(44) In view of the above, we hold that :—

(i) The purchase of paddy by the petitioners in these cases is not exempt from the levy of tax. The case does not fall within the parameters of Sections 5 of the Central Act and 12 of the State Act.

(ii) The petitioners have an effective alternative remedy under the provisions of the Haryana General Sales Tax Act in so far as the challenge to the orders of assessment etc. is concerned. They are relegated to the remedy under the statute.

(iii) The instructions issued by the authority vide letter, dated 29th November, 2000, suffer from no infirmity of law so as to call for any interference by this court.

(45) The writ petitions are accordingly dismissed subject to the condition that the petitioners will be entitled to file appeal against the order of assessment. In the circumstances of these cases, we make no order as to costs.

R.N.R.

Before S. S. Nijjar, J

H.M.T. LTD.—*Petitioner*

versus

CHANDIGARH ADMINISTRATION AND OTHERS—*Respondents*

C.W.P. NO. 6809 OF 2000

8th November, 2001

Constitution of India, 1950—Art. 226—Industrial Disputes Act, 1947—Ss. 2(a) and 10(1)—Territorial jurisdiction—Industrial dispute—Reference—Dismissal from service—Workman last employed at Mumbai—Order of dismissal though passed by the Head Office at Bangalore but served at Chandigarh—Chandigarh Administration making a reference of the dispute under section 10(1)(c)—Challenge to the territorial jurisdiction—High Court well within its jurisdiction

to determine the question of territorial jurisdiction of an appropriate Government to make the reference—Neither the Company has any establishment within the U.T. Chandigarh nor the workman worked in any establishment within the U.T. Chandigarh—Merely because the order of dismissal served at Chandigarh it cannot be said that the subject matter of the dispute substantially arose within the territorial jurisdiction of the U.T. Chandigarh—Chandigarh Administration not the appropriate Government for making the reference to the Labour Court and reference made by it is without jurisdiction.

Held, that the High Court has the jurisdiction to determine the question as to whether the State Government had the jurisdiction to make the reference at all. The facts in the present case touching on the question of jurisdiction are not in dispute. Therefore, it would not involve adjudication of any complicated dispute on facts which would be better left to be determined by the Tribunal/Labour Court. In the given facts of a particualr case the matter may well be left by the High Court to be determined by the Tribunal/Labour Court to which the reference is made. In the present case, the facts on issue of jurisdiction being undisputed, the High Court will be well within its jurisdiction to render a decision on the point of jurisdiction under Articles 226/227 of the Constitution of India.

(Para 12)

Further held, that the workman last worked for the petitioner at Bombay. It is not pleaded any where that the petitioner has any establishment within the territorial jurisdiction of the Union Territory, Chandigarh, and that the respondent-workman ever worked there. Therefore, even though, a part of cause of action may have arisen to the workman on receiving the order of dismissal in Chandigarh within the territorial jurisdiction of the U.T. Chandigarh, it would not be sufficient to establish that a substantial part of the industrial dispute arose within the Union Territory, Chandigarh. Therefore, Union Territory, Chandigarh, cannot be said to be the appropriate Government for making the reference to the Labour Court, Chandigarh. The reference made by the Chandigarh Administration, Labour Department, Chandigarh, to the Labour Court-cum-Industrial Tribunal, Chandigarh, is without jurisdiction.The Labour Court-cum-Industrial Tribunal, U.T. Chandigarh, has no jurisdiction to decide the Industrial dispute.

(Paras 33, 34 & 35)

Pawan Kumar Mutneja, Advocate *for the Petitioner.*

Sanjeev Sharma, Advocate *for respondent Nos. 1 and 4.*

Rajiv Narain Raina, Advocate *for respondent No. 3.*

JUDGMENT

S.S. NIJJAR. J

(1) This writ petition raises three substantial questions of law which can be summed up as follows :—

"1. On a reference being made by a State Government under section 10(1) of the Industrial Disputes Act, 1947, would the High Court have the jurisdiction to entertain a challenge by way of a writ petition under Articles 226/227 of the Constitution to the reference on the ground that the State Government which made the reference had no territorial jurisdiction to make the reference ?

2. Would the preliminary objection with regard to the jurisdiction of the appropriate government to make the reference have to be invariably left to be adjudicated upon by the Labour Court to which the reference has been made ?

3. In the facts and circumstances of the present case, would an industrial dispute substantially arise within the territorial jurisdiction of Union Territory, Chandigarh, merely because the order of dismissal, though passed at Bangalore (Head Office of the Company) was served upon the workman at her residence in Chandigarh, irrespective of the fact that the workman was last employed at Mumbai ?"

(2) In order to appreciate the controversy, a few relevant facts may be noticed.

(3) Hindustan Machine Tools Limited—the petitioner is engaged in the production and sale of watches, tractors and other heavy machineries. It has numerous plants situated all over the

country. Respondent No. 3. Ratni Kaul, (hereinafter referred to as "the workman"), was a resident of State of Jammu and Kashmir. She was appointed as Operator Trainee,—*vide* appointment letter dated 13th January, 1973. After completing her training, she was confirmed on the post and continued in service at Srinagar. Due to the problems in Kashmir Valley, she was posted on a temporary basis to H.M.T. Limited Watch Show Room/Service Centre, Bombay (now Mumbai), by order dated 10th August, 1991. This order was issued from the Head Office of the petitioner—company at Bangalore. The workman requested for her posting at Chandigarh which was rejected. Accordingly, she joined duties at Bombay on 23rd April, 1992. She worked in Bombay till 30th April, 1992. Thereafter, she applied for leave from 2nd May, 1992 to 23rd May, 1992 on the ground that her child was not well. Thereafter she kept requesting for extension of her leave on various grounds, such as, medical leave, maternity leave etc. She also repeatedly requested for her transfer to Chandigarh. On 13th October, 1992 a show Cause Notice was sent to her seeking her explanation about her absence. An enquiry was conducted into the allegations made against her. She was found guilty. Ultimately, she was demoted from WG V to WG IV by order dated 20th March, 1995. She was designated as Inspector-B. Her appeal against the order of punishment was dismissed on 29th June, 1995. Inspite of this, the workman did not join duty. On 28th August, 1995, another Show Cause Notice was sent to her seeking her explanation as to why she should not be deemed to have voluntarily left and abandoned the company service. After due procedure, again she was found guilty of the charges. However, the petitioner took a compassionate view and decided not to inflict any punishment on the workman. She was rather advised to join duties. Again the workman did not comply with the request of the petitioner-management. Since the workman had not joined duties for about five and half years, another charge-sheet dated 19th December, 1997 was served on her. This charge sheet contained two charges. i.e., absence without leave for more than 7 consecutive days without sufficient grounds or proper satisfactory explanation and wilful insubordination. *Ex-parte* enquiry was held at Bombay. The charges were held to be proved. Ultimately, the workman was dismissed from service by order dated 30th January, 1999. This order was passed at and sent by the Head Office at Bangalore by registered post to the address of the workman at Chandigarh. The letter is dated

30th January, 1999. The workman served a demand notice dated 19th April, 1999 on the management. The demand notice is addressed to the Head Office of the management at Bangalore. The management sent a reply to the demand notice to the workman rejecting her claim. The management also addressed a letter dated 17th July, 1999 to the Assistant Labour Commissioner, U.T., Chandigarh, stating therein that the workman should either file her grievance/complaint with the appropriate authority at Mumbai which was her last place of working or at Bangalore where Registered Office of the company is located. A reminder dated 1st September, 1999 was also sent to the Assistant Labour Commissioner, U.T., Chandigarh, to the same effect. Inspite of the objections, the Chandigarh Administration, Labour Department, by order dated 3rd January, 2000, has made a reference of a dispute between the management and the workman to the Labour Court-cum-Industrial Tribunal, U.T., Chandigarh, under section 10(1) (c) of the Industrial Disputes Act, 1947, (hereinafter referred to as "the Labour Court"). The dispute referred is as follows :—

> "Whether the services of Smt. Ratni Kaul were terminated illegally by the M.D. Hindustan Machine Tools Limited, if so, to what effect and to what relief is she entitled to, if any ?"

(4) This order of reference dated 3rd January, 2000, Annexure P-10, passed by the Chandigarh Administration, Labour Department, Chandigarh, has been challenged in the present writ petition under Articles 226/227 of the Constitution of India seeking a writ in the nature of certiorari quashing the same. The writ petition was filed on 23rd May, 2000. On 26th May, 2000, notice of motion was issued for 22nd November, 2000. In the meantime, proceedings before the Labour Court were stayed.

(5) Mr. Mutneja, learned counsel appearing for the petitioner-management submits that the appropriate government for referring the dispute in the present case would be the Government of Maharashtra where the workman last worked or the Government of Karnataka as the Head Office of the management is situated at Bangalore. According to the learned counsel, the Chandigarh Administration, would not be the appropriate government as contemplated under Section 2(a) of the Act, learned counsel further submitted that, admittedly, the workman

worked either at Srinagar or at Bombay. Therefore, no cause of action arose at Chandigarh for reference of the dispute to the Labour Court at Chandigarh. The management had taken specific objections before the Assistant Labour Commissioner, U.T., Chandigarh, even on the maintainability of the conciliation proceedings. It was, therefore, incumbent on the U.T., Administration to decide that it had jurisdiction over the matter before referring the same to the Labour Court, under section 10 (1) (c) of the Act. Learned counsel has further submitted that Section 10 of the Act imposes a duty on the appropriate government to form an opinion as to whether any industrial dispute exists or is apprehended. This decision must be taken by the appropriate government. The industrial dispute must arise within the territorial jurisdiction of the appropriate government. The industrial dispute which exists or is apprehended, must be within the territorial jurisdiction of the appropriate government. In the present case, all three ingredients are missing. It is further submitted that Section 4(2) of the Act highlights the jurisdiction of a Conciliation Officer. It is limited to a specific area or for specified industries in a specified area. Therefore, the Assistant Labour Commissioner, U.T., Chandigarh, did not have the jurisdiction over the petitioner-management. The conciliaiton proceedings are, therefore, *void ab initio*. Learned counsel further submitted that Section 20 of the Code of Civil Procedure gives further guidelines about territorial jurisdiction. According to the learned counsel, the Civil Suit can be instituted at a place where the defendant actually or voluntarily resides or carries on business or in which cause of action wholly or partly arose. Even accepting this principle the jurisdiction can only be either at Mumbai or at Bangalore. For these reasons, it is submitted that the objection to the competence of Chandigarh Administration to refer the matter to the Chandigarh Labour Court, goes to the root of the controversy and cannot be decided by the Labour Court in its adjudication. The jurisdiction of the Labour Court is limited to the reference made to it and to the point incidental thereto. The objection touching the very basis of the jurisdiction of the Labour Court can only be decided by this Court under Articles 226/227 of the Constitution of India. In support of the aforesaid propositions, learned counsel has relied on a large number of judgments which shall be adverted to a little later.

(6) On the other hand, Mr. Raina, appearing for the workman submitted that Industrial Disputes Act, is silent on the territorial

jurisdiction of the Labour Court. Therefore, the jurisdiction of the Labour Court would be decided on the principles which apply to the proceedings by way of suits instituted under the Code of Civil Procedure. According to the learned counsel, the Courts have always attached a great deal of importance to the residence of the claimant as the determining factor of territorial jurisdiction. In the present case, the cause of action accrued to the workman when she was served the order of dismissal at Chandigarh. Since the order of dismissal takes effect when it is served, the dispute will also arise at the time and place of the communication of the dismissal order, When the management communicated the order of dismissal at Chandigarh, the industrial dispute arose at Chandigarh. The employer-employee relationship was snapped at Chandigarh. Although the residence of the workman may not be the whole cause of action, yet it would be a part of the cause of action. According to the learned counsel, when different parts of the cause of action arose in different territories, the Courts located in those territories would have concurrent jurisdiction and it would be for the workman to decide as to where to seek the reference. Mr. Raina has further submitted that under Section 10 of the Act, appropriate government has to decide as to whether any industrial dispute exists or is apprehended. This objection to jurisdiction of the Government making the reference has to be taken before the Labour Court to which a reference is made. The objection would be a part of the reference. Mr Raina has also relied on a number of judgments in support of his submissions.

(7) I have considered the submissions made by the learned counsel for the parties.

(8) All the points raised by both the learned counsel, are no longer res integra and the same can be conveniently disposed of by referring to earlier decisions of the Supreme Court or the High Courts.

(9) In the case of *Newspapers Ltd.* versus *State Industrial Tribunal, U.P. and others (1)* the Supreme Court has categorically held as follows :—

> "Inspite of the fact that the making of a reference by the Government under the Industrial Disputes Act is the exercise of its administrative powers, that is not

(1) AIR 1957 SC 532

destructive of the rights of an aggrieved party to show that what was referred was not an industrial dispute at all and therefore the jurisdiction of the Industrial Tribunal to make the award can be questioned, even though the factual existence of a dispute may not be subject to a party's challenge. **State of Madras** *versus* **C.P. Sarathy 1953 SCR 334** at P 347: (AIR 1953 SC 53 at p.57)."

(10) Thereafter, the Supreme Court in the case of *National Engineering Industries Ltd.* versus *State of Rajasthan and others (2)* had the occasion to deal with the proposition that the State Government had no jurisdiction to make the reference. In paragraph 24 of the judgment, it has been held as under :—

"It will be thus seen that the High Court has jurisdiction to entertain a writ petition when there is an allegation that there is no industrial dispute and none apprehended which could be the subject matter of reference for adjudication to the Industrial Tribunal under Section 10 of the Act. Here it is a question of jurisdiction of the Industrial Tribunal, which could be examined by the High Court in its writ jurisdiction. It is the existence of the Industrial Tribunal (sic dispute) which would clothe the appropriate Government with power to make the reference and the Industrial Tribunal to adjudicate it. If there is no industrial dispute in existence or apprehended the appropriate Government lacks power to make any reference....."

(11) In coming to the aforesaid conclusion, the Supreme Court relied on an earlier judgment of the *Supreme Court in Express Newspapers (P) Ltd.,* versus *workers (3)* and observed as under :—

"In Express Newspapers (P) Ltd *versus* Workers the State Government made reference to the Industrial Tribunal

(2) (2000) 1 SCC 371
(3) AIR 1963 SC 569

under Section 10(1) (d) of the Act on the following two items of dispute :—

"1. Whether the transfer of the publication of Andhra Prabha and Andhra Prabha illustrated Weekly to Andhra Prabha Private Ltd. Vijayawada is justified and to what relief the workers and the working journalists are entitled ?

2. Whether the strike of the workers and working journalists from 27th April, 1959, and the consequent lockout by the management of the Express Newspapers Private Ltd. are justified and to what relief the workers and the working journalists are entitled ?"

This was challenged by the appellant by filing a writ petition in the Madras HIgh Court. While the learned Single Judge held in favour of the appellants, the Division Bench in appeal filed by the respondents reversed the same. This Court said that the true legal position in regard to the jurisdiction of the High Court to entertain the apellant's petition even at the initial stage of the proceedings proposed to be taken before the District Tribunal was not in dispute. It said that there was no dispute that in law, the appellant was entitled to move the High Court even at the initial stage to seek to satisfy that the dispute is not an industrial dispute and so, the Industrial Tribunal had no jurisdiction to embark upon the proposed inquiry. The Division Bench of the High Court in appeal was, however, of the view that having regard to the nature of the inquiry involved in the decision of the preliminary issue, it would be inappropriate for the High Court to take upon itself the task of determining the relevant facts on affidavit. A proper and a more appropriate course to adopt would be to let the material facts be determined by the Industrial Tribunal in the first instance. This was the question which was before this Court if the view taken by the Division Bench was arroneous in law. This Court after examining the facts of the case was of the

opinion that having regard to the nature of the dispute, the Division Bench was right in taking the view that the preliminary issue should be more appropriately dealt with by the Industrial Tribunal."

(12) That being the settled proposition of law, it would not be possible to agree with the submission made by Mr. Raina that the writ petition deserves to be dismissed as not maintainable. Clearly the High Court has the jurisdiction to determine the question as to whether the State Government had the jurisdiction to make the reference at all. The facts in the present case touching on the question of jurisdiction are not in dispute. Therefore, it would not involve adjudication of any complicated dispute on facts which would be better left to be determined by the Tribunal/Labour Court. In the given facts of a particular case the matter may well be left by the High Court to be determinated by the Tribunal/Labour Court to which the reference is made. Taking into consideration the complicated nature of the enquiry, the Supreme Court in the Express Newspapers (P) Ltd. case (supra), upheld the view taken by the Division Bench of the High Court that it would be more appropriate for the Industrial Tribunal to decide the preliminary issue of jurisdiction. In the present case no complicated enquiry is required and the facts on issue of jurisdiction being undisputed, the High Court will be well within its jurisdiction to render a decision on the point of jurisdiction under Articles 226/ 227 of the Constitution of India.

(13) A large number of authorities were cited by Mr. Mutneja in support of the submisstion that the Assistant Labour Commissioner, U.T., Chandigarh, did not have the jurisdiction to make a reference as the industrial dispute had not arisen within his territorial jurisdiction. The broader principles governing the determination of the jurisdiction of the Labour Court were first set out by Chagla C.J. in the case of *Lalbhai Tricumlal Mills Ltd.* versus *Dhanubhai Motilal Vin (4)* These observations of Chagla, C.J. have the repeated stamp of approval of the Supreme Court. The facts of the present case are similar to the facts which were being considered by the Bombay High Court in *Lalbhai Tricumlal's case (supra).* The dispute in that case pertained to the termination of the services of the employee, admittedly, at Bombay where the workman was employed whilst the Head Office of

(4) AIR 1955 Bombay 463

the employer-industry was in Ahmedabad. The workman had even complained and sought reinstatement with the Head Office of the Mills at Ahmedabad and the same being declined, he raised an industrial dispute before the Labour Court in Bombay. On behalf of the employers, an objection was raised with regard to the jurisdiction which was rejected by the Labour Court. The same point was urged before the High Court. Again, the objection of the employer was rejected. C.M. Chagla (C.J.) speaking for the Division Bench made the following observations :—

> "Now, the Act does not deal with the cause of action, nor does it indicate what factors will confer jurisdiction upon the Labour Court. But applying the well known tests of jurisdiction, a Court or Tribunal would have jurisdiction if the parties reside within jurisdiction or if the subject-matter of the dispute substantially arises within jurisdiction. And therefore the correct approach to this question is to ask ourselves-where did this dispute substantially arise-and in our opinion the only answer to that question can be that the dispute substantially arose in Bombay and not in Ahmedabad. What is the dispute ? The dispute is not as to whether the employee approached the emloyer in Ahmedabad and no agreement was arrived at. The dispute is whether the employer was justified in dismissing the employee, and inasmuch as the employment was in Bombay and the dismissal was in Bombay, it is difficult to understand how it can possibly be urged that the dispute did not substantially arise in Bombay, what Mr. Bhagwati says is that there is no dispute till an approach is made by the employee under the proviso to Section 42 (4).
>
> It is true that there would be no industrial dispute till the procedure laid down in the proviso to Section 42(4) is satisfied, but in a more important sense there would be no dispute at all if there had been no dismissal by the petitioner of respondent No. 5.

And again :

> "If that is going to be the subject-matter of the enquiry before the Labour Court that subject-matter arose in

Bombay and not in Ahmedabad. We express no opinion as to whether the Ahmedabad Court equally have jurisdiction or not. We are only concerned with deciding whether on these facts the Bombay Labour Court has jurisdiction, and in our opinion if as in this case the employee was employed in Bombay and dismissed in Bombay and he is making a complaint about his dismissal and wants reinstatement and compensation, the Bombay Labour Court has jurisdiction to decide this application. We, therefore, agree with the Industrial Court in the view it has taken."

(14) There observations of Chagla, C.J., were quoted and affirmed by the Constitution Bench of the Supreme Court in the case of *Indian Cable Co. Ltd.* versus *its workmen, (5).* This in terms was more explicitly reaffirmed in the case of Workmen of *Shri Ranga Vilas Motors (P) Ltd.* versus *Sri Rangavilas Motors (P) Ltd. and others, (6).* In *Ranga Villas Motors case (supra),* workman Mahalingam was posted/working at Bangalore. He was ordered to be transferred to Krishnagiri where the Head Office of the company was situated. The order had been issued by the Head Office at Krishnagiri. The Supreme Court considered the same question which had been posed before the High Court as follows :—

"Whether the State Government of Mysore was not the appropriate government to make the reference ?"

(15) Sikri. J. speaking for the Court, observed as follows :—

"Therefore, the appeal must succeed unless the company can satisfy us that the points decided against it should have been decided in its favour. This takes us to the other points, Mr. O.P. Malhotra strongly urges that the State Government of Mysore was not the appropriate Government to make the reference. He says that although the dispute started at Bangalore, the resolution sponsoring this dispute was passed in Krishnagiri, and, that the proper test to be applied in the case of individual disputes is where the dispute has been sponsored. It

(5) (1962) I Lab. L.J 409
(6) AIR 1967 SC 1040

seems to us that on the facts of this case it is clear that there was a separate establishment at Bangalore and Mahalingam was working there. There were a number of other workman working in this place. The order of transfer, it is true was made in Krishnagiri at the Head-Office, but the order was to operate on a workman working in Bangalore. In our view the High Court was right in holding that the proper question to raise is where did the dispute arise ? Ordinarily, if there is a separate establishment and the workman is working in that establishment, the dispute would arise at that place. As the High Court observed there should clearly be some nexus between the dispute and the territory of the State and not necessarily between the territory of the State and the industry concerning which the dispute arose. **This Court in Indian Cable Co. Ltd.** *versus* **its workmen (1962) Lab. LJ. 409 (SC)** held as follows :—

The Act contained no provisions bearing on this question which must, consequently, be decided on the principles governing the jurisdiction of Courts to entertain actions or proceedings. Dealing with a similar question under the provisions of the Bombay Industrial Relations Act, 1946, Chagla, **C.J. observed in Lalbhai Tricumlal Mills Ltd.** *versus* **Vin. 1956-1 Lab. LJ 557-558: (AIR 1955 Bom. 463 at p. 464)** :

(16) The law enunciated by the Supreme Court and the Bombay High Court has been reiterated by the Full Bench of the Patna High Court in the case of *Paritosh Kumar Pal* versus *State of Bihar and others (7)* S.S. Sandhawalia, C.J. posed the question which fell for consideration of the Full Bench as follows :—

"Would the situs of employment of the workman determine the locus for the territorial jurisdiction of the Tribunal to entertain a dispute arising from the termination of his services under the Industrial Disputes Act, 1947. Is the significant question necessitating this reference to the Full Bench"

(7) 1984 Lab. I.C. 1254

(17) The writ petitioner in that case had been employed by the distributor who was the sole distributor in Western India for the manufacture of medicines, namely, Mac Laboratories. The distributor had its Head Office at Calcutta. The writ petitioner was appointed as Medical-cum-Sales Representative of the distributor. The writ petitioner was chargesheeted and his services were terminated. Upon this, the writ petitioner raised an industrial dispute in the State of Bihar. Before the Industrial Tribunal, an objection was raised to its jurisdiction. The Tribunal, therefore, framed the following preliminary issue :—

> "Whether the reference by the Government is incompetent inasmuch as the management is carrying on its business at and from Calcutta and the establishment is at Calcutta ?"

(18) The parties led evidence on the issue. The Tribunal held that the Bihar State Government was not the appropriate Government to make the reference. In view of the above, it was held that the Tribunal had no jurisdiction to adjudicate upon the reference. Aggrieved against the decision of the Tribunal, a petition was filed by the workman which was referred to the Full Bench. It was accepted that the situs of employment of the workman was throughout at Patna in the State of Bihar. The employer-company did not have a separate establishment in Bihar, the registered office being at Calcutta. The business in Bihar was controlled from the Head Office at Calcutta. On behalf of the petitioner, it was argued that it is the situs of employment of the workman which is relevant for determining the territorial jurisdiction of the Tribunal to entertain the dispute and not the location of the employer—Industry or the mere factum of having a separate establishment within the State of Bihar. On behalf of the respondent-company, it was argued that situs of the employment of the workman was wholly irrelevant to the issue. The governing factors for the jurisdiction of the Tribunal was the location of the office of the industry alone either at its headquarter or where it had a distinct separate establishment. Sandhawalia, C.J., speaking for the Full Bench, after noticing the judgments of the Supreme Court and the Bombay High Court in *Lalbhai Tricumlal Mills Ltd. case* (supra), held as follows :—

> "From the above, it would appear that the aforesaid case in a way covers the issue herein on all fours by holding that the subject-matters of the Industrial dispute arises

at the situs of employment of the workman. However, in the above case the question whether there can also be concurrent jurisdiction at Bombay and Ahmedabad was left open by the Bench."

(19) In paragraph 13 of the judgment, the Full Bench laid down the following principles for the determination of the jurisdiction of a particular State Government for making the reference under the Act.

"Now an incisive analysis of the aforesaid authoritative enunciation of law would indicate that three clear cut principles or tests for determining jurisdiction emerge, therefrom. For clarity these may be first separately enumerated as under :—

(i) Where does the order of the termination of services operate ?

(ii) Is there some nexus between the industrial dispute arising from termination of the services of the workman and the territory of the State ?

(iii) That the well known test of jurisdiction of a Civil Court including the residence of the parties and the subject matter of the dispute substantially arising therein would be applicable.

(20) A perusal of the aforesaid enunciation of law by the Apex Court, by the Bombay High Court and the Patna High Court, makes it clear that the question of jurisdiction is to be determined by taking into consideration the three principles enunciated above by S.S. Sandhawalia, C.J. One of the primary test is where the impugned order of termination of services of a workman, in fact, operates. In *Workman of Shri Vilas Motors case* (supra), the order of termination was passed at Krishnagiri in Kerala. It was, however, held that the order operated at the place of employment of the workman. This has been held to be a paramount factor if not being wholly conclusive. It has been categorically held by the Full Bench of the Patna High Court in *Paritosh Kumar's case* (supra) that it is within area of employment

that the order of termination operates and the workman ceases to be a workman and loses his right to hold the post and receive wages therefor. It has been further held that on the nexus test also the situs of employment of the workman has a direct connection with the territory where such employment is terminated. It has been emphasized that the nexus has to be between the industrial dispute and the territory of the State and not necessarily with the industry or its headquarter as such. Even if one were to apply principles of Code of Civil Procedure, the territorial jurisdiction of the Court in which a suit may be instituted, would be the Court within whose territory the workman was employed. Applying the aforesaid principles to the fact situation in the present case, it would become appparent that no industial dispute has arisen within the territorial jurisdiction of the Union Territory, Chandigarh.

(21) The question of territorial jurisdiction in the context of Industrial Disputes Act with particular reference to Section 10 (1) of the Act has been elaborately considered by a Division Bench of the Madhya Pradesh High Court in the case of *Association of Medical Representatives (M. & V.)* versus *Industrial Tribunal, Madhya Pradesh, Indore, and another, (8)*. In that case, a company having its Head Office at Bombay engaged some Medical Representative to sell its products in the areas falling within the State of Madhya Pradesh. The work of the persons so appointed was controlled and supervised by the Head Office of the company at Bombay and they were paid their salaries by the Head Office. The company did not have any establishment in the State of Madhya Pradesh. The services of one salesman were terminated by an order made by the Head Office of the company at Bombay. The State of Madhya Pradesh referred the Industrial dispute for adjudication by the Industrial Tribunal which held that the Government of Madhya Pradesh was not the appropriate government to make the reference. The Tribunal held that the cause of action substantially arose with the State of Maharashtra. The Union challenged the aforesaid decision by way of a writ petition which was the subject-matter of decision by the Division Bench. It was argued on behalf of the Union that cause of action substantially arose within the State of Madhya Pradesh where the Medical Representatives of the company were working. Thus the contention was rejected by

(8) 1966 (I) LLJ 614

the Division Bench. After discusing the entire case law, it has been held as follows :—

> "In our opinion, the tribunal was right in concluding that the Madhya Pradesh Government was not the "appropriate Government" for making a reference under section 10(1) of the Act of the dispute regarding D 'Silva's termination of services. Now, Section 10(1) does not contain any express provision as to which is the appropriate State Government for referring an industrial dispute in relation to which the State Government is the "appropriate Government" as defined in Section 2(a)(ii) of the Act. The definition of "appropriate Government" given in Section 2(a) is also not very helpful for determining the "appropriate State Government". But Section 10(1) does contemplate that the appropriate Government would be that Government in whose jurisdiction the industrial dispute arises or is apprehended when it says that "where the appropriate Government is of opinon that any industrial dispute exists or is apprehended, it may at any time, by order in writting" make a reference. The definitions of "employer" and "workman" given in Sections 2(g) and 2(s) show that an industrial dispute arises where the industry exists".

(22) It is further observed as follows :—

> "The point of jurisdiction is really concluded by the decision of the **Supreme Court in Lipton Ltd.** *versus* **their employees (1959-1 L.L.J. 431)** *(vide supra)* where it has been ruled that the Government of the State within which one of the offices of a company is situated is the appropriate Government for referring any dispute between that company and its workmen who are paid their salary and controlled by that office, irrespective of the fact that these workers work at a place which is outside the limits of that State. On this principle laid down by the **Supreme Court in Lipton Ltd.** *versus* **their employees** *(,—vide supra)* **the Maharashtra**

Government was undoubtedly the appropriate Government for referring the dispute under section 10(1).

(23) In the present case, it is to be noticed that the respondent--workman has not worked in any establishment within the Union Territory, Chandigarh, even for a single day. In fact, it is no where pleaded that the petitioner has any establishment within the Union Territory, Chandigarh. Thus, it cannot be said that the parties reside within the jurisdiction of the Union Territory, Chandigarh of the subject--matter of the dispute substantially arose in Chandigarh. Similar view has been taken by a Division Bench of the Kerala High Court in the case of *J. & J. Dechane Distributors* versus *State of Kerala and others, (9).* After considering the principles of law set out by Chagla, C.J., in Lalbhai case *(supra)* and the Supreme Court cases, mentioned above, the Division Bench held as follows :—

> "5. It would now appear that although on the general principles regarding the jurisdiction of Courts to take cognizance of suits, (embodied in Section 20 of the Civil Procedure Code) it is enough to show that the cause of action wholly or in part arose within the jurisdiction of the Court, for the purpose of referring an industrial dispute, it is necesary to show that the dispute "substantially arose" within the cognizance of the "appropriate Government" empowered to make the reference. And the test of residence, or of carrying on business, or personally working for gain, formulated with reference to the defendant under section 20 of the C.P.C., is stated by Chagla, C.J., differently as "the residence of the parties", and not the defendant alone.
>
> 8. Going by the test propounded by the Supreme Court, could it be said, on the facts of this case, that the cause of action substantially arose within the frontiers of this State so as to empower the Kerala Government to make a reference ? Counsel for the respondent could rely only on two facts, namely, that the order of termination was served in Quilon within the State, and that the 3rd

(9) 1974 (2) LLJ 9

respondent himself was carrying on business of the petitioner in the Kerala State with Quilon as his headquarters. But there is nothing to show that the petitioner was having either a branch office or an establishment in Quilon or elsewhere in this State. The 3rd respondent was only a representative, who used occasionally to be sent out for promoting sales of the petitioner's products. We are unable to hold that the petitioner could be said to be carrying on business within the State.

9. The fact that the order of termination was served on the petitioner within the Kerala State appears to us, in the circumstances, to be too slender a ground to hold, in the language of Chagla, C.J., that "the subject--matter of the dispute substantially arises" within this State."

(24) The aforesaid observations make it abundantly clear that the matter is squarely covered against the proposition advanced by the respondent—workman to the effect that the Industrial Dispute substantially arose within the territorial jurisdiction of the U.T. Chandigarh.

(25) Mr. Raina has, however, placed strong reliance on a Division Bench judgment of this Court in the case of *Ram Lal* versus. *The Presiding Officer, Labour Court, Patiala and others, (10).* In that case the Division Bench had the occasion to consider the question which was framed as follows :—

"(a) Whether the appropriate Government to refer an Industrial Dispute for adjudication under section 10 is the State Government, within whose territorial jurisdiction the workman was working and orders of dismissal had been received : or the State Government within whose territorial jurisdiction the head office of/ or the industrial undertaking is located and where the orders dismissing the workman have been passed ?

(26.) In that case, Ram Lal appellant was appointed and working in Chandigarh on regular basis since 9th November, 1968

(10) 1986 (1) SLR 633

as Land Evaluation Officer with the Punjab State Co-operative Land Mortagage Bank Limited, Chandigarh (hereinafter referred to as the "State Bank"). In April, 1972, he was sent on deputation with the Bhatinda Primary Co-operative Land Mortagage Bank Limited at Bhatinda (hereinafter referred to as the "Primary Bank"). He was implicated in a case of corruption and was suspended on 11th August, 1972. He was also challaned and tried by the learned Chief Judicial Magistrate, Bhatinda. There was no evidence against him and he was discharged by the learned Magistrate on 8th February, 1978. However, in the meantime, the Chairman of the State Bank terminated his services on 10th November, 1972 while he was working at Bhatinda. He sent a demand notice. There was protracted litigation between Ram Lal and the State Bank. Ultimately, the State Government and the Labour Commissioner, Punjab, on 25th May, 1978 referred the industrial dispute for adjudication to the Labour Court under Section 10(1)(c) of the Act, which is as follows :—

> "Whether the termination of services of Shri Ram Lal workman is justified and in order ? If not, to what relief/ exact amount of compensation is he entitled to ?

(27) Before the Labour Court it was pleaded as preliminary objection that the State Bank did not have any establishment in the State of Punjab. Ram Lal was employed at Chandigarh and his services were terminated by an order at Chandigarh and the Chandigarh Administration was the only appropriate government, Punjab Government not being the appropriate government, has no jurisdiction to make an order of reference and the Labour Court has no jurisdiction for adjudication thereupon. Issue No. 1 was treated as preliminary issue. The Labour Court held that the Punjab Government was the appropriate government and had the jurisdiction to refer the industrial dispute for adjudication. The reference was, however, rejected by the Labour Court on the ground that Ram Lal had earlier elected to file a civil suit. In this civil suit, Ram Lal had sought a declaration that he continued to be in service and that the order terminating his services were illegal and void. The learned Subordinate Judge held that the order terminating his services was illegal, void and not binding on Ram Lal (plaintiff in the suit). However, the suit was held to be not maintainable against the Bank because it was neither a department of the Government nor a statutory body whose employees

have statutory status, Consequently, Ram Lal filed Civil Writ Petition against the order of the Labour Court. Both the Banks at Chandigarh and Bhatinda were impleaded as party-respondents. It was conceded before the learned Single Judge that the Labour Court had wrongly dismissed the reference on the ground that Ram Lal had filed the Civil suit for the same relief. It was, however, strenuously urged that the appropriate government for making a reference to the dispute was not the State of Punjab. The learned Single Judge held that the relationship between the State Bank and Ram Lal came to an end when the latter's services were terminated at Chandigarh. It was further held that the fact that the order of terminating services of Ram Lal, was served on him while he was working with the Primary Bank at Bhatinda, could not be taken as a circumstance to infer that the cause of action arose substantially at Bhatinda and not at Chandigarh. The writ petition was dismissed. It was in these circumstances that the question of law, as reproduced above, was framed by the Division Bench of this Court. Answering the aforesaid question, the Division Bench held as follows :—

> "It is established on the record that the Primary Bank at Bhatinda was a member of the State Bank. Under the service rules framed by the State Bank, it is obligatory on its members, the primary banks, to take the employees of the Bank on deputation. The workman was deputed to serve with the primary Bank at Bhatinda: certain incidents took place on the basis of which a criminal case was registered against the workman and he was tried and was discharged by the Criminal Court at Bhatinda. The order of termination of services of workman, though passed at Chandigarh, was served at Bhatinda. The order became effective and operated at Bhatinda where the workman was at the material time working and earning his wages. The relationship of the master and servant snapped at Bhatinda. No doubt, the Primary Bank at Bhatinda is not a Branch Office of the Bank, but it is its constituent nonetheless. For that reason the workman's services were lent to it. The object in enacting the Act was to bring about speedy resolution of the industrial disputes, so that the industrial peace and harmony, prevailed

and the forces of labour and capital co-operated to produce and engender goods and services and thereby contributing to the prosperity of the nation. The prevalence of harmony and tranquillity in the areas where the industrial activity is carried on and workman are employed is not only a need of the employer and the employees, but the Society itself has a stake in it. For these reasons the provisions of the Act have to be interpreted liberally and an interpretation which comports with the objects of the Act has to be adopted. The industrial dispute definitely arose at Bhatinda where the workman was working and where the orders of termination became effective.

Much guidance can be had from the provisions of the Act in determining as to which Government is the appropriate Government. Inevitably those well known tests have to be adopted which are employed for determining the jurisdiction of the Civil Court. One of the principles is as to where the dispute substantially arose. This was the view eunciated by **Chagla C.J. in Lalbhai Tricumlal Mills Ltd.** *versus* **Dhanubhai Motilal Vin and others,** A.I.R. 1955, Bombay, 463. It was approved by the final Court in workman of **Shri Ranga Vilas Motors (P) Ltd.** *versus* **Shri Ranga Vilas Motors (P) Ltd. and others, AIR 1967** Supreme Court, 1040. Within this jurisdiction, we have a Division Bench of this Court in **M/s. Little Sons and Co.** *versus* **Amar Nath and others, 1978 Lab. I.C. 430,** wherein the legal position emerging from the construction of Section 10 of the Act has been succinctly brought out. It has been observed :—

"For determining the appropriate Government competent to make a reference of the dispute due regard has to be paid to the place where a dispute arises and it cannot be said that the reference of the dispute must of necessity be made by the State within the territory of which the head office of the employer-company is situate.

.....The term "appropriate Government" is defined in S.2(a). It is significant that this definition does not attach any importance to the place where the contolling office of the industry is situate. On the other hand, the words "in relation to" denote that wherever a dispute between the industry and its workmen arises the Government having jurisdiction over that area would be competent to make a reference. It is not necessary that the head office or the controlling office of the industry should be present in that area. All that is required is that a part of the industry should exist there."

(28) A perusal of the observations made above, would show that Ram Lal was held to be on deputation with the Primary Bank. A criminal case was registered against him on the basis of an incident which had taken place at Bhatinda. The order of termination of his services, though passed at Chandigarh, was served at Bhatinda. The claim of Ram Lal was not based on the solitary fact that the order had been served at his residence, as is the case of the workman in the present case. In these circumstances, it was observed that the order became effective and operated at Bhatinda as at the relevant time the workman was working and earning his wages at Bhatinda. It was further held that the Primary Bank at Bhatinda, although not a branch office of the bank, but it is the "constituent nonetheless." It is further observed by the Division Bench that while determining which government is the "appropriate government", it is to be seen as to where the dispute substantially arose. Reference is made in this case to a decision of the another Division Bench of this Court in the case of M/s. Little Sons and Company's case *(supra)*. It was emphasized that the reference would be made by the government within whose territory the industrial dispute arises. In view of the above, it is stated that it is not necessary that the Head Office or the controlling office of the industry should be present in that area. But all important part of the ratio is in the last sentence where it is stated that all that is required is that a part of the industry should exist there. This judgment can, therefore, be of no assistance to the respondent-workman for the submission that merely because the order of dismissal has been received in Chandigarh, the industrial dispute substantially arose within the territorial jurisdiction of the Union Territory, Chandigarh. It is the admitted position on facts that respondent-workman has never been

employed by the petitioner in any establishment within Chandigarh. The respondent-workman was last employed at Bombay. She has been transferred from Srinagar to Bombay. Substantially the cause of action has arisen at Bombay. Merely because the order of dismissal has been served at Chandigarh would not be sufficient to hold that the industrial dispute has substantially arisen within the Union Territory, Chandigarh.

(29) Mr. Raina has strongly relied on the observations made by the Supreme Court in the case of *State of Punjab* versus *Amar Singh Harika, (11).* In that case, a Constitution Bench of the Supreme Court considered the impact of an order of dismissal purported to have been passed on 3rd June, 1949 and communicated to the respondent—Amar Singh Harika by the Chief Secretary, Pepsu Government on the 2nd/3rd January, 1953. After considering the entire matter in depth. Gajendragadkar, C.J. speaking for the Court observed as follows :—

> "The first question which has been raised before us by Mr. Bishan Narain is that though the respondent came to know about the order of his dismissal for the first time on the 28th May, 1951, the said order must be deemed to have taken effect as from the 3rd June, 1949, when it was actually passed. The High Court has rejected this contention, but Mr. Bishan Narain contends that the view taken by the High Court is erroneous in law. We are not impressed by Mr. Bishan Narain's argument. It is plain that the mere passing of an order of dismissal would not be effective unless it is published and communicated to the officer concerned. If the appointing authority passed an order of dismissal, but does not communicate it to the officer concerned, theoretically it is possible that unlike in the case of a judicial order pronounced in Court, the authority may change its mind and decide to modify its order. It may be that in some cases, the authority may feel that the ends of justice would be met by demoting the officer concerned rather than dismissing him. An order of dismissal passed by the appropriate authority and kept with itself, cannot

(11) AIR 1966 SC 1313

be said to take effect unless the officer concerned knows about the said order and it is otherwise communicated to all the parties concernend. If it is held that the mere passing of the order of dismissal has the effect of terminating the services of the officer concerned, various complications may arise. If before receiving the order of dismissal, the officer has exercised his power and jurisdiction to take decisions or do acts within his authority and power, would those acts and decisions be rendered invalid after it is known that an order of dismissal had already been passed against him ? Would the officer concerned be entitled to his salary for the period between the date when the order was passed and the date when it was communicated to him? These and other complications would inevitably arise if it is held that the order of dismissal takes effect as soon as it is passed, though it may be communicated to the officer concerned several days thereafter. It is true that in the present case, the respondent had been suspended during the material period: but that does not change the position that if the officer concerned is not suspended during the period of enquiry, complications of the kind already indicated would definitely arise. We are, therefore, reluctant to hold that an order of dismissal passed by an appropriate authority and kept on its file without communicating it to the officer concerned or otherwise publishing it will take effect as from the date on which the order is actually written out by the said authority: such an order can only be effective after it is communicated to the officer concerned or is otherwise published. When a public officer is removed from service, his successor would have to take charge of the said office: and except in cases where the officer concerned has already been suspended, difficulties would arise if it is held that an officer who is actually working and holding charge of his office, can be said to be effectively removed from his office by the mere passing of an order by the appropriate authority. In our opinion, therefore, the High Court was plainly right in holding that the

order of dismissal passed against the respondent on the 3rd June, 1949, could not be said to have taken effect until the respondent came to know about it on the 28th May, 1951."

(30) The aforesaid observations are of no assistance to the case put forward by Mr. Raina. The observations made by the Supreme Court pertain to an order of dismissal passed against a public servant. Further more, the observations did not pertain to the territorial jurisdiction of the Court in which the order of dismissal is received. The observations related to the time at which the order of dismissal became effective.

(31) Mr. Raina had further relied on a judgment of the Division Bench of the Calcutta High Court in the case of *Umasankar Chatterjee* versus *Union of India and others (12).* In that case, the dismissal order was passed at Korba in Madhya Pradesh. It was communicated to the appellant at his residence in Calcutta. The appellant challenged the order of dismissal by filing a writ petition in the Calcutta High Court. Learned Single Judge of the Calcutta High Court took the view that the Calcutta High Court had no jurisdiction to entertain and hear the writ petition of the appellant for the appellant served all along in Madhya Pradesh and the order of removal and the order of dismissal of the appeal were both passed in New Delhi. In the opinion of the learned Single Judge, either the Madhya Pradesh High Court or the Delhi High Court but not the Calcutta High Court had the jurisdiction in the matter. The learned Single Judge discharged the rule *nisi* issued on the writ petition of the appellant. Thus, appellant filed an appeal against the decision of the learned Single Bench. The Division Bench after considering and relying upon the judgment of the Supreme Court in Amar Singh Harika's case *(supra), inter-alia,* held as follows :—

"Thus, it appears from the principles of law laid down in the above decisions that the infringement of rights gives rise to a cause of action, and consequently, the right to sue. It is the case of the appellant in the instant case that his right to remain in service has been infringed by the impugned order of removal. The order of removal,

(12) 1982 Lab. I.C. 1361

therefore, undoubtedly, gave rise to a cause of action for the appellant to institute an action for the establishment of his right to be in service. It has been alrady held that the impugned order of removal became effective only when it was served on the appellant in Calcutta. So long as the order was not effective there was no question of accrual of a cause of action or the right to sue. But the moment it became effective there was such accrual of cause of action or the right to sue. The impugned order of removal having become effective in Calcutta when it was received by the appellant, a part of the cause of action must be held to have arisen in Calcutta within the jurisdiction of this Court."

(32) These observations would be of no assistance to Mr. Raina. A careful perusal of the decision shows that again the dispute related to an order passed by a company falling within Article 12 of the Constitution. Further more, these observations have been made after noticing the impact of the facts therein. The appellant was appointed the Finance Manager of the Fertilizer Corporation of India Limited (hereinafter refered to as the Corporation). A government Company under the control of the Central Government and was posted at Kamrup in Assam. On 25th August, 1975, the appellant was transferred to Korba in Madhya Pradesh. Before this transfer, he was sent on tour from Kamrup to Calcutta on 15th August, 1975 for finalisation of the annual accounts with the Government auditors. He was however, released from Calcutta on 25th August, 1975 on account of his illness. He joined Korba Division on 4th September, 1975. While he was working in the Korba Division, he was served with a charge-sheet containing six Articles of charges by the Chairman and the Managing Director of the Corporation under cover of his memo dated 14th September, 1976. All the charges, except one, related to the T.A. Bills submitted by the appellant in respect of travelling and transportation costs incurred by him for himself and the members of his family in Calcutta before he joined in Korba in Madhya Pradesh. It was, *inter-alia*, alleged that in the T.A. Bills the appellant had made certain false claims of cost which he did not incur during his tour in Calcutta. The appellant was put under suspension and during suspension, he was permitted by the authority concerned to stay at his Calcutta residence

and draw his subsistence allowance from the Calcutta office of the Corporation. The observations quoted above, were made by the Division Bench taking into consideration all these facts. In paragraph 19 of the judgment, it is categorically held that "it is not the case of the Corporation that in order to create jurisdiction of this Court, the appellant came to stay at his Calcutta residence so that the order of removal would be served upon him there. On the contrary, it is not disputed that after his suspension, the appellant was permitted to stay at his Calcutta residence and to draw his subsistence allowance from the Calcutta Office of the Corporation. It was held that there was no want of bona fide on the part of the appellant and in the normal course of business the authority concerned sent the impugned order of removal to the Calcutta address of the appellant. It was further noticed by the Division Bench in paragraph 20 that all the incidents constituting the charges levelled against the appellant having happened in Calcutta, a part of cause of action arose in Calcutta within the jurisdiction of this Court. It was observed as follows :—

> "Another contention of the appellant that has been already noticed is that all the incidents constituting the charges levelled against the appellant having happened in Calcutta, a part of cause of action arose in Calcutta within the jurisdiction of this Court. In our opinion, there is some substance in the contention. When the facts on the basis of which charges were framed against the appellant and the appellant was removed from service, it is difficult to hold that such facts did not constitute a part of the cause of action. These facts having originated in Calcutta when the appellant was staying in Calcutta on the eve of his transfer to Korba Division, a part of the cause of action also arose in Calcutta. The learned Judge did not consider this aspect of the case, presumably because his attention was not drawn to the charges most of which were based on facts originating in Calcutta.

(33) In the present case, the charges against the workman are of absence from duty and insubordination. She last worked for the

petitioner at Bombay. It is not pleaded any where that the petitioner has any establishment within the territorial jurisdiction of the Union Territory, Chandigarh, and that the respondent-workman ever worked there. Therefore, even though, a part of cause of action may have arisen to the workman on receiving the order of dismissal in Chandigarh within the territorial jurisdiction of the Union Territory, Chandigarh, it would not be sufficient to establish that a substantial part of the industrial dispute arose within the Union Territory, Chandigarh. The observations made by the Division Bench in *Umasankar's case* (supra) would not be applicable to the facts and circumstances of the present case.

(34) Applying any of the test enunciated by the Supreme Court in workmen of *Shri Ranga Vilas Motor's case* (supra) three test of civil jurisdiction as laid down by Chagla, C.J. in Lalbhai case (supra), or the principles laid down by the Full Bench of the Patna High Court or the decision of the Division Bench in the *Ram Lal's case* (supra), it would not be possible to hold that the industrial dispute has substantially arisen within the territorial jurisdiction of the Union Territory, Chandigarh. Therefore, Union Territory, Chandigarh, cannot be said to be appropriate government for making the reference to the Labour Court, Chandigarh.

(35) In view of the above, it is held that the reference made by the Chandigarh Administration, Labour Department, Chandigarh, to the Labour Court-cum-Industrial Tribunal, Chandigarh, is without jurisdiction. The Labour Court-cum-Industrial Tribunal, Union Territory, Chandigarh, has no jurisdiction to decide the industrial dispute.

(36) For the reasons recorded above, the writ petition is allowed. Order Annexure P-10 is hereby quashed. No costs.

R.N.R.