Q1. Industry section 2(j) defines industry, industry" means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen.

This definition is in two parts. The first says that industry means any business, trade, undertaking, manufacture or calling of employers and the second part provides that it includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen. "If the activity can be described as an industry with reference to the occupation of the employers, the ambit of the industry, under the force of the second part takes in the different kinds of activity of employees mentioned in the second part. But the second part standing alone cannot define industry. By the inclusive part of the definition the labour force employed in any industry is made an integral part of the industry for the purpose' of industrial disputes although industry is ordinarily something which employers create or undertake". However, the concept that "industry is ordinarily something which employers create or undertake" is gradually yielding place to the modern concept which regards industry as a joint venture undertaken by employers, and workmen, an enterprise which belongs equally to both. Further it is not necessary to view definition of industry under Section 2(j) in two parts. The definition read as a whole denotes a collective which employers and employees are associated. It does not consist either by employers

alone or by employees alone. An industry exists only when there is relationship between employers and employees, the former engaged in business, trade, undertaking, manufacture or calling of employers and the latter engaged in any calling, service, employment, handicraft or industrial occupation or avocation. There must, therefore, be an rise in which the employers follow their avocations as detailed in the defamation and employ workmen.Thus, a basic requirement of 'industry' is that the employers must "Be" ""carrying on any business, 'trade, undertaking, manufacture or calling of employers'. There is next much difficulty in ascertaining the meaning of the words business, trade, manufacture, or calling of employers in order to determine whether a particular activity carried on with the co-operation of employer and employees is an industry or not but the difficulties have cropped up in defining the word 'undertaking'.

"Undertaking" means anything undertaken, any business, work or project which one engages in or attempts, or an enterprise. It is a term of very wide denotation have been evolved by the Supreme Court in a number of decisions which But all decisions of the Supreme Court are agreed that an undertaking to be within the definition in Section 2(j) must be read subject to a limitation, namely, that it must be analogous to trade or business.1 Some working principles furnish a guidance in determining what are the attributes or characteristics which will indicate that an undertaking is analogous to trade

or business. The first principles was stated by Gajendragadkar, J. in

Hospital MazdoorSobfefl case as follows :

"As a working principle it may be stated that an activity systematically or habitually undertaken for the production or distribution of goods or for the rendering of material services to the community at large or a part of such community- with, the help of employees is an undertaking. Such an activity generally involves the co-operation of the employer and the employees; and its object is the satisfaction of material human needs. It must be organized an arranged in a manner in which trade or business is generally organized or arranged. It must not be casual, nor must it be for one's self nor for pleasure. Thus the manner in which the activity in question is organized or arranged, the condition of the co-operation between the employer and the employee necessary for its success and its object to render material service to the community can be regarded as some of the features which are distinctive of activities to which Section 2(j) applies."

In Bangalore Water Supply v. A. Rajappa, a seven Judges' Bench of the Supreme Court exhaustively considered the scope of industry and laid down the following test which has practically reiterated the test laid down in Hospital Mazdoor Sabha case :

Triple Test.—Where there is (i), systematic activity, (ii) organised by co-operation between employer and employee (the direct and substantial element is

chimerical), (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes, prima facie, there is an "industry" in that enterprise. This is known as tripple test. The following points were also emphasised in this case :

(1) Indtistry does not include spiritual or religious services or services geared to celestial bliss, e.g., making, on a large scale, prasad or food. It includes material services and things.

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

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

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

Therefore the consequences of the decision in this case are that professions, clubs, educational institutions co-operatives, research institutes, charitable projects and other kindered adventures, if they fulfil the triple test stated above cannot be exempted from the scope of Section 2(j) of the Act.

Dominant nature test.—Where a complex of activities, some of which qualify for exemption, others not, involve employees on the total undertaking some of

whom are not workmen or some departments are not productive of goods and services if isolated, even then the predominant nature of the services and the integrated nature of the departments will be true test, the whole undertaking will be "industry" although those who are not workmen by definition may not benefit by status.

Exceptions.—A restricted category of professions, clubs, co-operatives and even gurukulas and little research labs, may qualify for exemption if in simple ventures, substantially and, going by the dominant nature criterion substantively, no employees are entertained but in minimal matters, marginal employees are hired without destroying the non-employee character of the unit. If in pious or altruistic mission, many employ themselves, free or for small honorarium or like return, mainly drawn by sharing in the purpose or cause, such as lawyers volunteering to-run a free legal services, clinic or doctors serving in their spare hours in a free medical centre of ashramites working at the bidding of the holiness, divinity or like central personality, and the services are supplied free or at nominal cost and-those who serve are not engaged for remuneration or on the .basis of 'master and servant relationship, then, the institution is not an industry even if stray servants, manual or technical are hired. Such elementary or like undertakings alone are exempt not other generosity, compassion, developmental passion or project.

Sovereign functions, strictly understood, (alone) qualify for exemption, not

the welfare activities or economic adventures undertaken by Government or statutory bodies. Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within Section

It was further observed that :

"Undertaking must suffer a contextual and associational shrinkage as explained in D.N. Barterjee v. P.R. Mukher]ee,b so also, service calling and the like. This yields to the inference that all organised activities possessing the triple elements abovementioned, although not trade or business, may still be industry provided the nature of the activity,, viz. the employer-employee basis, bears resemblance to what is found in, trade or business. This takes into the fold of "industry" undertaking, callings and services, adventures analogous to the carrying on of trade or business. All features other than the methodology of carrying on the activity, viz., in organizing the co-operation between employer and employee, may be dissimilar. It does not matter if on the employment terms there is analogy".

The Supreme Court in Management of Safdarjung Hospital, Delhi v. Kuldip Singh counter to the principles enunciated in Bangalore Water Supply v. A. Rajappa case and overrule its decision

! whether Municipal corporation can be regarded as an industry was decided by the court in D.N. Banerjee v. P.R. Mukherjee. In this case the Budge Municipality dismissed two of its employees, Mr. P.C. Mitra, a Head clerk and Mr. P.N. Ghose a Sanitary Inspector on charges for negligence, insubordination and indiscipline. The Municipal Workers Union of which the dismissed employees were members questioned the propriety of the dismissal and the matter was referred to the Industrial Tribunal. The Tribunal directed reinstatement and the award was challenged by the Municipality on the ground that its duties being connected with the local self-government it was not an industry and the dispute was not an industrial dispute and therefore reference of the dispute to the tribunal was bad in law. The Supreme Court observed that in the ordinary or non-technical sense industry or business means an undertaking where capital and labour co-operate with each other for the purpose of producing wealth in the shape of goods, tools etc. and for making profits. In the opinion of the Court every aspect of activity in which the relationship of master and servant or employer and employees exists or arises does not become an industry

It was further observed that 'undertaking' in the first part and industrial occupation or avocation in the second part of Section 2(j) obviously mean much more than what is ordinarily understood by trade or business. The definition was apparently intended to include within its scope what might not strictly be

called a trade or business. Neither investment of capital nor profit making motive is essential to constitute an industry as they are generally, necessary in a business, A public utility service such as railways, telephones, and the supply of power, light or water to the public may be carried on by private companies or business corporations and if these public utility services are carried on by local bodies like a Municipality they do not cease to be an industry,For the reasons stated above Municipal Corporation was held to be an industry.

In Permanand v. Nagar Palika, Dehradun and others} the Supreme Court held that the activity of a Nagar Palika in any of its department except those dealing with levy of house tax etc, falls within the definition of industry in U.P. Industrial Disputes Act, 1947.

The question whether hospital is an industry or not has come for determination by the Supreme Court on a number of occasions and the uncertainty has been allowed to persist because of conflicting judicial decisions right from Hospital Mazdoor Sabha case to the Bangalore Water Supply v. A. Rajappa. In State of Bombay v. Hospital Mazdoor Sabha case, the Hospital MazdoorSabha was a registered Trade Union of the employees of hospitals in the State of Bombay, The services of two of its members were terminated by way of retrenchment' by the Government and the Union claimed their reinstatement through a writ petition. It was urged by the State that the writ application was misconceived because hospitals did not constitute an industry. The group of hospitals were run

by the State for giving medical relief to citizens and imparting medical education. The Supreme Court held the group of hospitals to be industry and observed as follows :

(1) The State is carrying on an 'undertaking' within Section 2(j) when it

runs a group of hospitals for purpose of giving medical relief to the citizens and for

helping to impart medical education.

(2) An activity systematically or habitually undertaken for the production

or distribution of goods or for the rendering of material services to the community at large or a part of such community with the help of employees is an undertaking.

(3) It is the character of the activity in question which attracts the provisions of Section 2(j), Who conducts the activity and whether it is conducted for profit or not make a material difference. {4} The conventional meaning attributed to the words, 'trade and business' has lost some of its validity for the purposes of industrial adjudication...it would be erroneous to attach undue importance to attributes associated with business or trade in the popular mind in days gone by.

Hospital run by the Government as a part of its function is not an industry.

Hospitals run by the State of Orissa are places where persons can get treated.

they are run as departments of Government. The mere fact that payment is accepted in respect of some beds cannot lead to the inference that the hospitals are run as a business in a commercial way. Primarily, the hospitals are meant as free service by the Government to the patients without any profit motive".

But in view of the decision of the Supreme Court in Bangalore Water Supply v. A. Rajappa Dhanrajgiri Hospital case has been overruled and all hospitals fulfilling the test laid down in Bangalore Water Supply case will be industry.

Thus on an analysis of the entire case law up to Bangalore Water Supply case on the subject it can be said that such hospitals as are run by the Government as part of its sovereign functions with the sole object of rendering free service o the patients are not industry. But all other hospitals, both public and private; whether charitable or commercial would be industry if they fulfil the triple test .laid down in Bangalore Water Supply v. A. Rajappa.

respondent Mr. Ram Nath was employed as driver by University College for women. Mr. AsgarMashih was initially employed as driver by Delhi University but was later on transferred to the University College for women in 1949. The University of Delhi found that running the busess for transporting the girl students of the women's college has resulted in loss. Therefore it decided to discontinue that facility and consequently the services of the above two drivers were terminated. The order of termination was challenged on the ground that

the drivers were workmen and the termination of their services amounted to retrenchment. They demanded payment of retrenchment compensation under Section 25-F of the Act by filing petitions before the Industrial Tribunal. The Tribunal decided the matter in favour of the drivers and hence the University of Delhi challenged the validity of the award on the ground that activity carried on by the University is not industry. It was held by the Supreme Court that the work of imparting education is more a mission and a vocation than profession or trade or business and therefore University is not an industry. But this case has been overruled by the Supreme Court in Bangalore Water Supply case and in view of the triple test laid down in Bangalore Water Supply^ case even a University would be an industry although such of its employees as are not workmen within the meaning of Section 2(s) of the Act, may not. get the desired benefits to which a workman in an industry may be entitled to.

In Brahma Samaj Education Society v. West Bengal College Employees' Association, the society owned two colleges. A dispute arose between the society and non-teaching staff of the colleges. It was pleaded that the society was purely an educational institution and not an industry because there was no production of wealth with the co-operation of labour and capital as is necessary- to constitute an industry. The Calcutta High Court observed that our conception of industry has not been static but has been changing with the passage of time. An undertaking which depends on the intelligence or capacity of an individual

does not become an industry simply because it has a large establishment. There may be an educational institution to which pupils go because of the excellence of the teachers; such institutions are not industry. On the other hand, there may be an institution which is so organised that it is not dependent upon the intellectual skill of any individual, but is an organisation where a number of individuals join together to render services which might even have a profit motive. Many technical institutions are run on these lines. When again we find these institutions also do business by manufacturing things or selling things and thereby making a profit they certainly come under heading of "industry". These being the tests, it is clear that it will be a question of evidence as to whether a particular institution can be said to be an industry or not.

In Osmania University v. Industrial Tribunal Hyderabad, a dispute having arisen between the Osmania University and its employees, the High Court of Andhra Pradesh, after closely examining the Constitution of the University, held the dispute not to be in connection with an industry. The correct test, for ascertaining whether the particular dispute is between the capital and labour, is whether they are engaged in co-operation, or whether the dispute has arisen inactivities connected directly with, or attendant upon, the production or distribution of wealth.

In Ahmedabad Textile Industry's Research Association v. State of Bombay? an association was formed for founding a scientific research institute. The institute

was to carry on research in connection with the textile and other allied trades to increase efficiency. The Supreme Court held that "though the association was established for the purpose of research, its main object was the benefit of the members of the association, the association is organised, and arranged in the manner in which a trade or business is generally organised; it postulates co-operation between employers and employees; moreover the personnel who carry on the research have no right in the result of the research. For these reasons the association was held to be "an industry".

But a society which is established with the object of catering to the intellectual as distinguished from material needs of men by promoting general knowledge of the country by conducting research and publishing various journals and books is not an industry. Even though it publishes books for sale in market, when it has no press of its own the society cannot be termed even an 'undertaking' for selling of its publication was only an ancillary activity and the employees were engaged in rendering clerical assistance in this matter just as the employees of a solicitor'firm help the solicitors in giving advice and service.

Since University of Delhi v. Ram Natb? has been overruled by the Supreme Court in Bangalore Water Supply v. A. Rajappa the present position is that the educational institutions including the university are industry in a limited sense. Now those employees of educational institutions who are covered by the

definition of workman under Section 2(s) of the Industrial Disputes Act, 1947 will be treated as workman of an industry.

Is Government Department an industry.—In State of Rajasthan v. Ganeshi lal, the Labour Court had held the Law Department,of Government as an industry. This view was upheld by the Single Judge and- Division Bench of the High Court. It was challenged by the State before Supreme Court.

It was held that the Law Department of Government could not be considered as an industry. Labour Court and the High Court have not indicated as to how the Law Department is an industry. They merely stated that in some cases certain departments have been held to be covered by the expression industry in some decisions. It was also pointed out that a decision is a precedent on its own facts. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed.

Clubs.—Clubs or self-service institutions or non-proprietary member's club will be industry provided they fulfil the triple test laid down in Bangalore 'Water Supply v, A. Rajappa.1 The Cricket Club of India case and Madras Gymkhana Club case (discussed below) which were the two leading cases, on- the point so far have been overruled by Bangalore Water Supply case. In Cricket Club of India v. Bombay Labour Union2 the question was whether the Cricket Club of India, Bombay which was a member's club and not a proprietary club, although

it was incorporated as a company under the Companies Act was an industry or not. The club had membership of about 4800 and was employing 397 employees. It was held that the club was a self service institution and not an industry and "it was wrong to equate the catering facilities provided by the club to its members or their guests (members paying for that), with a hotel. The catering facility also was in the nature of self service by the club to its members". This case has now been overruled.

Madras Gymkhana Club Employees' Union-v. Management;' is another case on this point. This was a member's club and not a proprietary club with a membership of about 1200. Its object was to provide a venue for sports and games and facilities for recreation and entertainment. It was running a catering department which provided food and refreshment not only generally but also on special occasion. It was held that the club was a member's self-serving institution and not an industry. No doubt the material needs or wants of a section of the community were catered but that was not enough as it was not done as part of trade or business or as an undertaking analogous to trade or business. This case has also been overruled. Now it is not necessary that the activity should be a trade or business or analogous to trade or business

It may, therefore, be submitted that both Cricket Club of India and Madras Gymkhana Club would now be an industry because they fulfil the triple test laid down in Bangalore Water Supply case. Both are systematically organised with

the co-operation of employer and employee for distribution of service to satisfy human wishes.

Supply v. A. Rajappa.

Q2. Industrial Dispute:-The main objective of the Act, as pointed out in preamble is "to make provision for the investigation and settlement of industrial dispute". Therefore the definition of "industrial dispute" has special significance. The following elements should exist to constitute an industrial dispute

1. a dispute or difference between (a) employers and employers, or

(b) workmen, or (c) workmen and workmen;

The dispute or difference should be connected with (a) employment or non-employment, or (b) terms of employment, or (c) conditions of

labour of any person;

(3) the dispute may be in relation to any workman or workmen or any other person in whom they are interested as a body.

The expression "of any person" appearing in the last line of Section 2(k) means that the person may not be a workman but he may be some one in whose employment, terms of employment or conditions of labour the workmen as a

class have a true and substantial interest. Industrial dispute is not restricted to dispute between employer and a recognised majority union. It also means a difference between employer and workmen including a minority union.

The definition of industrial dispute does not refer to industry. But on the grammar of the expression it must necessarily be a dispute in an industry. Moreover, the expression the 'employer' and 'workman' used in the definition of industrial dispute carry the requirement of 'industry' in that definition by virtue of their own definition. Before an industrial dispute can be raised there must be first established a relationship of employer and employee associating together, the former following a trade or business, etc., and the latter following any calling, service or employment, etc., in aid of the employee's enterprise. It is not necessary that there must be a profit motive but the enterprise must be analogous to trade or business in a commercial sense. For a dispute to be industrial dispute it is necessary that a demand must be first raised on management and rejected by them. Making of such a demand to conciliation officer and its communication by him to management who reject the same is not sufficient to constitute industrial dispute.

For coming into existence of an industrial dispute a written demand is not a sine qua non, unless of course in the case of public utility service. The very words in the definition of industrial dispute in Section 2(k) are 'dispute or difference'. The term 'industrial dispute' connotes a real and substantial difference having some

element of persistency and continuity till resolved and likely, if not adjusted, to endanger the industrial peace of the undertaking or the community.

In Workmen of Hindustan Lever Ltd. v. Hindustan Lever Ltd., the question was whether a demand to confirm employees in an acting capacity in a grade is an industrial dispute ? It was held that a demand of the workmen to confirm employees employed in an acting capacity in a grade would unquestionably be an industrial dispute without anything more.

It was held in Sarva Shramik Sangh v. Indian Hume Pipe Company Limited, that the Industrial Disputes Act, 1947 does not limit the power of the Industrial Tribunal to grant relief only from the date of raising of industrial dispute. The definition of the industrial dispute in Section 2(k) of the Act does not contain, any such limitation. The Tribunal has power to grant relief from a date anterior

of raising industrial dispute.

Chandrakant Tukaram Nikam and others v. Municipal Corporation of Ahemdabad and another, the workmen of the respondent Municipal Corporation had challenged orders of dismissal/removal from service in Civil Courts which was contested by the respondent. It was held by the Supreme Court that the jurisdiction of the Civil Court was impliedly barred in these cases as the dismissal or removal from service and legality of such order being industrial dispute, the appropriate forum for such relief was one constituted under Industrial Disputes Act, 1947.

In Thirupattur Co-operative Sugar Mills Ltd. v. S. Sivalingam, the trial Court restrained the sugar mill by temporary injunction from implementing the proposed penalty of reduction in rank against the present respondent. The Co-operative Sugar Mills Ltd. challenged the said order in the High Court. It was held that the lower Court had thoroughly gone into evidence on record and allowed the application for temporary injunction. The High Court said that there was no irregularity or infirmity in the impugned injunction order. It was made clear that matters of dispute between employer and workman other than the discharge, dismissal, retrenchment or termination of service are not industrial dispute under section 2(k) of the Industrial Disputes Act, 1947. Therefore remedy for such disputes lies in civil court. Only Civil Court has jurisdiction to try the suit relating to matters other than those covered by section 2-A of the Industrial Disputes Act.

It was held in Jadhav J . .H. v. Forbes Gobak Ltd., that in order that a dispute relating to a single workman may be an industrial dispute it must either be espoused by the union or by a number of workmen. In the present case the individual dispute was espoused by the union. The Court also pointed out that there was no particular form prescribed to effect such espousal. The objection in this case was that the union espousing the cause of workman was not the majority union but that objection was rightly rejected by the Tribunal and wrongly accepted by the High Court. The Supreme Court said that the High

Court should not have upset the finding of the Tribunal without holding that the conclusion was irrational or perverse.

Employment and non-employment.—Non-employment includes retrenchment as well as refusal to reinstate. The use of the word non -employment' raises question, whether an employee who had been dismissed, removed, discharged or retrenched can be re-instated by an order of the Industrial Tribunal. In Western India Automobile Association v. Industrial Tribunal,the Federal Court held that :

"Re-instatement is connected with non-employment and is, therefore,

within the words of the definition. It would be curious result if the view

is taken that though a person discharged during a dispute is within the

definition of the word 'workman' yet if he raises a dispute about dismissal re-instatement it would be outside the words of the definition in connection with employment or non-employment."

Compassionate appointment.—In Punjab National Bank and Others v. Ashwini Kumar Taneja, the question was whether denial of compassionate appointment to the son of an employee dying in harness could be justified on the ground that his family received substantial retiral benefits. The Supreme Court held it justified. Reiterating the basic intention (of compassionate appointment) namely that the family should not be deprived of the means of livelihood, the Supreme

Court held that retiral benefits received by the family (of the deceased) were to be taken into consideration and in this context it referred to the relevant clause in the employer Bank's Scheme for compassionate appointment.

Regularisation of Service.—In Pankaj Gupta and Others v. State of J. & K and others, some persons were employed as class IV employees without publication of a notice inviting applications for filling up these posts. The appellants were employed only on recommendation by members of State Legislature. No criteria approved by the Government or any rules of recruitment were followed while making these appointments. It was held by the Supreme Court that no person illegally appointed would be entitled to claim that he should be continued in service. The Supreme court directed to fill vacancies after fresh notification and the appellants could apply for these posts and it they do so they should be given relaxation in age.

Dispute relating to workmen employed by the contractor.—The Standard Vaccum Company case is the leading case on the point. The Standard Vacuum Company used to 'give annual contract for maintenance of the plant and premises. In the first year 67 persons were employed while the next year only 40 workmen were employed. The contractor's men were not entitled to any privileges and there was no security of employment. The workmen raised an industrial dispute demanding the abolition of the contract system. The Supreme Court held the dispute to be an industrial dispute because there was a real and

substantial dispute between the company and the workmen on the question of employment of contract labour for the work of the company. The fact that the workmen were employed by the contractor would not alter the nature of dispute so long as the party raising the dispute has a direct interest in the subject-matter of the dispute. A dispute about the reason for stoppage of work or a dispute relating to application and interpretation of standing orders is an industrial dispute.

In K.K. Thilakan and others v. FACT Ltd., and another 26 persons employed by the contractor, Pigee Agencies in connection with the work of respondent a public sector undertaking. After about 10 years of service claimed to be absorbed in service under the Respondent No. 1. It was held that the petitioners were never the workmen of the respondent but were only now seeking employment. An industrial dispute cannot exist between an employer and person seeking employment. Here the petitioners were employed by a contractor employed by the first respondent. That cannot confer on them any preferential claim to be appointed in its service.'

Disputes regarding medical aid to families or housing of workmen.—In any industrial dispute, Tribunal has jurisdiction to make proper and reasonable order, but housing of the industrial labour is primarily the responsibility of the State, and in the present economic conditions of our industries, an obligation to provide housing accommodation to the employees cannot be imposed upon the

employers. The Tribunal may also make an award for medical aid to the families of employees, although there is no authoritative judicial opinion on this point.

Jurisdiction of civil court barred.—In State of Haryana and others v. Bikar Singh, respondent was a conductor in Haryana Roadways. He was dismissed from service for embezzlement of Rs. 200 which he collected from a passenger and for which he did not issue ticket. A suit was filed in Civil Court by dismissed conductor seeking a decree of declaration "that he should be deemed to be in service and the orders regarding his dismissal passed by the departmental authorities be declared as null and void. The trial Court examined the case on merit without determining the jurisdiction of the Court. The Supreme Court expressed its dismay on the absence of a finding of the trial court on the issue of jurisdiction and set aside the orders of the Civil Court and the High Court. It was observed that the Civil Court had no jurisdiction to entertain a suit relating to a dispute involving recognition and enforcement of rights and obligations created under the Industrial Disputes Act, 1947. Hence, decree passed by Civil Court being without jurisdiction was a nullity. However, the Supreme Court observed that so much of the salary paid to the respondent for the work he had rendered pursuant to the impugned orders of the lower •brums would not be recovered from the respondent.

In Rajasthan State Road Transport Corporation and another v. Khadarmal, the service of a probationer was terminated. The matter was adjudicated by Civil court which was challenged on the ground of jurisdiction. The Supreme Court observed that the Civil Court had no jurisdiction and the decrees passed had no force of law and were set aside. The right remedy in this case would have been of an industrial dispute under the Industrial Disputes Act, 1947, The Supreme Court held that there could be no direction to reinstatement or to continue reinstatement. However, back wages, if any paid, should not be refrered, the Supreme Court added

Privilege.—Where privilege given to an office-bearer of a trade union in

n of duty relief is withdrawn by the management which has granted the

it cannot be said that an industrial dispute has arisen thereby. The legal status of the duty relief is only that of a concession and not a matter pertaining to conditions of service. Where the concession provided is withdrawn, the beneficiary cannot complain that a condition of service is affected and the management is not entitled to do so without raising an industrial dispute and having the matter adjudicated by the competent authority.

Delay in raising industrial dispute.—Delay in raising industrial dispute does-not serve as a bar to the reference of a dispute. If the dispute is raised after a considerable delay which is not reasonably explained, the Tribunal would

definitely take that fact into account while dealing with the merits of the dispute.

Individual dispute and industrial dispute.—Whether a single workman, Who is agrrieved by an action of the employer can raise industrial dispute. Section 2(k) of the Act speaks of a dispute between employer and workmen i.e., plural form has been used. "Before insertion of Section 2-A of the Act an individual dispute could not per se be an industrial dispute, but it could become one if taken up by the Trade Union or a number of workmen. The provision of the Act leads to the conclusion that its applicability to an individual dispute as opposed to dispute involving a group of workmen is excluded unless it acquires the general characteristics of an industrial dispute, viz., the workmen as a body or a considerable section of them make -common cause with the individual workman."

It was held in Jagdish Narain Sharma and another v. Rajasthan Pairika Ltd. and another; that a dispute relating to transfer of a workman will become an industrial dispute only when it is espoused by a union of workmen or by a substantial number of workmen employed in an industry. Without such espousal the dispute cannot be treated as an industrial dispute and cannot be referred to a Labour Court.

Section 2-A is of limited application. It does not declare all individual disputes to be an industrial dispute. A dispute connected with a discharged, dismissed,

retrenched or terminated workman shall be an industrial dispute. If the dispute or difference is connected with other matter then it would have to satisfy the test laid down in judicial decisions. Thus only a collective dispute could constitute an industrial dispute but collective dispute does not mean that the dispute should either be sponsored by a recognised union or that all or majority of the workmen of an industrial establishment should be parties to it." A dispute is an industrial dispute even where it is sponsored by a union which is not registered; but the Trade Union must not be one unconnected with the employer or the industry concerned. Where an individual dispute is espoused by union the question of the employee being a member of the union when the cause arose is immaterial. Those taking up the cause of the aggrieved workman must be in the same employement.

Q3.WORKMAN

Section2(s)of the Industrial Disputes Act defines Workman.—The definition of workman is important because the Act aims at investigation and settlement of industrial dispute which implies a difference between employer and workmen. Therefore a tribunal has right to adjudicate an industrial dispute only when such a dispute relates to an employee who is a workman.

"Workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or' reward, whether the terms of employment be

express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, dispute, or whose dismissal, discharge or retrenchment has led to that dispute.

"Workman" does not include any such person— (i) who is subject to the Air Force Act, 1950, or the Army Act, 1950, or

the Navy Act, 1957; or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity;or

(iv) who, being employed in a supervisory capacity, draws wages exceeding ten thousand rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

The expression "employed" used in the definition has two known conotations. The context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which employee renders services for which he is engaged by the employer and the agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person

being a workman within the terms of the definition is that he should be employed to do the work in the industry and that there should be employment of his by the employer and that there should be a relationship betweeen the employer and him as between the employer and employee or master and servant. Unless a person is thus, employed there can be no question his being a workman within the definition. Thus where a contractor employs workman to do the work which he contracted with a third person to accomplish, the workman of the contractor would not without something more a workman of that third person.

In Bihar State Road Transport Corporation v. State of Bihar, a person was appointed as head clerk in the office of Divisional Manager and there was no evidence that he was doing managerial or supervisory work, His conditions of service were governed by the standing orders of the Rajya Transport. He was workman.

In Punjab National Bank v. GhulamDastagir, the respondent was personal driver of area manager of the appellant Bank. Area manager was given personal allowance by bank to enable him to employ personal driver of his own jeep. All requirements in maintaining jeep were borne by the bank. There was no material to show that the said driver was employed by the bank, was paid his salary by bank and was included in the list of employees of the bank. It was

held that the driver was not employed by the bank and was not a workman within Section 2(s) of the Act

In Divisional Manager, New India Assurance Company Ltd. v. A. Sankara lingam, the respondent was appointed as a sweeper-cum-water carrier on a monthly wage basis with effect from January 2,1986. Later on he requested for regularisation of his services but was on the contrary informed orally that he was not required to work with effect from March 15, 1989. The question is whether a part time workman would be covered within the definition of workman under Section 2(s) of the Industrial Disputes Act, 1947. When the services of workman in this case were terminated, he challenged it and the Tribunal held that he was not a workman under Section 2(s) of the Act as he had worked only as a part time employee and that too on ad hoc basis. The award of Tribunal was set aside by the High Court and reinstatement of workman was ordered. Hence the employer preferred an appeal to the Supreme Court.It was held that even a part time workman would be covered within the definition of workman in Section 2(s) of the Act if he works under the control and supervision of an employer and is entitled to claim protection of Section 25-F of the Industrial Disputes Act, 1947

In S.K. Verma v. Mahesh Chandra, the Development Officer of Life Insurance Corporation was held to be a workman. Keeping in view the nature of duties

performed by such officers and the powers vested in them they cannot be said to be engaged in any administrative or managerial work.

In H.S. Chauhan v. Life Insurance Corporation of India, a Development Officer was held to be a workman. He had to perform routine, manual, mechanical and clercial duties and was drawing wages- exceeding Rs. 500/-. He had no supervisory duty. He could neither appoint any person nor remove, anybody. He had no power to assign duties or distribute work to any employee.

In Titaghur Papers Mills Co. Ltd, v. 1st Industrial Tribunal, a person with technical expertise was also held to be a workman. Although they did not run. the machines themselves but stood by and guarded ordinary workmen in the matter of funning the machine, their job cannot be said to be purely 'supervisory or administrative.

It was held in Indian Bank Association v. Workmen of Syndicate Bank and others, that deposit collectors of Banks were workmen and commission received by them were wages, the master and servant relation existed between deposit collectors and concerned bank.

It was held in Philips v. Labour Court, Hyderabad and another, that designation alone is not important to determine whether a person is working in a supervisory capacity or is a workman. The test to decide whether an employee is a workman is to take into account his basic or primary duties and the dominant purpose of his employment. An incidental performance of supervisory

duty will not make the character of employment supervisory. The focus shall be on the nature of the duties. A clerk who has been given the assistance of a peon cannot be said to be working in a supervisory capacity. Similarly giving training by chief analytical chemist to an apprentice as part of his work by itself would not be supervisory. A clerk in a Bank is a workman. In Kerala State oil Corporation Ltd. v. Industrial. Tribunal and others, the factory requisitioned different companies to supply security personnel to work in factory who were paid by the companies which sent them to work in factory. It was held that such security men are workmen of factory which requisitioned them.

In National Engineering Industries Ltd. v. Shri Kishan Bhageria and others, it was held that the duties of the Internal Auditor were mainly reporting and checking up on behalf of management and the person doing such work is not a supervisor. The Auditor has no independent right or authority to take decision and his decision did not bind the company. Hence the Internal Auditor is a workman and not a supervisor.

In Kesava Bhatt v. Shree Ram Ambuhm Trust; the Kerala High Court held that a priest is not a workman. In its opinion a pujari cannot be equated with a mere wage earner and his services cannot be treated as manual or clerical etc. There was difference between a mahant, cook or clerk who work around the precincts of the temple or its corridor and office rooms and a priest placed in the sanctum sanctorum and who silently said his prayers. The deity or God he serves cannot

be looked upon as a profit producing scheme and the owner of a temple cannot be equated to an industrial or commercial employer. Therefore priest is not a workman.

In T,P. Srivastaua v. National Tobacco Co. of India Ltd, it was held by the Supreme Court that a section salesman employed by the respondent company is not a workman because the duties of the appellant require imaginative and creative mind which could not be termed as either manual, skilled, unskilled or clerical in nature. His supervising work was only incidental.

In Ramesh s/o Ramarao wase v. The Commissioner, Revenue Division, Amravati, the petitioner was a sectional engineer performing supervisory duties. He pleaded that in performance of his duties he was using technical knowledge, therefore, he was a workman. It was held that using of technical knowledge does not change the dominant nature of his supervisory duty to technical. Performing a technical job and supervisory work are two different things. In the technical work, there would hardly be any scope for judging, opinion or evaluating. Exercising control over subordinates, sanction leave or supervision over quality of work are all supervisory duties. Only because a surgeon or an engineer uses his technical knowledge in performing his job it cannot be said that they are workmen.

In Management of Otis Elevator Co-India Ltd. v. Presiding Officer, Industrial Tribunal III and another the respondent number 2 was offered to join as a

Field/Trade Trainee in the petitioner's organisation on June 1, 1987. In August, 1988, the respondent No. 2 was informed that the petitioner had decided to discontinue his contract of training with effect from 31st August 1988. He was paid some stipend during his training period. It was held by the High Court that the respondent was not a workman of the company as the purpose of engagement of the petitioner was only to offer him training under the terms and conditions stipulated in his contract of training. It was further held that the stipend paid to the respondent No. 2 cannot be termed as wages. Besides the respondent No. 2 had accepted all the dues that were payable to him and executed the receipt in settlement of all his final claims. The Court held that the order of disengagement of the above trade trainee was not stigmatic.

Difference between workman and independent contractor.—For any person to be a workman it is necessary that he should be in the employment of the employer. Merely a contract to do some work is not enough. Unless the relationship of master and servant which is implied in the term "employed" is admitted or established, the person concerned is no workman.

In Dharangdhara Chemical Works Ltd. v. State of Saurashtra and others, the appellant company took from the State Government on lease certain salt work at Kudain in the State of Saurashtra. Salt was manufactured from rainwater which soaks down the surface and becomes impregnated with saline matter. The entire area was divided into small plots called "Pattas". The "Pattas" were let out to

"aghiaras" at Rs. 400 a year. The point for determination was, whether the seaghiaras" were workmen or "contractor". It was proved that the "aghiaras" were free to engage extra labour at their own cost. They were paid Rs, 0-5-6 per maund for the salt produced by them. They were free to work when they liked. as no hours of work was prescribed and no muster roll was maintained. In rainy season when they were free form this work they returned to their villages and became engaged in their agricultural work. The management exercised supervision and control at all stages of manufacture. The following principles were laid down by the Supreme Court :

(1) For a person to be a workman it is necessary that he should be employed in an industry and there should be relationship of employer and employee. The test to determine employer-employee relationship is the existence of the right in the master to supervise and control the work done by the servant, not only in directing what work the servant is to do, but also the manner in which he shall do this work;

(2) As regards the fact that the "aghiaras" did piece work the Court observed that a person can be a workman even though he is paid not per day but by the job. The test is, whether the employer retained the right of controlling the work, and it makes no difference whether the man was employed on a daily wage or paid by the job.

(3) The fact that the "aghiaras" were entitled to engage other persons to

do the work was not conclusive proof of the fact that they were independent contractors. The broad distinction between workman and an independent contractor lies in this that while the former agrees himself to do the work, the latter agrees to get other persons to do it. If a person agrees himself to do the work, and does the work, he is a workman, he does not cease to be a workman merely because he gets other persons to work along with him and that those persons are controlled and paid by him.

In J.K. Cotton Spinning and Weaving Mills Co. Ltd, v. Labour Appellate Tribunal of India, the Mill provided to its officers under terms of the contracts the bungalows with attached gardens in the colony of the mills and some "malis" were employed by the mill to look after these gardens. The conditions of service of "malis" was determined by the mill. Their work was supervised and controlled by the mill. Payment was also made by the mill. The Supreme Court held that the "malis" must be held to be engaged in operations which are incidentally connected with the main industry carried on by the mills and are, therefore, workman within the meaning of Section 2(s).

Badli Workman.-— "Badli workman" means a workman who is employed in an industrial establishment in the place of another workman whose name is borne on the muster rolls of the establishment but ceases to be regarded as Badli workman if he has completed one establishment.

At present the workman whose services have been discharged, retrenched or otherwise terminated under Section 2-A of the Industrial Act, 1947 is unable to approach the Labour Court or Tribunal in the absence of a reference of industrial dispute by the appropriate government to Labour Court or Tribunal. This causes delay and untold suffering to the workmen. Prior to the present (Amendment) Act, 2010 the Industrial Disputes (Amendment) Act 1982 provided for an in-house Grievance Settlement Authority for the settlement of industrial disputes connected with an individual workman employed in the industrial establishment, but it does not permit the workman to approach Labour Court or Tribunal until such dispute has been decided by the Grievance Settlement Authority. The Labour Courts and Tribunals have no power under the Act to enforce the awards published by the appropriate Government.

In view of the above it was necessary to provide for workman a direct access to Labour Court or Tribunal in case of disputes arising due to discharge, dismissal, retrenchment or termination of service of workman. Therefore, the present Amendment, Act of 2010 established a Grievance Redressal Machinery as an in-house mechanism in an industrial establishment with twenty or more workmen without affecting the right of workman to raise an industrial dispute the same matter under the provisions of the Act. Accordingly the necessary ages wheresoever required have been made by the Industrial Disputes

Amendment) Act, 2010 in order to achieve above object.