the Tribunal that the findings of misconduct is correct. The limitations imposed on the powers of the Tribunal by the decision in Indian Iron and Steel Co. Ltd. 1958 SCR 667 = AIR 1958 SC 130. Case can no longer be invoked by an employer. The Tribunal is now at liberty to consider not only whether the finding of misconduct recorded by an employer is correct; but also to differ from the said finding if a proper case is made out. What was once largely in the realm of

the satisfaction of the employer, has ceased to be so; and now it is the satisfaction of the Tribunal that finally decides the matter....."

"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 on a par by Section 11A....."

"Another change that has been effected by Section 11-A is the power conferred on a Tribunal to alter the punishment imposed by an employer. If the Tribunal comes to the conclusion that the misconduct is established either by the domestic enquiry accepted by it or by the evidence adduced before it for the first time, the Tribunal originally had no power to interfere with the punishment imposed by the management. Once the misconduct is proved, the Tribunal had to sustain the order of punishment unless it was harsh indicating victimisation under section 11A, though the Tribunal may hold that the misconduct is proved, nevertheless it may be of the opinion that the order of discharge or dismissal for the said misconduct is not justified. In other words, the Tribunal may hold that the proved misconduct does not merit dismissal by way of discharge or dismissal. It can, under such circumstances, award to the workman only lesser punishment instead. The power to interfere with the punishment and alter the same has been now conferred on the Tribunal by Section 11A."

"The Legislature in Section 11A has made a departure in certain respects in the law as laid down by this Court. For the first time, power has been given to a Tribunal to satisfy itself whether misconduct is proved. This is particularly so, as already pointed out by us, regarding

even findings arrived at by an employer in an enquiry properly held. The Tribunal has also been given power, also for the first time, to interfere with the punishment imposed by an employer."

"To invoke Section 11A, it is necessary that an industrial dispute of the type mentioned therein should have been referred to an industrial Tribunal for adjudication."

(59) When deciding about the question of applicability of Section 11-A to Industrial disputes which had already been referred for adjudication and were pending with the Tribunal on 15th December, 1971, it was held by the Supreme Court as under :

"Section 11A applies only to the disputes which are referred for adjudication on or after 15th December, 1971. To conclude in our opinion Section 11A has no application to disputes referred prior to 15th December, 1971. Such disputes have to be dealt with according to the decisions of this Court already referred to".

(60) It was observed by the Supreme Court in Ram Avtar Sharma's case (supra) while discussing the effect of Section 11-A after its introduction in the Act w.e.f. December 15, 1971. It was observed as under :

"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 discharge or dismissal qualititatively in the matter of adequacy or otherwise of punishment."

(61) Learned Single Judge of this Court in *Partap Singh* v. *State of Haryana*(16), when quashing an order passed by the appropriate Government to make a reference finally held with regard to scope of section 11A which reads as under :

"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

16. 1995 (3) RSJ 105.

punishment was disproportionate to the proved charges, the Government has no option but to refer the dispute for adjudication to an appropriate authority."

(62) A Division Bench of this Court in *Ramphal* v. *State of Haryana* (17), After discussing the scope of Sections 10 and 11A held 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 scrutinized 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 power 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 peculiar 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 misconduct is alleged and 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 upon him by the management is disproportionate to the gravity of the charge.

17. 1995 (1) RSJ 826.

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 11 A, 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 provision of Section 11 A will be rendered nugatory and the workman deprived of the rights conferred on him by it."

(63) We respectfully disagree with the findings of the Hon'ble Single Judge and the Hon'ble Judges of the Division Bench referred to above so far as they hold that by enacting Section 11A, the Legislature has taken away the power of the State Government under section 10 of the Act to refer an industrial dispute relating to the discharge or dismissal of a workman to a Labour Court/ Tribunal or National Tribunal for adjudication. They are, thus, overruled to that extent.

(64) The provision of Section 11-A come to play only after the dispute is referred to by an appropriate Government under section 10 to the Labour Court, Tribunal or National Tribunal for adjudication. But it cannot be held that by enacting Section 11A, the legislature has taken away the power of the State Government under section 10 of the Act to refer an industrial dispute relating to the discharge or dismissal of a workman to the Labour Court, Tribunal or the National Tribunal for adjudication.In ***Ramphal*** v. *State of Haryana's* case (supra), the learned Judges, while giving weight to their observations that by enacting Section 11A, the legislature has taken away the power of the State Government under section 10 of the Act, have referred to the effect of notice given under section 22 in case of a public utilitiy service in which situation 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 adjudicating authority. This instance cannot be cited so far as the effect of Section 11A on the powers of the appropriate

Government under section 10 is concerned. As it has been provided under section 10(1)(d) itself 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. There is no such provision regarding section 11-A in Section 10. If it were the intention of the legislature to take away the powers of making reference under section 10 by the Government then no body could stop them from providing such type of proviso in Section 10 itself which has not been so done and we are not ready to infer from the insertion of Section 11A in the Statute that Section 10 of the Act stands amended or repelled and particularly, as it has been referred to above provisions of Section 11A come to play only after an industrial dispute is referred to the Labor Court/Tribunals under section 10 of the Act.

(65) We thus, hold an appropriate Government still has the power to refuse to refer an industrial dispute to the Labour Court or the Tribunal, subject, of-course, to the limitations put on it as has been discussed and held above. Both the judgments of the learned Division Bench and the Single Bench so far as they have held that by enacting Section 11A, the legislature has taken away the power of the State Government under section 10 of the Act to refer an industrial dispute relating to the discharge or dismissal of a workman to the Labour Court, Tribunal or the National Tribunal for adjudication are over-ruled.

(66) In nutshell, Section 11-A of the Act now empowers the Labour Court, Tribunals, National Tribunals to re-appraise the finding in the domestic enquiry and satisfy itself as to whether said evidence relied upon by an employer established the misconduct alleged against a workman. They are also now at liberty to consider not only as to whether the finding of misconduct recorded by an employer is correct; but also to differ from the said finding if a proper case is made out which was once largely in the realm of the satisfaction of the employer, has ceased to be so; and now it is the satisfaction of Tribunal that finally decides the matter. The power to interfere with the punishment and alter the same has now been conferred on tribunal etc. under section 11A. Of-course, the proviso to Section 11 does not deprive the employer of his right to adduce evidence for the first time before the Tribunal. When

examining the scope of Section 11A, it has been held by the Supreme Court in various cases that the Labour Courts and Industrial Tribunals are empowered not only to examine the fariness of enquiry but also to 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.

(67) A reading of Section 11-A alongwith the statement of objects and reasons and in view of the judgments referred to above indicates that by insertion of Section 11 A in the Act only the powers of the Labour Court/Tribunals have been enlarged. Thus, now 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 re-instatement of the workman on such terms and conditions, if any, as it thinks fit or give such other reliefs to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require.

Insertion of Section 11-A, thus, has not taken away the powers of the appropriate Government to refer or not to refer an industrial dispute to the Labour Court or the Tribunals as the case may be.

(68) Section 11-A comes into operation only when a dispute which has been referred by the appropriate Government under section 10 is adjudicated upon on merits. While Section 10 gives the power to the appropriate Government to exercise its discretionary power, Section11-A lays down the powers exerciseable by a Labour Court or Tribunal while adjudicating the dispute after receiving the reference under Section 10.

The only way of getting a reference made is by resorting to the power given under Section 10(1). Section 11-A deals only with the powers of the adjudicating authority deciding the dispute on a reference made to it under Section 10.

(69) After going through the statutory provisions and the various decisions of the Supreme Court as well as the High Courts, our answer to the fourth proposition is that by insertion of Section 11-A in the Act only the powers of the Labour Courts/Tribunals

have been enlarged. Insertion of Section 11-A has not taken away the powers of the appropriate Government to refer or not to refer an industrial dispute to the Labour Court or the Tribunals, as the case may be, of course, subject to the limitations imposed by the law as laid down by the authoritative pronouncements of the Supreme Court. Section 11 comes to play only after the industrial dispute is referred to the Labour, Tribunal or National Tribunal or the appropriate Government for adjudication.

(70) In view of our discussion made above, no doubt is left that the observations of the Supreme Court in *Bombay Union of Journalists* v. *State of Bombay (supra)* that the appropriate Government can consider *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) are still applicable.

The appropriate Government is not precluded from considering the *prima facie* merits of the dispute and to refuse to refer the dispute under Section 10 read with Section 12(5), if the claim made is patently frivolous or is clearly belated even after the insertion of Section 2-A and 11-A in the Act.

(71) Now we will examine as to what would be the cumulative effect of these newly added Sections 2-A and 11-A of the Industrial Disputes Act on the power of the appropriate Government either to make a reference or refuse to make a reference. To put it in other words, whether as a result of the combined operation of Sections 2-A and 11-A, the Government cannot refuse to make a reference for adjudication of disputes which are specifically referred to in Section 2-A of the Act. We have already referred to the decisions which hold that Section 2-A has merely extended the scope of the definition of an industrial dispute as found in Section 2(K) of the Act and that it has no impact on the power of the Government to determine the question whether to refer a dispute or not for adjudication by a Labour Court or Industrial Tribunal as the case may be. Similarly, we have also referred to the decision of the Hon'ble Supreme Court in M/s Fire Stone's case (AIR 1973. SC. 1227) wherein it has been clearly held that invoking of Section 11-A will arise only if an industrial dispute is referred to the Labour Court of Industrial Tribunal for adjudication. This apart, even though Sections 2-A and 11-A have been introduced in the Act so far as Punjab and Haryana States are concerned no change has been made in Section 10 which empowers the

appropriate Government either to refer or not to refer a dispute for adjudication. If really, the intention was to do away completely with the power of the Government to decide whether to refer or not to refer a dispute for adjudication by a Labour Court/Tribunal, then there should have been suitable amendments to Sections 10 and 2-A of the Act also, whereas, there have been none. The very fact that the Hon'ble Supreme Court has recommended in the Rajasthan State Road Corporation's case cited *supra* to the Parliament/State Legislatures to make amendment enabling an employee to approach the Labour Court or Industrial Tribunal as the case may be, directly without there being a necessity to approach the Government to make a reference of the dispute for adjudication indicates that so long as Section 10 of the Act remains as it is, it cannot be held that by the mere introduction of Sections 2-A or 11-A or by a combined operation of these two Sections, the necessity to make a reference has been obviated or that the power of the Government to refuse a reference in appropriate cases has been taken away or that where the dispute is one as contemplated in Section 2-A of the Act, the Government has no option but to refer the dispute for adjudication.

(72) In this connection, it is also noteworthy that the Governments of Andhra Pradesh and Tamil Nadu have already made amendments to Section 2-A of the Act by renumbering the existing Section 2-A as Sub-section (1) and adding the Sub-section (2) as follows:—

(73) The Andhra amendment inserting Sub-section (2) is as follows:—

> "(2) Notwithstanding anything in Section 10, any such workman as is specified in Sub-section (1) may, make an application in the prescribed manner direct to the Labour Court for adjudication of the dispute referred to therein; and on receipt of such application the Labour Court shall have jurisdiction to adjudicate upon any matter in the dispute, as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act; and accordingly all the provisions of this Act, shall apply in relation to such dispute as they apply in relation to any other industrial dispute."

(74) The Tamil Nadu amendment inserting Sub-section (2) is as follows :—

> "(2) Where no settlement is arrived at in the course of any

conciliation proceeding taken under this Act in regard to an industrial dispute referred to in Sub-section (1), the aggrieved individual workman may apply, in the prescribed manner, to the Labour Court for adjudication of such dispute and the Labour Court shall proceed to adjudicate such dispute, as if such dispute has been referred to it for adjudication and accordingly all the provisions of this Act relating to adjudication of industrial disputes by the Labour Court shall apply to such adjudication."

(75) The State of West Bengal has introduced Sub-section (1-B) to Section 10 enabling a party to approach the Labour Court or Tribunal by filing an application. Similarly, the Karnataka Government has introduced Sub-section (4-A) to Section 10 of the Act as follows:—

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

(76) So we find certain State Governments have made amendments enabling the workman to approach the Labour Court for the purpose of settling the industrial dispute as contemplated in Section 2A of the Act whereas the others have not. N.P. Therefore, we are of the view that even combined operation of Sections 2A and 11A of the Act does not have the effect of taking away the power of the Government to make a reference or to refuse a reference so long as there is no amendment to the provisions of either Section 2A or Section 10 of the Act.

(77) Our answer to the final proposition as to whether it is necessary by the appropriate Government to give reasons for not referring the dispute under Section 10 of the Act to a Labour Court or the Tribunal etc. is as under.

(78) After reading Sections 10 and 12 together, in our view, it is incumbent upon the Government to record and communicate to the parties concerned its reasons for refusing to make a reference. It has been provided in Section 12(5) itself that where the appropriate Government does not make a reference, it shall record and communicate its reasons to the parties concerned. Even otherwise, for refusing to refer any dispute under Section 10 it is necessary for the Government to give reasons for refusing to refer the industrial dispute to the Labour Court or the Tribunals on the principles of natural justice. The Government is required to pass a speaking order when refusing to refer the dispute to the Labour Court or the Tribunals as the case may be so that the party concerned may be able to know the reasons for its refusal. We, thus, answer this proposition of law, as referred to above, accordingly.

(79) The cumulative effect of our answers to the above questions can be montaged and concisely summed up to say, that introduction of Section 2(A) read with Section 11(A) as it is on the statute book today, does not materially affect the existing powers of the Government to make a reference under Section 10 of the Industrial Disputes Act within the afore-stated well defined limitations. Thus, the scope of power exercisable by the appropriate Government falls in a very narrow compass and does not in any way permit it to encroach upon the determination of merits in dispute. The amendment of Section 2(A) only lifts an embargo which earlier existed on an individual workman to have his dispute referred through the competent Government for adjudication to a competent forum i.e. Industrial Court or Tribunal etc. The legislative intent behind such amendment appears to be more tilted towards enlarging the scope of a referable dispute by the concerned authority rather than to put any further shakles on the existing power of the Government to make a reference of an industrial dispute under the provisions of this Act. The jurisdiction of the appropriate Government is primarily administrative in its nature and scope. It must restrict its decision with regard to a dispute being non-existence vexatious and/or frivolous. This power extends to declining reference of a dispute in the event of industrial harmony being adversely affected as understood in its larger sense. Industrial harmony cannot be restricted to a dispute of a few workmen with its management in an industry. A section of industrial units should stand effected and fall within the clutches of adversity arising out of such industrial dispute. In other words involvement of larger industrial section treated as a whole would alone result in

disturbance of industrial harmony, infringe public utility and larger public interest. The expression 'industrial harmony' must not be understood in its narrow sense so as to frustrate every dispute on the ground that there is likelihood of some clash between the workman of an industry and the management.

(80) The percept of industrial law with its liberal amendments justifies liberal reference of industrial dispute, more tilted towards recognition and acceptance of dispute of individual workman of the nature prescribed under Section 2(1). The language of the amended provisions of Section 2-A read with Sections 10 and 11-A of the Industrial Disputes Act further substantiates the view taken by us. The concept of deeming dispute and reference of such a dispute to the Industrial Tribunal or Labour Court certainly enlarges the scope of referable disputes with some liberal construction.

(81) The mutability of Industrial Law being progressive has placed greater emphasis on restricting or limiting the power of the State to decline reference of industrial disputes which exist or are apprehended. This approach indicated by us is not innovative in any way but is a mere elaboration of existing principles. It is derivative in its substance and scope. The interpretation given by us to these statutory provisions is invulnerable but at the same time it is not a universal panacea to all industrial disputes.

(82) In the case of Punjab Anand Lamp Industries*(supra)* a Division Bench of this Court attempted to prescribe the scope and magnitude of powers exercisable by the State while making a reference under Section 10 of the Act, in para 66 of the judgment. We would endorse these well defined limitations on the powers of the State Government to make a reference with approval. Certainly we are conscious of the fact that it is not possible to provide a straight jacket formula or any hard and fast rule which would cover cases of all kinds arising under this Act, still we are of the considered view that such elaboration is the need of the day.

(83) The State Government is expected to exercise its jurisdiction within the well defined parameters so as to avoid unnecessary increase in institution of cases. In this regard exercise of authority with some clarity and meaningful understanding of law would certainly reduce unnecessary litigation on the one hand and would create greater harmony in administration of industrial justice in the concerned quarter. We have considered it necessary to spell out such limitations with more definiteness not only to

provide clarity and greater help to the Courts dealing with such matters but also to the concerned authorities to act with more precaution. Now the facts of this case,—*vide* similar orders, dated 23rd July, 1991 annexed as Annexures P-1 and P-2 with this petition, the petitioners were informed by Joint Secretary. Haryana Government, Labour Department that the Government did not consider their case fit for reference to the Labour Court because the enquiries revealed that their services were dismissed on account of grave misconduct and their reinstatement was not considered proper in the interest of industrial peace.

(84) As we have discussed in the main part of the judgment, it was incumbent upon the State Government to give detailed reasons and to pass a speaking order before rejecting the demand of a worker to refer his case under Section 10 read with Section 12 of the Act. We have given detailed reasons above when holding that the State Government cannot delve into the merits of the case.

(85) The statute does not enjoin upon the State Government to adjudicate upon the disputed questions of facts. On disputed questions of facts, the appropriate Government cannot purport to reach the final conclusions as that would be the province of the Industrial Tribunal/Labour Court.

(86) In the case in hand, the government has reached at a conclusion by holding that the enquiries revealed that the services of the petitioners were dispensed with on account of grave misconduct and, thus, their reinstatement was not considered proper in the interest of industrial peace. The Government has exceeded its jurisdiction while going into the merits of the case and to further adjudicate the matter finally.

(87) Consequently, we quash the orders, dated 23rd July, 1991 Annexures P-1 and P-2 along with Annexure P-8 which conveyed to the petitioners that the orders referred to as Annexures P-1 and P-2 have been considered earlier and they could not be reviewed. We direct the respondents to refer the disputes of the petitioners for adjudication to the Labour Court immediately.

(88) Resultantly, this writ petition is accepted with costs. Costs are quantified as Rs. 1,000 each to the petitioner which shall be paid within two months from today.

R.N.R.