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The revision petition is, therefore, accepted; the order of the learned Subordinate Judge is set aside and the application of the State of Punjab under section 8(2) of the Act is dismissed with costs throughout.

B.R.T.

CIVIL MISCELLANEOUS

Before R. S. Narula, J.

THE WORKMEN OF THE BHUPINDRA CEMENT WORKERS SURAJPUR—*Petitioners*

versus

THE INDUSTRIAL TRIBUNAL, PUNJAB, PATIALA AND ANOTHER,—*Respondents.*

Civil Writ No. 1520 of 1962.

1965

September, 1st

Industrial Employment (Standing Orders) Act (XX of 1946)—S. 3—Certifying Officer or Appellate Authority—Whether can allow a departure from the model standing Orders—Constitution of India (1950)—Art. 226—Finding of fact recorded by Appellate Authority—Whether can be interfered with by High Court in a writ petition.

Held, that it is open to a Certifying Officer and the Appellate Authority under the Industrial Employment (Standing Orders) Act, 1946, to allow a departure from the model standing Orders—on the ground of fairness and reasonableness of the proposed provisions and that the authorities under the Act can certify the standing orders providing for matters covered by the relevant items of the Schedule to the Act even if there is no such provision (of the kind intended to be provided), in the model standing orders provided that the departure does not go contrary to model standing order concerned.

Held, that it is not open to the High Court to interfere with the findings of fact on discretionary matters recorded by the Appellate Authority under the said Act in a petition under Article 226 of the Constitution of India.

Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of Certiorari or any other appropriate writ, order or direction be issued calling for the records of respondent No. 1 relating to the order and after a perusal of the same the order be quashed in so far as it relates to the amendment

of clauses 9(1)(c), 9(5) and 20(ii) of the Certified Standing Orders as certified by the Certifying Officer and further praying that the costs of the petition be allowed to the petitioners.

ANAND SWAROOP AND R. S. MITTAL, ADVOCATES, for the Petitioners.

BHAGIRATH DASS AND B. K. JHINGAN, ADVOCATES, for the Respondent No. 2.

ORDER

NARULA, J.—In 1960, the Bhupindra Cement Works, Surajpur, respondent No. 2, in this writ petition (hereinafter referred to as the employer) submitted Draft Standing Orders under section 3 of the Industrial Employment (Standing Orders) Act, 20 of 1946, hereinafter called the Act, to the Labour Commissioner, Punjab in his capacity as Certifying Officer for certification under section 3(1) of the Act. The Certifying Officer made certain alterations and amendments in the Draft Standing Orders and certified them after such amendments by his order under section 5 of the Act, dated October 11, 1960. The employer preferred an appeal against the above-said order of the Certifying Officer, dated 11th October, 1960, to the Industrial Tribunal, Punjab, under section 6 of the Act. The appellate authority remanded the case to the Certifying Officer with a direction to give reasons in support of the changes or amendments made by him in the Draft Standing Orders as submitted by the employer. By a detailed order, dated May 5, 1962 (copy annexure 'D' to the writ petition) the Certifying Officer gave reasons in support of the changes or modifications effected by him in the Draft Standing Orders. On the receipt of the said memorandum of reasons dated 5th May, 1962, the appeal of the employer was revived and decided on merits. By order, dated July 30, 1962 the appellate authority amended the Draft Standing Orders as certified by the Certifying Officer in respect of clauses 3(2)(a), 9(1)(c), 9(5), 20(ii), 22(7) and 24 of the Standing Orders. Out of the above-mentioned clauses, the amendments in clauses 3(2)(a), 22(7) and 24 were by agreement of the parties and, are therefore, not being questioned in these proceedings. A copy of the order of the appellate authority has been filed as annexure 'E' to the writ petition. The impugned alterations effected by the appellate authority, which are the subject-matter of the present writ petition, were in respect of items 9(1)(c) and 9(5) (which

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can be taken up together) and in clause 20(ii) of the Standing Orders.

I will first take up the objection raised by the learned counsel for the petitioners (the employees) to the amendment effected in clause 9(1)(c). The corresponding clause in the Draft Standing Orders submitted by the employer (copy annexure 'A' to the writ petition) is 9(1)(d) and reads as follows:—

> "On re-starting a shift, notice thereof shall be given, and the workers discharged as a result of discontinuance of the shift shall, if they present themselves within 7 days of the giving of the notice, be given preference for employment according to the length of their service. *However, this rule shall not apply to workers with a history of past misdemeanour, misconduct or inefficiency, punished, tolerated or condoned.*"

I have underlined a part of the above Draft Standing Order because it is this portion of the Order which is in dispute in the present proceedings. In his order, dated May 5, 1962, the Certifying Officer had deleted the underlined portion from clause 9(1)(c) of the Draft Standing Orders for the reasons given by him under that caluse which reads as under :—

> "I had also deleted the underlined sentence beginning with the word 'However' and ending with the words 'or condoned' as it was not fair to allow the management to exercise any pick and choose while re-employing the retrenched workmen under the I.D. Act, specially because the bargaining power of the workmen at that time is very weak and also because they already get this right at the time of retrenchment under section 25-F of the Industrial Disputes Act. The position was explained to the management in the meeting held on 20th April, 1962 and they have agreed to this deletion."

To summarise the reasons given by the Certifying Officer in support of the changes effected by him in the Draft Standing Orders in this respect he had stated (i) that

the employer had agreed to this deletion; (ii) that it would not be fair to allow the management to exercise any right of pick and choose while re-employing the retrenched workmen under the Industrial Disputes Act specially because the bargaining power of the workmen at that time is very weak; and (iii) because the workmen had already acquired a right to be given preferential chance for re-employment at the time of their retrenchment because of the provisions of section 25-F of the Industrial Disputes Act.

The appellate authority while accepting the appeal of the employer in respect of the above-said item reversed the order of the Certifying Officer and reinstated the underlined words in the above-quoted clause on the following grounds:—

(i) In section 25-G of the Industrial Disputes Act the word "ordinarily" and the concluding phrase "unless for reasons to be recorded the employer retrenches any other workman" show that a discretion has been left by the Industrial Disputes Act with the management to take into account considerations of efficiency and trustworthiness, etc., of the employee and this shows that it would be open to an employer, to retrench a senior employee while retaining in his employment persons, who are junior to him and that being so the appellate authority did not see any reason why this discretion should not be there with the management at the time of re-employment of the retrenched workmen also;

(ii) that section 25-H of the Industrial Disputes Act does not compel the employer to re-employ a retrenched workman in preference to others even though the retrenched workman is found to be inefficient or unreliable or habitually irregular in the discharge of his duties. The section only means that other things being equal preference should be given to the retrenched employee offering himself for re-employment over others.

The argument of Shri Anand Swaroop, the learned counsel appearing for the petitioners, is that errors of law are apparent on the face of the above-said order of the appellate authority inasmuch as the reinstatement of the

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disputed portion of the Draft Standing Order is contrary to the model Standing Orders and the appellate authority had no jurisdiction to effect such change in the order of the Certifying Officer. Before this argument of the learned counsel for the petitioners is dealt with, it would be appropriate to set out the case of the employees relating to clause 9(5)of the Draft Standing Orders also as one commoh set of arguments has been addressed by both sides in connection with both these clauses.

In the Draft Standing Orders submitted by the employer clause 9(5) read as follows:—

> "On the re-opening of a department or section of the department as the case may be, preference for employment will be given to the workers whose services were terminated on account of the closure according to their length of service, *except such workers who were discharged for past misdemeanour, misconduct or inefficiency, punished, tolerated, or condoned,*—provided that they present themselves at the latest by the day of re-opening."

The reasons for deleting the italicised portion in the above Draft Standing Order have been given by the Certifying Officer in his order, dated 5th of May, 1962, in the following words:—

> "I had deleted the underlined words beginning with "excepting" and ending with the word "condoned" on the analogy mentioned in case of D.S. O.9(1)(d) above. The management objects to this deletion as in their view the re-employment of persons discharged for past misdemeanour, misconduct or inefficiency, punished, tolerated or condoned should be left to their discretion, as in their opinion re-instatement of such personnel would not be conducive to industrial peace. The arguments for deleting the provisions are the same as given in case of D.S. O.9(1)(d) above. For seiving out undesirable element the management should take recourse to the means permitted in these standing orders or law for the time being in force by adopting regular course of charge-sheet in stead of taking general powers of discretion to

pick and choose which can easily be misused if so desired."

While reversing the order of the Certifying Officer in its impugned order, dated 30th July, 1962, the appellate authority stated as follows:—

"The clause is similar to the one referred to above, except that it relates to the re-opening of a department or section. The same modification in the draft has been made by the Certifying Officer as in the case of clause 9(1)(d). For the reasons already recorded, the clause in the draft is certified as clause 9(5) of the Certified Standing Orders."

I will now take up the arguments advanced by the learned counsel for the employees in support of the claim to the effect that the order of the appellate authority in respect of the above-said two clauses is liable to be reversed and that for the same is liable to be restored the order of the Certifying Officer. In order to appreciate the arguments it is necessary to give a summary of some of the relevant provisions of the Act.

Section 3(1) of the Act requires that within six months from the date on which the Act becomes applicable to an industrial establishment the employer has to submit to the Certifying Officer Draft Standing Orders proposed by him for adoption in his industrial establishment. Sub-section (2) of that section makes it compulsory for the employer to provide in such draft for every matter set out in the Schedule to the Act which may be applicable to the industrial establishment concerned. The said sub-section further provides that so far as is practicable the Standing Orders have to be in conformity with certain model Standing Orders wherever the same have been prescribed. Item 7 in the Schedule to the act relates to provisions for closing and re-opening of sections of the industrial establishment and temporary stoppages of work and the rights and liabilities of the employer and workmen arising therefrom. Item 8 in the said Schedule relates to termination of employment and the notice thereof to be given by the employer and workmen. It is not disputed that model Standing Orders have been prescribed in the Schedule to the Industrial Employment (Standing Orders) Punjab Rules, 1949.

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Item No. 7, in the said model Standing Orders relates to the working of shifts and is in the following terms:—

"7. *Shift working.*—More than one shift may be worked in a department or departments or any section of department of the establishment at the discretion of the employer. If more than one shift is worked, the workmen shall be liable to be transferred from one shift to another. No shift working shall be discontinued without one month's notice given in writing to the workmen prior to such discontinuance:

Provided that no such notice shall be necessary if the closing of the shift is under an agreement with the workmen affected. If as a result of the discontinuance of the shift working, any workmen are to be retrenched, such retrenchment shall be affected in accordance with the provisions of the Industrial Disputes Act, 1947 (XIV of 1947), and the rules made thereunder. If shift working is restarted, the workmen shall be given notice and re-employed in accordance with the provisions of the said rules."

The restarting of the shift to which the present dispute relates is dealt with in the last sentence of the above-said model Standing Order. It merely provides that the workmen have to be given notice and to be re-employed in accordance with the provisions of the rules framed under the Industrial Disputes Act, XIV of 1947. In item 7 of the model Standing Orders there is no provision of the kind made in the underlined portion of clause 9(1)(d) in the Draft Standing Orders (Annexure 'A' to the writ petition). The Punjab Government has framed the Industrial Disputes (Punjab) Rules, 1958, under the Industrial Disputes Act, XIV of 1947. Rule 77(1) of those rules reads as follows:—

"77. *Re-employment of retrenched workmen.*—(1) At least fifteen days before the date on which vacancies are to be filled, the employer shall arrange for the display on a notice-board in a conspicuous place in the premises of the industrial establishment details of those vacancies and shall also give intimation of those vacancies to

every one of all the retrenched workmen eligible to be considered therefor, to the address given by him at the time of retrenchment or any time thereafter:

Provided that where the number of such vacancies is less than the number of retrenched workmen, it shall be sufficient if intimation is given by the employer individually to the seniormost retrenched workmen in the list referred to in rule 76 the number of such seniormost workmen being double the number of such vacancies:

Provided further that where the vacancy is of a duration of less than one month there shall be no obligation on the employer to send intimation of such vacancy to individual retrenched workmen:

Provided further that if a retrenched workman does not offer himself for re-employment in spite of having received an intimation from an employer, he need not intimate to him the vacancies that may be filled on any subsequent occassion."

It would be noticed that there is no provision of the kind desired by the employer in the controversial Draft Standing Order in rule 77 of the Industrial Disputes (Punjab) Rules, 1958. The argument of the learned counsel is that the powers and jurisdiction of the appellate authority under the Act are circumscribed by the provision contained in section 6(1) thereof and that the appellate authority can amend or modify the Order as certified by the Certifying Officer only in order to "render the Standing Orders certifiable" under the Act. The learned counsel contends that a Standing Order is certifiable if it fulfils the requirements of section 4 of the Act. The provisions of section 4 have already been noticed above. The contention is that the relevant Standing Orders as certified by the Certifying Officer do contain a provision for the relevant matter set out in the Schedule to the Act and, therefore, satisfy the requirements of clause (a) of section 4 and that the certified Standing Orders are otherwise in conformity with the provisions of the Act and, therefore, satisfy clause (b) of section 4 thereof. That being so, it is argued, the orders as certified by the Labour Commissioner were certifiable

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within the meaning of section 4 of the Act and the appellate authority had, therefore, no jurisdiction to amend and change the same. In reply to this argument it has been contended by Shri Bhagirath Dass, the learned counsel appearing for the employer, that after the amendment of section 4 of the Act in 1956, it is the duty of the appellate authority while exercising its appellate jurisdiction under section 6 of the Act not only to satisfy itself whether the Standing Orders in question are certifiable under the Act or not but also to adjudicate upon the fairness or reasonableness of the provisions of the relevant Standing Orders. According to the learned counsel for the respondent this is what the appellate authority has done in connection with the impugned amendments and that it is the appellate authority which is the sole judge of that aspect of the case and this Court in exercise of its writ jurisdiction cannot interfere with the findings or discretion of the appellate authority in that respect. It is further contended by Shri Bhagirath Dass, that the view of the appellate authority regarding the discretion given to an employer in not strictly conforming to the 'last come first go' rule in the matter of retrenchment is consistent with the law laid down in this respect by their Lordships of the Supreme Court in *Messrs Swadesamitran Limited, Madras* v. *Their Workmen* (1), wherein it was held that in effecting retrenchment the management normally has to adopt and give effect to the industrial rule of retrenchment 'last come first go', but that for valid reasons the management may depart from the said rule. The view of the matter taken by the Certifying Officer was contrary to the law settled by the Supreme Court in this respect and the view of the appellate authority in the impugned order is consistent with the ratio of the above-said authoritative pronouncement of the Supreme Court. Once it is held that the employer is not bound to re-employ a retrenched workman, who is not at par with others, in preference to the others, no fault can be found with the order of the appellate authority.

There is no dispute that a provision of the kind sought to be made at the instance of the employer is not obtainable in the model Standing Orders. Mr. Anand Swaroop has contended that to make a provision of the kind, which is not available in the model Standing Orders, would be contrary to and not in conformity with the model Standing

(1) A.I.R. 1960 S.C. 762.

Orders. This argument is, however, not consistent with the law laid down in this respect by a Division Bench of the Assam High Court in *Akhil Ranjan Das Gupta* v. *Management, Assam Tribune, Gauhati and others* (2). In that case it was held that the purpose of the Standing Orders is to clarify the conditions of service and they are in the nature of a contract on which openly the employee enters into the service and that if there is any deviation in the matters which are provided for in the model standing orders, in the draft proposals, in that event it may be open to the Certifying Officer to enquire into the reasonableness or otherwise of the proposed departure from the model rules. It was further held in that case that if the draft standing orders provided for something which is not in the model standing orders at all, it could not be said that the draft was not in conformity with the provisions of the model standing orders. I am in respectful agreement with the law laid down by the Assam High Court in the above mentioned case. I hold that it is open to a Certifying Officer or an appellate authority under the Act to allow a departure from the model Standing Orders on the ground of fairness and reasonableness of the proposed provisions and that the authorities under the Act can certify the standing orders providing for matters covered by the relevant items of the Schedule to the Act even if there is no such provision (of the kind intended to be provided) in the model standing orders provided that the departure does not go contrary to the model Standing Order concerned.

Independently of the reasons given by me above, I am of the view that no interference by this Court under Article 226 of the Constitution is called for in the matter of the said impugned order as there is no error of law apparent on the face of the order of the appellate authority which may justify this Court's interference by way of a writ in the nature of *certiorari*. In *Parry and Co., Ltd.* v. *Commercial Employees' Association, Madras* (3), it was laid down that a High Court cannot issue a writ of *certiorari* to quash a decision passed with jurisdiction on the mere ground that such decision is erroneous. It has been repeatedly held in a series of cases that every error of law is not an error apparent on the face of the record justifying interference by way of *certiorari*. It is only on a matter on which no

(2) A.I.R. 1965 Assam 40.
(3) 1952 S.C.R. 519.

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two opinions are possible that the Court can interfere under Article 226 of the Constitution with a judicial or quasi-judicial order if it is otherwise within jurisdiction. In *I.M. Lall* v. *Gopal Singh and others* (4), it was observed by this Court (Tek Chand, J.), that the expression "error apparent on the face of the record" defies definition and the facts of each case are determinative in that case. Tek Chand, J. held in that case that where in order to arrive at a particular conclusion, examination of lengthy arguments is required, the error, when ultimately proved, does not become self-evident and that if a point at issue is dubious and requires an argument to demonstrate it, the error cannot be said to be self-evident. It was further held in that case, after a thorough examination of various authorities of the Supreme Court, that where two views are possible and though one of them turns out to be erroneous, the error cannot be said to be such as to call for interference by invoking the extraordinary jurisdiction of the High Court under Article 226 of the Constitution by means of a writ of *certiorari*.

In view of the above state of law I regret I am unable to grant any relief to the petitioners in this respect even if the contention of the petitioners about the view held by the appellate authority on the merits of the propositions enunciated before me were found to be erroneous. This disposes of the contentions relating to clauses 9(1)(c) and 9(5)of the Draft Standing Orders. The only other contention relates to clause 20(ii) of the Draft Standing Orders which is in the following words:—

> "20. The following acts and omissions shall be treated as misconduct and punishment shall be accorded in accordance with Standing Order 21.
>
> (1) * * * * * *
>
> (ii) striking work either singly or with other workers without fourteen days' notice;
>
> (iii) * * * * * *
> * * * * * *".

By orders of the Certifying Officer (Annexure 'D') to the writ petition this clause was deleted. It was held by the Certifying Officer that the clause cannot be made a

(4) I.L.R. (1963) 2 Punj. 571.

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cause of misconduct because strike is one of the recognised rights of the workmen and to compel them to give 14 days' notice of the intended strike would amount to negativing that right. The Cement Industry is not a public utility service. According to the Certifying Officer, making any such provision in the Standing Order would mean overriding the provisions of the Industrial Disputes Act. The relevant clause of the Code of Discipline agreed to between the parties was brought to the notice of the Certifying Officer, but he held that in case of breach of the said Code the management could proceed against the delinquents. While reversing the above order and re-instating the above-said impugned clauses in the Standing Orders as finally certified by the appellate authority following reasons were given by the Industrial Tribunal for adopting that course:—

(i) In the Code of Discipline evolved at the 15th session of the Indian Labour Conference it was provided that there should be no strike or lockout without notice:

(ii) that a similar provision in respect of strike by workers after notice to the management is contained in the Standing Orders of almost all other concerns owned by the Associated Cement Companies Ltd.

(iii) that in view of the special features of the industry it is but essential that the management should get sufficient prior notice of any intended strike by the workers so as to enable the management to make alternative arrangements or to consider seriously the demands made by the workers.

(iv) that the fact that section 22 of the Industrial Disputes Act requires a notice of the strike to be given only in the case of a public utility service and that there is no provision for prior notice in the case of other establishments in section 23 of that Act did not mean that no provision to that effect could be made in the Standing Orders.

(v) that model Standing Orders had to be followed only so far as they were practicable and that

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sections 23 and 24 of the Industrial Disputes Act did not lay down a prohibition to the inclusion of any such provision in the Standing Orders of an industrial establishment which has not been declared as a public utility service.

The appellate authority emphasised the fact that in view of the peculiar facts of the case, the existence of which was not seriously disputed before the appellate authority and also with a view to keep uniformity in the Standing Orders of the various sister concerns owned by the employer he considered that sub-clause (ii) of clause 20 of the Draft Standing Orders should be retained and re-inserted in the final certified Standing Orders.

The above-said findings of the appellate authority amount to holding that sticking to the model Standing Orders in this respect was not practicable in the circumstances of the instant case within the meaning of section 3(2) of the Act. The findings also amount to holding that in the opinion of the appellate authority it would be fair and reasonable to retain that clause as contained in the Draft Standing Orders. That being the situation it is not for this Court to interfere with the findings of fact on discretionary matters recorded by the appellate authority under the Act. Even otherwise no injustice to the petitioners results from the insertion of those words.

Both sides have relied on the judgment of the Supreme Court in the *Associated Cement Co., Ltd.* v. *P. D. Vyas and others* (5) in connection with their respective contentions regarding this point. This case was decided on the basis of law as it prevailed prior to the amendment of section 4 of the Act. In spite of that, the Division Bench of the Bombay High Court declined to interfere with the order of the appellate authority and that judgment was upheld by the Supreme Court. It was observed by their Lordships of the Supreme Court in the end of the judgment that in a petition for a writ of *certiorari* it would normally not be open to the petitioners to challenge the merits of the findings recorded by the authorities under the Act. Still this is precisely what Mr. Anand Swaroop has been canvassing me to do in this case. The orders of the appellate authority are supported by good grounds and for the

(5) A.I.R. 1960 S.C. 665.

reasons already recorded by me I have not been able to persuade myself to interfere with the same.

No other point was argued before me by either of the parties. This writ petition, therefore, fails and is dismissed. But in view of the fact that the petitioners are workmen, I leave the parties to bear their own costs.

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FULL BENCH

Before S. B. Capoor, I. D. Dua and P. C. Pandit, J.J.

MURARI LAL GUPTA,—*Petitioner.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No. 2377 of 1964

1965

September, 29th

Land Acquisition Act (1 *of* 1894)—*Ss. 5-A and* 17—*Government—Whether entitled to order that provisions of S. 5-A will not apply to a perticular acquisition—Decision as to urgency—Whether of the Government—Such decision—Whether reviewable by Courts.*

Held, that a combined reading of sub-sections (1) and (4) of section 17 of the Land Acquision Act, 1894, clearly shows that when land, in a particular case, is being acquired under the provisions of section 17(1), then under section 17(4) the Government can direct that the provisions of section 5-A will not apply.

Held, that the question whether an urgency exists or not is a matter solely for the determination of the Government and it is not a matter for judicial review. The question of determining the urgency in a particular case is the main concern of the Government. The existence of the urgency is a matter for their subjective satisfaction. If this question were to be made a justiciable issue, the consequences would be that the Government would not be able to go ahead with the acquisition proceedings for a long time in urgent cases, the purpose for which the land was being acquired without complying with the provisions of section 5-A would be defeated and the Government would not able to execute the work, for which the land was being acquired, in time. Section 17 gives special powers to the acquiring authority in cases of urgency only and the appropriate authority could take action only after it is satisfied that the case