UNIT-III

Q1.Same as the definition of Industrial Dispute

Q2.Section 10 . Reference of Disputes to Boards, Courts or Tribunal:-

Section 10(1) of the Act is in the nature of operative provision providing for reference of any matter relating to an industrial dispute or the dispute itself to various authorities created by the Act. A precondition for making any reference by the Appropriate Government under this section is in existence or apprehension of an industrial dispute. The reference should be by an order in writing. This sub-section provides that where the Appropriate government is of the opinion that any industrial dispute exists or is apprehended, it may at any. time :

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

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

refer the dispute or any matter appearing to be connected with, or relevant to the dispute, to a Labour Court for adjudication provided the dispute relates to any matter specified in the second schedule; or refer the dispute or any matter appearing to be connected with, or relevant to, the dispute (where it relates to any matter specified in the Second Schedule or Third Schedule), to a tribunal for adjudication : Provided that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than one hundred workmen the Appropriate Government may, if it so thinks fit, make the reference to a Labour Court under clause (c) above ;

Provided further that where the dispute relates to a public utility service and a notice of strike or lock-out under Section 22 has been given, the Appropriate Government shall make a reference under this sub-section notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced. No such reference shall be made if the notice has been frivolously or vexatiously given or that it would be inexpedient to make the reference :

Provided also that where the dispute in relation to which the Central Government is the Appropriate Government, it shall be competent for that Government to refer the dispute to a Labour Court or an Industrial Tribunal, as the case may be, constituted by the State Government.

Under Section 10 (1-A) the Central Government may refer a dispute to a National Tribunal for adjudication if it is of the opinion that— (i) any dispute exists or is apprehended; and

ii.)the dispute involves, any question of national importance;

iii)or the dispute is of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected such dispute; and

(iv) the dispute should be adjudicated by a National Tribunal.

It is further provided that the reference to National Tribunal shall be made by the Central Government only whether it is the Appropriate Government in relation to that dispute or not. The reference must be by an order in writing. The Central Government may refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the second schedule or the third schedule.

Section 10(2) of the Act provides for compulsory reference of an industrial dispute by the Appropriate Government. The two conditions that make it obligatory for the Appropriate Government to make a reference are :

(i) An application in the prescribed manner made by the parties to an

industrial dispute, whether made jointly or separately;

(ii) Satisfaction of the Appropriate Government as to the fact that the person; applying represent the majority of each party.

If these two conditions are fulfilled then the industrial dispute may be referred to Board, Court, Labor Court, Tribunal or National Tribunal.

In Sunil Kumar Ghosh and others v, K. Ram Chandran and others, it was held by the Supreme Court that it is settled law that without consent, workmen cannot be forced to work under different management and in that event, those workmen are entitled to retirement/retrenchment compensation in terms of the Act. In view of the same the Supreme Court was of the view that the workmen are entitled to the benefit of such direction and it is the obligation on the part of the Management Philips India Ltd. to comply with the same. The Supreme Court was also satisfied that the learned single judge was conscious of the fact that these workmen failed to avail the V.R.S. within the stipulated time and also did not retire from the service. However, taking note of the fact that the workmen cannot be compelled to join the transferee company against their wish and without their consent and all alone fighting for their cause in various forums such as Civil Court, Labour Court, the Government and the High Court and even in Supreme- Court. The Supreme Court was of the view that the learned single judge was fully satisfied in passing such order.

A perusal of the directions passed by the learned single Judge leaves no room for doubt that a mandatory duty was cast upon Respondent Nos, 1 and 2 to comply with the same. In such circumstances, it is highly improper on the part of the Management now to turn around and to contend that since the appellant-

workman had neither been retired nor resigned, nor retrenched from service, as such, there was no question of any payment or to comply with the directions passed by the learned single Judge.

In nutshell it was held that the workmen cannot be compelled to work under different management and in that event those workmen are entitled to retirement/retrenchment compensation in terms of the Industrial Disputes Act, 1947.

Sec.10(2-A):- An order referring an industrial dispute to a Labour Court, Tribunal National Tribunal under this, section shall specify the period within which such Labour Court, Tribunal or National Tribunal shall submit its award on such dispute to the Appropriate Government :

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

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

Provided also that in computing any period specified in this subsection, the period, if any for which the proceedings before the Labour court, National Tribunal had been stayed by any injunction or order of a Civil court shall be excluded :

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

Section 10(3) of the Act provides that where an industrial dispute has been referred to Board, Labour Court, Tribunal or National Tribunal under Section 10 the Act, the Appropriate Government may issue an order prohibiting the continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of reference.

The scope of an adjudication proceeding is laid down in Section 10(4) of the Act. Where an order making the reference of any industrial dispute to any authorities as mentioned in this section had been made and wherein the points of dispute for adjudication are specified the adjudication shall be confined only to those-points and the matters incidental thereto.

; Sub-section (5) of Section 10 empowers the Appropriate Government to include at the time of making the reference or at any time before the submission of the award, any other establishment, group or class of establishments of a similar nature, which is or is likely to be interested in or affected by the dispute.

Such inclusion is permissible whether at the time of inclusion any dispute exists or is apprehended in that establishment, group or class of establishments. Whether the dispute is of such a nature that any other establishment, group or class of establishments of a similar nature is likely to be interested in or affected by such dispute or not is the absolute discretion of the Appropriate Government. The Appropriate Government may arrive at such a conclusion either on an application being made to it or otherwise.

Section 10(6) of the Act provides that where any reference has been made under sub-section (1-A) to a National Tribunal, then notwithstanding anything contained in this Act, no Labour Court or Tribunal shall have jurisdiction to adjudicate upon any matter which is under adjudication before the National Tribunal and accordingly—

(a) if the matter under adjudication before the National Tribunal is pending

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

(b) it shall not be lawful for the Appropriate Government to refer the matter

under adjudication before the National Tribunal to any Labour Court or Tribunal for adjudication during the pendency of the proceeding in relation to such matters before the National Tribunal.

Explanation.—In this sub-section, 'Labour Court' or Tribunal' includes any Court or Tribunal or other authority constituted under any law relating to investigation and settlement of industrial disputes in force in any State.

Section 10(7) of the Act provides that where a reference of a dispute in relation

to which the Central Government is not the Appropriate Government, is made to a

National Tribunal, then notwithstanding anything contained in Sections 15, 17, 19,

33-B and 36-A the Appropriate Government in relation to such dispute shall

be the Central Government. But save as aforesaid and otherwise expressly provided in this Act, any reference in any other provisions of this Act to the State Government in relation to that dispute shall mean a reference to the State Government.

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

Court, Tribunal or National Tribunal shall complete such proceedings and submit its award to the Appropriate Government.

In Indian Farmers Fertilizer Co-operative Ltd. v. Industrial Tribnal I, Allahabad and others, the appellants contented before the Supreme Court" that the Tribunal had acted beyond the scope of reference in as much as the question referred to it was whether the appellant had wrongly terminated the services of 88 workmen and the question whether they were the employees of the appellant was completely outside the scope of reference. The Supreme Court held that the claim of the workmen has been that they have been employed by the appellant but the appellant claimed than they were employees of the contractor. The nature of their employment whether directly under appellant or through contractor was necessarily to be decided determine the relief to be given to them. When a question was raised that the workmen in question were not employees of the appellant, necessarily the Tribunal had to go into that question in depth. On due appreciation of evidence the Tribunal came to the conclusion that they were the employees of the appellant and that finding of fact was based on evidence. The conclusion reached by the tribunal, in the opinion of the Supreme Court could not be seriously assailed by the appellant and there is no justification to interfere with the award affirmed by the High Court that the employees should be deemed to be continuing in service of the appellant without break in service with all attendant benefits including back wages.

It was held in Satish Sharma v. Union of India and others, that when dispute continues to exist and there is delay in raising dispute, reference of such dispute cannot be refused merely on the ground of such delay. Consequently the refusing to make a reference was set aside and the Union of India even after of about 11, years, as the dispute was still continuing, was directed to refer dispute for adjudication to Labour Court.

Union Bank of India Employees V. the Government had refused to make the reference of the dispute a as there was no change in conditions of service, section 9-A of the Industrial Disputes Act was not attracted. The single judge has directed the government to refer the dispute to Industrial Tribunal for adjudication. Aggrieved by this order the Bank filed present appeal. Upholding the order under appeal the High Court that the order passed by the appropriate Government was not in consonance law as it was not within the power of the appropriate Government to consider merits of the matter. It was, however clarified that the single Judge's order should not be considered as having recorded findings on merits of the dispute and the Industrial Tribunal could decide it when the matter was referred, on merits without being influenced by the observation of the single Judge.

Section 10(1) confers a discretionary power on the Government and this discretionary power can be exercised on being satisfied that an industrial dispute exists or is apprehended. There must be some material before the

Government on the basis of which it forms an opinion that an industrial dispute exists or is apprehended. The power conferred on the Appropriate Government is an administrative power and the action of the Government in making the reference is an administrative act. The adequacy or sufficiency of the material on which the opinion was formed is beyond the pale of judicial scrutiny. If the action of the Government in making the reference is impugned by a party it would be open to such a party to show that what was referred was not an industrial dispute and that the tribunal had no jurisdiction to make the award but if the dispute was an industrial dispute, its factual existence and the expediency of making a reference in the circumstances of a particular case are matters entirely for Government to decide upon, and it will not be competent for the Court to hold the reference bad and quash the proceedings for want of jurisdiction merely because there was, in its opinion, no material before Government on which it would have come to an affirmative conclusion on those matters.

Ordinarily and generally in a large number of cases, a reference is made when the government finds that an industrial dispute exists. There are cases where dispute is only apprehended or even there may be where some dispute exists and some are apprehended. To keep an order of reference free from pale of attack on such a ground, the Government will be well advised to specify one

or the other in their order of reference. The Government should clarify the position and remove the ambiguity by filing a counter when the reference order is challenged on this ground.

Section 10(1) of the Act confers discretion on the Government to refer a or not. But when conciliation proceedings have failed, the reasons for to refer the dispute for adjudication must be recorded by the Government. In Bombay Union of Journalists v. State of Bombay, the Supreme Court refused to accept that the Appropriate Government is precluded from considering even prima facie the merits of the disputes when it decides the question as to whether its power to make a reference should be exercised under Section 10(1) read with Section 12(5) or not. If the claim made is patently frivolous or clearly belated, the Appropriate Government may refuse to make a reference. Likewise, if the impact of the claim on the general relations between the employer and the employees in the region is likely to be adverse, 'the Appropriate Government may take that into account in deciding whether reference should be made or not. Therefore, a prima facie examination of the merits cannot be said to be foreign to the inquiry which the Appropriate Government is entitled to make dealing with a dispute under Section 10(1) and so the argument that the Appropriate Government exceeded its jurisdiction in expressing its prima facie view on the nature of the termination of service cannot be accepted.

In Workmen v. I.I.T.I. Cycles of India Ltd., and others, the State Government refused to make a reference of an industrial dispute for adjudication on ground that there was a settlement between the management and the recognized union under Section 18(1) of the Industrial Disputes Act, 1947 and the Industrial Tribunal accepted the terms of the settlement as fair and just when the validity of the settlement was questioned by two other minority unions. It was held by the Supreme Court that it was not obligatory on the part of the Government to make a reference of dispute in each and every case. In this the order of the Government refusing to make a reference does not call for interference because there was a settlement having the support of the majority of workers and the settlement was found fair and just by the Industrial Tribunal. The Government can decline reference in the interest of industrial peace. The Government has not declined on the ground that the dispute was raised by a minority union. Even a minority union can raise a dispute. The Government itself has not adjudicated the dispute, it has only referred in its order to findings of the Tribunal which has adjudicated the merits of the case.

Reference of industrial dispute:-

The act of making a reference of any dispute under sub-section (1) is an administrative act and neither judicial nor quasi-judicial. If the Appropriate Government decides that no reference is necessary, the Government cannot be compelled by issuing a writ to make a reference. The use of the word 'may'

shows that the power is discretionary and not mandatory. If in any particular case, the Government acts arbitrarily or contrary to law in refusing to refer a dispute to the Tribunal or Labour Court, then such a refusal may be a right ground for petition under Article 226 of the Constitution.

It was held in Sultan Singh v. State of Haryana and another, that a conjoint reading of Section 10(1) and Section 12(5) of the Industrial Disputes Act, 1947 makes it clear that it would be open to the State Government to form an opinion whether a dispute exists or is apprehended and thereafter it may either make a reference or refuse. The decision is based on subjective satisfaction of the Government. Only the order of refusal to make a reference needs to be communicated and the order must record the reasons for refusing to make a reference. It is only an administrative order and not a quasi judicial order. There is no need to issue any notice to the employer nor to hear the employer before

|Lay-off(Section 2kkk) :-The following are salient features of lay off :

(1) An employer, who is willing to employ, fails or refuses or is unable to provide employment for reasons beyond his control.

(2) Any such failure or refusal to employ a workman may be on account

of :—

(i) shortage of coal, power, or raw materials, or

(ii) the accumulation of stock, or

(iii) the breakdown of machinery, or (iv) natural calamity, or

(v) any other connected reasons.

(3) A workman who is so deprived of employment must be such whose name is borne on the muster rolls of his industrial establishment.

(4) The workman must not have been retrenched.

Explanation.—The explanation attached to the sub-section lays down that every workman whose name is borne on the muster rolls of the industrial establishment and who presents himself for work at the establishment at the time appointed for the purpose during normal working hours on any day and is not given employment by the employer within two hours of his so presenting himself shall be deemed to have been laid-off for that 'day within the meaning of this clause.

If the workman, instead of being given employment at the commencement of any shift for any day is asked to present himself for the purpose during second half for the day and is given employment, then, he shall be deemed have been laid-off only for one-half of that day.

If he is not given any such employment even after so presenting himself he shall not be deemed to have been laid-off for the second half of the shift of the day and shall be entitled to full basic wages and dearness allowance for that part of the day.

Lay-off means putting aside workmen temporarily. The duration of lay-off should not be for a period longer than the period of emergency. The employer-employee relationship does not come to an end but is merely suspended during the period of emergency.

In Central India Spinning, Weaving Manufacturing Co. Ltd., Nagpur v. State Industrial Court, the Bombay High cort held that the key to the definition is to be found in the words "the failure, refusal or inability of an employer". These words make it clear that unemployment has to be on account of a cause which is independent of any action or inaction on the part of the workmen themselves.

The expression "for any other reason" appearing in this sub-section has to be construed ejusdem generis. Any other reason must be of the kind, as the other reasons stated in the clause. The common feature of all these reasons is that the workmen are laid off for reasons beyond the control of the employer. Therefore, the expression "for any other reason" must also denote similar characteristics.

Lay-off is not a right conferred but an obligation imposed on the employer for the benefit of the workmen. Far from laying off of an employee being a right, it is really an obligation. The very essence of a lay-off is that it is a temporary stoppage and that within a reasonable period of time the employer expects that, the business or industry would continue and his employees who have been laid-off will be restored to their full rights as employees. Further, in the definition of

lay-off there is no indication whatever that it should continue for a particular period, of time.

In Nutan Mills Ltd., Ahmadabad v. Employees State Insurance Corporation, the question for consideration was, whether on the employee being laid-off the relation of master and servant continues and the mutual rights and obligations which flow from such relationship also continue. The High Court of Bombay was of the opinion that the relationship of master and servant did not continue but was suspended during the period of "lay-off and the employee entitled to any wages. It was further held that :

"If the contract is not suspended and if the mutual obligation between the employer and the employee continues, then the mere fact that the employee is not given work or cannot render service to the employer will not derogate from his right to receive wages from the employer. A subsisting contract of employment results in there being certain obligations upon the employer and also upon the employee and also certain rights as between the employer and the employee. The obligations are that the employer is bound to pay wages and the employee is bound to serve. The rights are that the employer is entitled to claim from employee that he should render services. The right of the employee is that if he is prepared to serve he would have the right to receive the wages stipulated. But if the contract of employment is suspended, then there is no

obligation upon the employee to serve the employer, nor is there a reciprocal obligation upon the employer to pay wages."

In S.A .E. Mazdoor Union v. Labour Commissioner, Indore and others, the Trade Union challenged the order of the Labour Commissioner granting permission to the employer to lay-off on the ground of accumulation of stock sought under Section 25M of the Industrial Disputes Act, 1947. It was held that the fact that accumulation of stock would become inevitable if workmen were not laid off would fall within the scope of reasons of Section 25M read with Section 2(kkk) of the Industrial Disputes Act, 1947. Under the circumstances, the application for permission to lay-off reflected a ground on the basis of which the Labour Commissioner could objectively consider the case for granting the said permission. Therefore the permission for lay-off granted by the Labour Commissioner was not assailable.

Lock-out,section 2(i):-

"Lock-out" means the closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him.

Strike is a weapon in the hands of the labour to force the management to accept their demands. Similarly, lock-out is a weapon in the hands of the management to coerce the labour to come down in their demands relating to the conditions of

employment. Lock-out is the keeping of labour away from work by an employer with a view to resist their claim. There are four ingredients of lock-out :

1. (i) temporary closing of a place of employment by the employer, or

(ii) suspension of work by the employer, or

(iii) refusal by an employer to continue to employ any number of persons employed by him;

(2) the above-mentioned acts of the employer should be motivated by

coercion;

(3) an industry as defined in the Act; and

(4) a dispute in such industry.

Lock-out has been described by the Supreme Court as the antithesis of strike. In view of Madras High Court, whatever be the circumstances in which the employer may find himself placed and whatever be the strength of the agencies which forced on him the step and however impotent he may be to avoid the result, if an employer closes the place of employment or suspends work on his premises, a lock-out would come into existence.It was further held that in the constant tussle of employees and employer the strike is the weapon of the employees.....lock-out is the corresponding weapon in the armoury of the employer. If the employer shuts down his place of business as a means of reprisal or as an instrument of coercion or as a mode of exerting pressure on the

employees or generally speaking when his act is what may be called an act of belligerency there would be a lock-out.

In case of lock-out the workmen are asked by the employer to keep away festival holidays as the system of unpaid holidays was no longer followed in any major industry of the region. It was held that there should be more concentration on increase of production and efficiency than enjoying the holidays if the country is to march ahead on the road to prosperity. As such there was no reason or justification for unpaid holidays not being curtailed.

Retrenchment Section 2(oo):-

Retrenchment connotes in its ordinary acceptation that the business itself is being continued, but that a portion of the staff of labour force is discharged as surplusage. It means the- discharge of surplus labour or staff by the employer for any reason whatsoever. The order of termination must be actuated with a motive of economy. Section 2(oo) which defines the term "retrenchment" may be analysed as follows :

(1) Retrenchment means the termination by the employer of the service

of a workman;

(2) The termination may be for any reason whatsoever;

(3) But the termination should not be as a measure of punishment by way

of disciplinary action. The following are not retrenchment :

(a) voluntary retirement of a workman, or

(b) retirement of a workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) termination, of the service of a workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein, or

(c) termination of the service of a workman on the ground of continued ill-health.

Action taken by the employer may be for any reason. When a portion of the staff or labour force is discharged as surplusage in a running or continuing business, termination of service which follows may be due to a variety of reasons, e.g., economy, rationalization in industry, installation of a new labour saving machinery etc. It does not matter why the employer is discharging the surplusage. If other requirements of the definition are fulfilled, then it is retrenchment. "For any reason whatsoever" are the key words. Every termination spells retrenchment. A termination takes place where a term expires either by the active step of the master or the running out of the stipulated term.

The termination of service on account of superannuation at a particular age which is prescribed by the rules which constitute the condition of service cannot

be regarded as retrenchment. Retrenchment means discharge of surplus

labour by the employer for any reason whatsoever, otherwise than as a

punishment inflicted by way of disciplinary action. It has no application where the service of all workmen have been terminated by the employer on a real and bona fide closure of business or on the undertaking being taken over by another employer. The discharge of surplus labour must be in running industry. The termination of service in accordance with rules of service is not retrenchment, but the termination of service in terms of contract of employment is not retrenchment.

For what reasons and at what time the employer would discharge the surplus labour, is entirely his discretion. If a reorganization scheme has been adopted by the company for reasons of .economy and convenience, the discharge and retrenchment of some of the workmen would have been considered as an inevitable though very unfortunate consequence of the reorganization scheme which the employer acting bona fide was entitled to adopt.

ln D.C. & G. Mills v. Shambhu Nath the respondent was working as a Motion-Setter at the relevant time. There was some reorganization in the establishment

and the post of Motion Setter was abolished. Thereafter the respondent would have been retrenched but in terms of a settlement between the management and the workmen, no employee was retrenched. The management agreed to offer work "on any other suitable post". Therefore the respondent was offered an alternative job without loss of wages. He was found unfit for that job even after extension of probation. Thereafter, he was offered another job on the same wages, which he did not accept. Instead he requested the management to give him one more chance to show his efficiency. His name was struck-off as the management did not accept his request. It was held that the striking off name of the respondent amounted to retrenchment. Retrenchement would include termination of services of a temporary railway servant on one month's notice.

In Managing Director, Karnataka Handloom Development Corporation Ltd. v. Sri Mahadeva Laxman Raval, respondent was appointed for fixed periods as an expert weaver to train weavers. His services were discontinued after the expiry of the contract period. He raised a dispute and the Labour Court directed his reinstatement. The award of Labour Court was confirmed by High Court. Hence the corporation preferred an appeal in the Supreme Court.

Allowing the appeal the Supreme Court observed that the respondent was aware that his appointment was purely contractual. His appointment stood automatically terminated on completion of the stipulated period. The Supreme

Court held that the terms of appointment show that the respondent was not a worker but employed on contract basis in a time barred scheme.

The Court held that section 2(oo) of the Industrial Disputes Act, 1947 was not attracted and discontinuance of respondent's service was not retrenchment as defined in Section 2(oo) of the Act.

In Kamlesh Kumar Rajanikant Mehta v. Presiding Officer Central Government Industrial Tribunal No. 1 and others the question was : where the services of an employee is terminated for loss of confidence, will it amount to retrenchment. It was held that retrenchment is merely the discharge of surplus labour staff in a running or continuing business or industry, for certain reasons, viz., cutting down of expenditure or wanting to introduce labour saving device. If the termination is for any other reason say for loss of confidence, it is not retrenchment. It would be a mistake to hold that loss of confidence could be included in the expression "for any reason whatsoever" and termination on that score would amount to retrenchment.

It was held in Sh. Satya Prakash Giri & others v. Presiding Officer, Industrial Tribunal, Haryana and another that it is settled law that it is the managerial discretion of an employer to organize his business in the manner he considers best. It is not competent for a workman to challenge the propriety of the same so long as the business is organized in a bona fide manner. While reorganizing the business, if surplus employees are asked to quit, no employer can be burdened

with carrying on with an economic dead weight and retrenchment has to be accepted as inevitable.

Where the services of a workman is terminated due to loss of confidence such termination amounts to punishment inflicted by way of disciplinary action. Since termination is grounded upon conduct attaching stigma to the appellant, disciplinary proceedings are necessary as a condition precedent to infliction of the striking off name of the respondent amounted to retrenchment. Retrenchment would include termination of services of a temporary railway servant on one month's notice.

Where the services of a workman is terminated due to loss of confidence such termination amounts to punishment inflicted by way of disciplinary action. Since termination is grounded upon conduct attaching stigma to the appellant, disciplinary proceedings are necessary as a condition precedent to infliction of termination as a measure of punishment. If no disciplinary proceedings are held the order of termination would be vitiated in law and cannot be sustained. In such a situation he can either be reinstated in service or be adequately compensated. Hence termination on the ground of loss of confidence would not amount to retrenchment.

In Post Graduate Institute of Medical Education and Research v. Officer Labour Court and another, the second respondent, namely, Bhupinder Singh was appointed as a Junior Laboratory Technician on an adhoc basis against a

post reserved for Scheduled Tribe, from December, 1985 till March 1986. The appointment was continued from time to time but not after October, 1988. A dispute arose and was referred to the Labour Court which held the termination illegal and directed reinstatement with full back wages and continuity of service, the award was challenged and it was held by the High Court that the appointment was not purely contractual one which could be terminated by the employer on the expiry of the contractual period and it did not come within the purview of clause (bb) of Section 2(oo). As it was to a post reserved for the Schedule Tribe, it was not proper to discontinue the second respondent's service until a Schedule Tribe candidate was recommended by the Employment Exchange or the Selection Committee of the Institute. The appeal was, therefore, dismissed.

In L Robert D'Souza v. Executive Engineer Southern Railway, it was held that the termination for unauthorized absence from duty by workman amounted to retrenchment. Similarly termination of service in accordance with the standing orders of the Company for continued absence without leave was retrenchment.

The position relating to retrenchment was expressed in explicit terms in a Parna case. The High Court has held that whether the termination is brought about by voluntary or involuntary actions, whether that was produced by overt act or by operation of the provisions of the standing orders, the termination would be retrenchment.

In S. Govindamju v. K.S.R.T.C. and anothers, the appellant was duly selected for conductor's post according to Regulations. He was appointed in a temporary vacancy and later on his services were terminated on the ground of his being found unsuitable. No opinion was expressed by the Supreme Court whether it would amount to retrenchment or not. But it was held that once a candidate is selected in accordance with the regulations, he gets right to be considered for appointment as and when vacancy arises. On the removal of his name serious consequences entail as he forfeits his right to employment in future. In such a situation, even though the regulations do not stipulate for affording any opportunity to the employee the principles of natural justice would be attracted and the employee would be entitled to an opportunity of explanation though no elaborate enquiry would be necessary.

In State of Rajasthan & others v. Rameshwar Lai Gohlot, a person was appointed on January 28, 1988 for a period of 3 months or till regularly selected candidate assumes office. His appointment was terminated on November 19, 1988. It was held that when the appointment is for a fixed period, unless there is finding that power under Clause (bb) of Section 2(oo) was misused or vitiated by its mala fide exercise, it cannot be held that the termination is illegal. In its absence, the employer could terminate the services in terms of the letter of appointment unless it is colorable exercise of power. Therefore in case of

termination of services in terms of letter of appointment neither reinstatement nor fresh appointment could

Strike.

Section 2(q)Strike means :

(1) cessation of work by a body of persons employed in any industry acting in combination; or

(2) a concerted refusal of any number of persons who are or have been employed in any industry to continue to work or to accept employment; or

(3) a refusal under a common understanding of any number of persons who are or have been employed in industry to continue to work or to accept employment.

Strike means the stoppage of work by a body of workmen acting in concert with a view to bring pressure upon the employer to concede to their demands during an industrial dispute. The workmen must be employed in any industry. Mere cessation of work does not come within the purview of strike unless it can be shown that such cessation of work was a concerted action for the enforcement of an industrial demand.

As pointed out in this clause a cessation of work or refusal to work is an essential element of strike. There can be no strike if there is no cessation of

work. However, the duration of cessation of work is immaterial. Cessation of work even for half an hour amounts to a strike. What is required, therefore, is actual cessation of work for howsoever short a period it may be. Mere absence from work is not enough but there must be concerted refusal to work, to constitute a strike. The workers of a company wanted to celebrate "May day". They requested the employer of company to declare that day a holiday. They were also ready to compensate the loss of work by working on a Sunday. On the Company's failure to declare 'May day' as a holiday the workers enbloc applied for leave. It was held that there was no "cessation of work" or concerted refusal to work and the action of the employees to apply for casual leave enbloc did not amount to strike.

Kinds of Strike.-—There are mainly three kinds of strike, namely,

1 general strike; (2) stay-in-strike; and (3) go slow.

(1) General Strike:-A General strike is one, where the workmen join together for common cause and stay away from work, depriving the employer of their labour needed to run his factory. Token strike is also a kind of general strike. Token strike is for a day or a few hours or for a short duration because its main object is to draw the attention of the employer by demonstrating the solidarity and co-operation of the employees. General strike is for a long period. It is generally resorted to when employees fail to achieve their object including a token strike which generally precedes a general.

Stay-in-Strike:-

A 'Stay-in-Strike' is also known as 'tools down strike'. It is that form of strike where the workmen report to their duties, occupy the premises but do not work. The employer is thus prevented from employing other labour to carry on his business. Where dismissed workmen were staying on premises and refused to leave them it was held not to amount to stay in strike but an offence of criminal trespass. The presence of excited labour in the factory is a great threat and danger. The Supreme Court has held that refusal under common understanding to continue to work is a strike and if in pursuance of such common understanding the employees entered the premises of the Bank and refused to take their pens in their hands that would no doubt be a strike under Section 2(q).

(3) Go-Slow:-

In a "go-slow" strike, the workmen do not stay away from work, they do come to their work and work also, but with a slow speed in order to lower down the production and thereby cause loss to the employer. Go-slow strike is not a "strike" within the meaning of the term in the Act, but is serious misconduct which is insidious in its nature and cannot be countenanced.

In addition to these three forms of strike which are frequently resorted to by the industrial workers, a few more may be cited although some of them are not strike within the meaning of section 2(q)

(i) Sympathetic Strike

A sympathetic strike is resorted to in sympathy of other striking workmen. Its aim is to encourage or to extend moral support to or indirectly to aid the striking workmen. The sympathizers resorting to such strike have no demand or grievance of their own. It was held in Kambalingam v. Indian Metallurgical Corporation, Madras, that when the workers in concert absent themselves out of sympathy to some cause wholly unrelated to their employment or even in regard to condition of employment of other workers in service under other management, such absence could not be held to be strike as the essential element of the intention to use it against the management is absent. The management would, therefore, be entitled to take disciplinary proceedings against the workmen for their absence on the ground of breach of condition of service.

(ii) Hunger Strike:-

In hunger strike a group of workmen resort to fasting on or near the place of work or the residence of the employer with a view to coerce the employer to accept their demands. In Piparaich Sugar Mills Ltd. v. Their Workmen, certain employees who held key positions in the Mill resorted to hunger strike at the residence of the Managing Director, with the result that even those workmen who reported to their duties could not be given work. It was held that the

concerted action of the workmen who went on hunger strike amounted to strike within the meaning of this sub-section.

(iii) Work to rule:-

The employees in case of "work to rule" strictly adhere to the rules while performing their duties which ordinarily they do not observe. Thus strict observance of rules results in slowing down the tempo of work cause inconvenience to the public and embarrassment to the employer.

Closure and Transfer:-

Prior to the Industrial Disputes(Amendment) Act,1984 the word closure was not defined in any enforced legislative enactment. Section 2(cc) of the 1984 Act defines closure to mean:

"the permenant closing down of a place of employement or part thereof"

Section 25-o lays down the procedure for closing down a undertaking, namely:

1.An employer whose intention is to close down an undertaking of an industrial establishment to which Industrial Disputes Act, applies shall in a prescribed manner apply for prior permission atleast 90 days before the date on which he intends to close establishment to the Appropriate government stating clearly reasons for the intended closure of industrial establishment and the copy of such representation shall be served simultaneously to the representatives of workman in a prescribed manner.

Provided that nothing in this subsection shall apply to an undertaking set up for the construction of buildings, roads ,bridges, canals, dams and other construction works.

2.Where an application under sub-section1 has been made the appropriate government, after making such enquiry as it thinks fit and after giving reasonable opportunity of being heard to the employer, the workman, and the persons interested in such closure may, having regard to the adequacy of the reasons stated by the employer, the interests of the general public and all other relevant factors,by order for reasons to be recorded in writing, grant or refuse to grant such permission and copy of such order shall be communicated to the employer and workman.

3.Where the application has been made under sub-section1 and the appropriate government does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall shall be deemed to have been granted on the expiration of said sixty days.

4.An order of the Appropriate government granting or refusing to grant permission shall subject to the provisions of subsection-5 be final and binding on all the parties and shall remain in force for one year from the date of such order.

5.The Appropriate government may either on it's own motion or on application being made by the employer or any workman, review it's order granting or refusing to grant permission under subsection-2 or refer the matter to a tribunal for adjudication.

6.Where no application for permission under subsection-1 is made within period specified therein, or where the permission for closure has been refused, the closure of the undertaking shall be deemed to be illegal from the date of closure and the workman shall be entitled to all the benefits under any law for the time being in force as if the undertaking had not been closed down.

7.Notwithstanding anything contained in the foregoing provisions ,the Appropriate government may, if it is satisfied that the exceptional circumstances as accident in the undertaking or death of employer or the like is necessary so to do, by order, direct that the provisions of subsection-1 shall not apply in relation to such undertaking for such period as may be specified in the order.

8.Where an undertaking is permitted to be closed down under subsection-2 or where permission for closure is deemed to be granted under subsection 3, every workman who is employed in that undertaking immediately before the date of application for permission under this subsection shall be deemed to be recieve compensation which shall be equivalent to 15 days average pay for every

completed year of continuous service or any part thereof in excess of six months.

Any employer who closes down the industrial establishment without complying provisions of section 25-o shall be punished with an imprisonment which may extend to six months and fine which may extend to five thousand rupees or both.

In S. G. Chemicals and dyes Trading Employees V. S. G. Chemicals and dyes Trading limited and another, The respondent company was engaged in business of pharmaceuticals etc. and was operating in Bombay through three divisions situated at different places. The pharmaceuticals, the dyes, the marketing and sales divisions situated at Worly, Trombay and churchgate respectively. The registered office was also situated at church gate.The company gave notice to the Government under section 25-FFA(1) of its intention to close down its Marketing and sales Division employing 90 workman at Churchgate. Copies of the notice were sent to the Commissioner of Labour, Maharashtra and the Union. Pursuant to this notice the Division of Churchgate was closed down and the C ompany agreed to pay compensation under section 25-FF of the Industrial Disputed Act. The Union protested against the termination of employees and complained that closure was in contravention of section 25-O of the Industrial disputes Act. The union contended that for the purpose of section 25-O all the workmen working in three Divisions of the company should be taken into

consideration as there was functional integrity amongst the three Divisions. The Court held that Section 25-O applies to the closure of an undertaking of an industrial establishment and not to the closure of an industrial establishment.