ANSWERS FOR DISCUSSION IN THE WORKSHOP TO BE HELD ON 16.11.2014

: Subject - 1(A) :

Preliminary issue regarding fairness of enquiry and perversity of finding. How to deal and whether it is mandatory to be tried as preliminary issue.

Ans. to Que. No.1 : When the case of dismissal or discharge of an employee is referred for industrial adjudication the Labour Court should first decide as preliminary issues whether the domestic enquiry has violated the principles of natural justice.

Ref. : **Cooper Engineering Ltd. vs. P. P. Munde (1975) 2 SCC 661**

Ans. to Que. No.2 : Broad principles to govern the disciplinary enquiry is in the context of statutory rules under the Standing Orders – a) If provision violated is not substantiative but procedural, principles of natural justice is not violated. b) When proviso is substantiative theory of substantial compliance or test of prejudice does not arise; c) Procedural provisions are meant to provide adequate reasonable opportunity to the delinquent, violation thereof in compliance in each case cannot vitiate the enquiry; d) Violation of the provisions should be given from the point of view of causing prejudice to the delinquent employee.

Ref. :i] **National Organic Chemicals (RCD) Ltd. vs. Pandit Ladku Patil, 2008 III CLR 716 (Bom. H. C.)**

ii] **State Bank of Patiyala vs. S. K. Sharma (1996) 3 SCC 364 (Para 33)**

Ans. to Que. No.3 : The Scope of interference is very limited. 1] Whether there is some evidence to support the finding, ii] whether the evidence is such that a prudent and reasonable man would accept, iii] whether the approach of the enquiry officer is judicious and iv] whether the rules of natural justice have been followed. If these tests are satisfied, there can be no interference with the subjective opinion of the enquiry officer at the hands of Courts.

Ref. : i] **Suryabhan Maruti Avhand vs. Mahindra and Mahindra Ltd., 2011 I CLR 457 (DB) (Bom. H. C.)**

ii] **M/s, Firestone Tyre and Rubber Co. of India (P) Ltd. vs. Management and ors., [1973 (26) FLR 359].**

Ans. to Que. No.4 : Normally the Court should be reluctant to interfere with the orders passed at preliminary stage. However, when illegality and perversity of the gross nature is noticed and seen, the Court has to perform its duty in accordance with law, so also, when exercise of powers vested in it results in miscarriage of justice, then it is a duty of the Court to interfere with the findings of the Labour Court on preliminary issue.

Ref. :**Suryabhan Maruti Avhad vs. Mahindra and Mahindra Ltd. 2011 I CLR 457 (Bom. H. C.)**

Ans. to Que. No.5 : Yes. The employer has right to adduce evidence before the Court to prove the misconduct of the delinquent employee when the findings of enquiry officer are perverse or enquiry is unfair.

Ans. to Que. No.6 : When a case of dismissal or discharge of an employee is referred for industrial adjudication the Labour Court should first decide as preliminary issue whether the domestic enquiry has violated the principles of natural justice i. e. regarding fairness of enquiry and/or findings of enquiry officer.

Ref. : **Workmen of M/s. Firestone Tyre and Rubber Co. of India (P) Ltd. vs. Management and others, AIR 1973 page 1227**.

Ans. to Que. No.7 : Yes. It is necessary to Labour Court to decide fairness of enquiry and findings of enquiry officer as preliminary issue though the employer does not plead in his written statement that if enquiry is held to be defective and/or no enquiry is held then permission be granted to prove misconduct before the Court. In case of **Delhi Cloth Mills Co. vs. Ludh Budh Singh (1972) 1 SCC page 595 (paras 615 to 618)** the Hon'ble Supreme Court has laid down propositions.

Ref. : i] **Workmen of M/s. Firestone Tyre and Rubber Co. of India (P) Ltd. vs. Management and others, AIR 1973 1227**

ii] **KSRTC vs. Laxmidevamma, 2001 II CLR 640**.

Ans. to Que. No.8 : No. The enquiry officer cannot suggest punishment at the time of giving his findings in the enquiry report. Provided that if there is Certified Standing Orders or Rules to that effect he can suggest the punishment at that time.

Ans. to Que. No.9 : The findings of enquiry officer can be decided on the basis of material evidence recorded in the enquiry

proceeding and not on the basis of evidence recorded before the Court. Therefore, findings of the enquiry officer can not be said to be perverse when no oral evidence is adduced before the Court.

Ref. : **Gulam Mustaffa Kureshi vs. Member, Industrial Court and Ors. LPA 165/2004, W. P. No.4855/2003 dated 21.10.2004 (DB).**

Ans. to Que. No.10 : No. The reason is that the complainant in his complaint does not challenge the legality and validity of the enquiry proceeding in his complaint and also the findings of the enquiry officer.

Ans. to Que. No.11 : Yes. When a domestic enquiry has been held by the Management and the Management relies on the same, it is open to the later to request the Tribunal to try the validity of the domestic enquiry as a preliminary issue and also ask for an opportunity to adduce evidence before the Tribunal, if the finding on the preliminary issue is against the Management. Propositions laid down in case **Delhi Cloth Delhi Mills Ltd. vs. Ludh Budh Singh (1972) 1 SCC page 595 (paras 615 to 618).**

Ans. to Que. No.12 : No. In a domestic enquiry once a conclusion is deduced from the evidence it is not permissible to assail that conclusion even though it is possible for some other authority to arrive at a different conclusion on the same evidence.

Ref. :**Banaras Electric Light & Power Co. Ltd. vs. Labour Court Lucknow, AIR (SC) 1972 page 2181**.

Ans. to Que. No.13 : Yes. Although employee admits fairness of enquiry even then it is necessary to frame preliminary issue regarding perversity of findings.

Ref. : **Gulam Mustaffa Kureshi vs. Member, Industrial Court and Ors. LPA 165/2004, W. P. No.4855/2003 dated 21.10.2004 (DB)**.

Ans. to Que. No.14 : Preliminary issue of the fairness of enquiry and perversity of the findings can be framed while deciding the application filed under Section 101 of Maharashtra Industrial Relations Act, 1946 preferred by the employer seeking permission to dismiss the protected employee after enquiry. Considering the nature and scope of the enquiry under Section 101 (2) (A) of the MIR Act, 1946, it is clear that the Court under the said provisions of law has to find out whether a prima facie case is made out by the employer for terminating the services of the employee and whether action is not motivated by any unfair labour practice or victimization and whether the procedure laid down for such action has been followed or not.

Ref. : i] **Haribhau Kuble vs.Chanvim Engineering (I) Pvt. Ltd. W. P. No.180/2012**.

ii] **LPA No.262/2012 in W. P. No.180/2012**.

Ans. to Que. No.15 : Though the Management Representative was not appointed in enquiry, enquiry officer can put questions to the witness by way of clarification and not by way of cross-

examination. If the enquiry officer cross-examined the witness then it can be said that the enquiry conducted by the enquiry officer is not fair and proper.

Ans. to Que. No.16 : No. Reporting Officer himself cannot act as an enquiry officer as no person can be a judge of his own case.

Ans. to Que. No.17 : Issuance of charge-sheet is necessary before conducting departmental enquiry. The delinquent is required to know the specific and clear charges against him so that he can defend himself.

Ans. to Que. No.18 : No. The passenger witnesses are not necessary to be examined during enquiry. In case of State of **Hariyana vs. Ratansingh AIR 1977 SC 1512** has held that,

> "It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All the materials which are logically probative for prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and creditability."

Ans. to Que. No.19 : No. Even if the issues regarding fairness of enquiry and perversity of findings are not tried together there would be no effect. The said issues can be either tried together or separately.

Ans. to Que. No.20 : The record pertaining to the domestic enquiry would not constituted "fresh evidence" as those proceedings have already been found by the Labour Court to be defective. Such record would also not constitute "material on record", within the meaning of Section 11-A of the Industrial Disputes Act, 1947 as the enquiry proceedings, on being found to be bad, have to be ignored altogether.

Ref. : **Neeta Kaplish vs. Presiding Officer, Labour Court 1999 I CLR 219**.

: Subject- B (I) :

Scope of Section 32 of the MRTU & PULP Act, 1971 and limitations to jurisdiction while deciding the incidental or connected matters.

Ans. to Que. No.21 : No. Section 30 provides powers of Industrial and Labour Courts while Section 32 states about power of the Court to decide all connected matters. Section 32 would not enlarge the jurisdiction of the Court beyond what is conferred upon it by other provisions of the Act. If under other provisions of the Act the Industrial Tribunal or the Labour Court has no jurisdiction to deal with a particular aspect of the matter, Section 32 does not give such power to it.

Ref. :i] **Cipla Ltd. vs. Maharashtra General Kamgar Union, 2001 I CLR 754**.

ii] **Sarva Shramik Sangh vs. Indian Smelting and Refining Company Ltd. (2003) 10 SCC 455**.

Ans. to Que. No.22 : No. From the language of Section 32, it is clear that this provision does not enlarge the scope or the extent of the jurisdiction of the Industrial Court beyond what is conferred upon it by the other provisions of the Act. If under other provisions of the Act, the Industrial Court has no jurisdiction to deal with unfair labour practices mentioned in Item No.1 Schedule IV, Section 32 does not give such power to the Industrial Court.

Ref. : **National General Mazdoor Union vs. M/s. Nitin Casting Ltd., 1990 II CLR 641**.

Ans. to Que. No.23 : Pre-existing relationship of employer-employee is an essential pre-requisite being a core issue to file a complaint under the Act and in case of dispute regarding employer-employee relationship the Court can not decide under Section 32 as

an incidental issue.

Ans. to Que. No.24 : Issue as to who can represent the Union can be decided as an incidental issue under Section 32 of the MRTU & PULP Act, 1971 as laid down in case of **P. D. Siddhaye vs. G. N. Patwardhan, 1997 II CLR 1090**.

Ans. to Que. No.25 : Industrial Court can deal with a matter pertaining to unfair labour practices falling under Item 1 of Schedule IV of MRTU & PULP Act by co-jointly reading Section 32 of the Act in view of the law laid down in case of **Walchannagar Industries Ltd. vs. Dattasingh Lalsingh Pardesi, 2006 I CLR 810**.

: Subject - B(II) :

Procedure for dealing with the criminal complaints under Section 48 of the MRTU & PULP Act, 1971.

Ans. to Que. No.26 : Sanction from the competent authority is not necessary under Section 197 of Cr. P. C. in a complaint filed against any public servant under Section 48 of the MRTU & PULP Act, 1971. The Section does not extend its protective cover to every act or omission done by public servant in service but restricts its scope of operation to only those acts or omissions which are done by public servant in discharge of official duty. Hence, no previous

sanction is necessary.

Ref. :i] **Anjani Kumar vs. State of Bihar, (2008) (3) Mh. L. J. (Cri.) 508.**

ii] **Jayant Kawle and Ors. vs. Hon'ble Judge, Third Labour Court, Nagpur, 2009 I CLR 1079**.

Ans. to Que. No.27 : Yes. The provisions of Section 468 of Cr. P. C. are applicable while filing complaint under Section 48 of MRTU & PULP Act. Section 48 of MRTU & PULP Act lays down the powers and procedure of the Labour Court in trial of offences under this Act. The Labour Court has all the powers under the Cr. P. C. and, therefore, the provisions of Section 468 of the Cr. P. C. would also be applicable.

Ref. : **RCF Mumbai vs. Ramesh Kamble, 2003 I CLR 313**.

Ans. to Que. No.28 : No. A person who is not a party to the original complaint under Section 48 of the Act would not be made party to the Criminal Complaint under Section 48 of the Act. The concept of vicarious liability is unknown to criminal law. This is because, the order binds those who were the party to the earlier proceedings and not third person as he was not a party to the original complaint.

Ref. : i] **N. T. Lawankar vs. Anil Deviprasad Garad, 2007 (5) Mh. L. J. 214**.

ii] **Deepak Ray vs. Mofatlal Employees Union, 1995 (2) Mh. L. J. 149**.

Ans. to Que. No.29 : The procedure to be adopted in dealing with a complaint under Section 48 of the MRTU & PULP Act is prescribed in Rules 80 to 91 framed under the Labour Courts (Practice and Procedure) Rules, 1975. The complaint should be presented to the Court which shall follow the procedure under Section 200 and 202 of the Cr. P. C.

Ans. to Que. No.30 : It is not legally necessary or mandatory to issue notice to the proposed accused before issuance of process against him but the same is followed as a abandon caution.

Ans. to Que. No.31 : The Court can take cognizance of offence under Section 48 of MRTU & PULP Act; a) When there is breach of order of the Court; b) against contravention of Courts orders; c) fail to comply with the order of the Court.

Ref. : **Bhor Industries vs. State of Maharashtra 2001 I LLN 126**.

Ans. to Que. No.32 : When alternate remedy is available to recover the amount ordered by the Court the complaint under Section 48 of the MRTU & PULP Act would be maintainable. When a party has two options for claiming the relief then the said party can adopt any of the option.

Ans. to Que. No.33 : There is difference between the provisions of Section 48 and Sub-section 1 & 2, its clauses and Sub-section 3 and 4 which are as under:

> In Sub-section (1) of Section 48 if any person fails to comply the order of the Court passed under Sub-section

(1) and Sub-section (2) of Section 30 can file complaint before Labour Court and Labour Court after trial can punish the person with imprisonment of three months or with fine of Rs.5000/- or with both. However, Sub-Section (2) and its Clauses provides if the person failing to deliver the documents, to furnish information and intentionally omits to do the order passed by either Industrial Court or Labour Court or he fails to state the truth by oath or affirmation and he refuses to answer any question touching the subject or intentionally offers any insult or causes any interruption to the Industrial Court or Labour Court at any stage of its judicial proceeding, he shall be punished for a term of six months or fine of Rs.1000/- or with both. In Sub-section (3), a person who refused to sign any statement made by him when required by either Industrial Court or Labour Court he shall be punished with imprisonment to the extent of three months or with fine to the extent of Rs.500/- or with both.

If an offence under Sub-section (2) or (3) of Section 48 is committed in presence of the Industrial Court or, as the case may be, the Labour Court; after recording the facts constituting the offence and the statement of the accused as provided in Cr. P. C., has to be forwarded the case to a Magistrate having jurisdiction to try the same, and may require security to be given for the presence of the accused person before such Magistrate or, if security is not given, shall forward such person in custody to such Magistrate. The Magistrate to whom case is so forwarded shall proceed to hear the complaint against the accused person in the manner provided in Cr. P. C.

Ans. to Que. No.34 : No. The principle of de-novo trial is not applicable to the complaint filed under Section 48 (1) of MRTU & PULP Act.

Ans. to Que. No.35 : Yes. Objections can be raised in a complaint under Section 48 (1) of MRTU & PULP Act before recording plea of the accused; such as maintainability of the complaint, limitation etc.

Ans. to Que. No.36 : No. Such practice is unknown to criminal law. Liability in criminal cases is most stringent than civil cases. So, veracity of statement of complainant has to be made before the Magistrate from the mouth of complainant himself.

Ans. to Que. No.37 : Yes. Provided ex-parte ad interim order has been communicated to the respondent/accused.

Ans. to Que. No.38 : No. The Liquidator acts in consonance with the provisions of the Companies Act. Therefore, he cannot be prosecuted under Section 48 (1) of MRTU & PULP Act for non compliance of the order.

: Subject - B(III) :

Powers vested in the Labour Court and Industrial Court for granting interim relief under Section 30(2) of the MRTU & PULP Act, 1971 as well as under Section 119 (d) of Maharashtra Industrial Relations Act, 1946.

Ans. to Que. No.39 : The grant or refusal to grant interim relief in the complaint is covered by three well established principles viz. i) whether the complainant has made out prima facie case; ii) whether the complainant would suffer irreparable injury in the absence of interim relief; and iii) whether the balance of convenience lies in his favour. The burden to prove these three necessities lies on the person seeking interim relief. Interim relief is not granted to a party guilty of delay or who has indulged in suppression of facts. The person seeking interim relief must approach the Court with clean hands. The Court has to see whether the claim is bonafide and whether there is a fair and substantial question to be tried.

Ref. : **Mahindra & Mahindra Ltd. vs. Dwarkanath Babaji Dalvi, 2006 Mh. L. J. 88**.

Ans. to Que. No.40 : No. When the jurisdiction of the Court is under challenge and if such preliminary issue has been raised then the preliminary objection in respect of the jurisdiction has to be decided first as it goes to the root of the matter as held in case of i] **Maharashtra State Power Loom Corp. Ltd. vs. K. d. Rangate, 2003 III CLR 586**. ii] **Tata Memorial Centre vs. Sanjay Sharma, 1997 LLJ III 241 (DB Bom. H. C.).**

Ans. to Que. No.41 : Yes. In a complaint made by one party, interim relief under Section 30 (2) can be sought by other party.

Ref. : i] **Deepak Industries. vs. Engineering Metal Workers Union, 1986 II LLN 1018**.

ii] **Bhartiya General Labour Front vs. S. I. Engineering Works, 1997 I CLR 1103 (Bom. H. C.)**.

Ans. to Que. No.42 : No. An application under Section 30 (2) of the Act is an independent application and the party has to stand or fall on the basis of the allegations and the supporting documents adduced by it along-with that application. In such circumstances, if the apprehension is entertained by the other party that the method is adopted just to extend the advantage of the interim order cannot be said to be absolutely wrong. In any case, the Court shall not assist the party to make a roving or fishing enquiry so as to enable themselves to find out some evidence in support of its contentions in respect of interim application. It is clear from Regulation 115 (4) of the Industrial Court Regulation Act read with Section 30 (2) of the Act, that it is for the party to prove his own case by coming along with his own documents who comes to the Court and cannot insist for a production of the same by the other party at interim stage as held in **Ramesh Tapade vs. Bajaj Auto Ltd., 1999 All M. R. III 48.**

Ans. to Que. No.43 : No. If the gravity of misconduct is serious in nature and there is no undue haste on the part of the employer as full-fledged enquiry is conducted. Interim relief cannot and should not be granted.

Ref. : i] **MSRTC vs. Rajiv N. Bhagwatkar, 2003 Mh. L. J. 769**.

ii] **M. D. Parmar vs. State of Gujrat, 1991 (6) SLR 129**.

Ans. to Que. No.44 : Ordinarily No, In rarest of rare case it may be granted. Hon'ble Apex Court in Bank of Maharashtra vs. Race Shipping and Private Ltd., AIR 1995 SC 1368 has observed in strong words in para (12) : Time and again this Court has deprecated the practice of granting interim orders which practically give the principal relief sought in the complaint for no better reason than that a prima facie case has to be made out, without being concerned about the balance of convenience, the public interest and a host of other considerations.

Ref. : Ichalkaranji Municipal Council vs. Raj Bandu Taral, 1999 II LLJ 970.

Ans. to Que. No.45 : Yes. Industrial Court can grant interim relief to restrain the employees from proceeding on strike without declaration of strike illegal or lift lock-out by way of interim relief under Section 30 (2) of the MRTU & PULP Act.

Ref. : i] **Mumbai Mazdoor Sabha vs. Bennet Coleman & Company Ltd., 1980 LLJ I 112**.

Ans. to Que. No.46 : Yes. However, before waiver of notice, the Court must satisfy that on the issuance of notice, other-side may put the complainant in adverse situation and the matter may become infructuous and it is to pass such order as temporary

arrangement to preserve the status-quo till the appearance of the other-side.

Ref. : i] **MSRTC vs. Jagdale, 1999 I CLR 92**.

ii] **Sarasabai Namdev Kudle vs. State of Maharashtra, 1998 3 All. M. R. 710**.

Ans. to Que. No.47 : Yes. It is in the discretion of the Labour or Industrial Court to give an opportunity to the party to approach higher Courts.

Ans. to Que. No.48 : Yes. Stay can be granted to the show cause notice.

Ref. : **Hindustan Lever Ltd. vs. Ashok Vishnu Kate, 1995 I LLJ 899**.

Ans. to Que. No.49 : In cases of **Kalavati Bharsing Thapa vs. Maharashtra Plastic Industries, 2005 I Mh. L. J. 631** and **Spanco Ltd. vs. A to Z Maintenance & Engineering, W. P. No.385/2010 decided on 1.9.2010 (D.B.)** this can be done by invoking the provisions of Order 47 Rule 1 of Civil Procedure Code. When any person from the discovery of new and important matter or evidence, which after the exercise of due diligence, was not within his knowledge, or could not be produced by him at the time when the order was made or on account of some mistake, error apparent on the face of record or for any other sufficient reason may apply for review of judgment of the Court which passed the order.

Ans. to Que. No.50 : Yes. An application for interim can be entertained.

Ans. to Que. No.51 : Yes. An employee can claim subsistence allowance under Section 119 (d) of MIR Act by way of interim relief before the Labour Court, if he is dismissed without enquiry and where he chooses to defend his decision in Labour Court. He has right to seek subsistence allowance by way of interim relief.

Ref. : **Gujrat Bank Workers Unions vs. Chairman Manager Bharat Co-operative Bank Ltd., 1996 II CLR 761 (Gujrat H. C.)**.

Ans. to Que. No.52 : No. There is no provision of recording of oral evidence for deciding an application for interim relief under Section 30 (2) of the MRTU & PULP Act.

Ref. : **Ramesh Tapade vs. Bajaj Auto Ltd., 1999 All M. R. III 48.**

Ans. to Que. No.53 : Yes. It can be granted.

Ref. : Air India vs. Air India Labour Union, 1995 III LLJ 443 and 2001 III LLJ 728.

Ans. to Que. No.54 : No. To maintain a complaint under the provisions of MRTU & PULP Act the pre-requisite condition is that the complainant has status of a workman as defined under Section 3 (5) of the MRTU & PULP Act and industry under Section 2 (j) of the Industrial Disputes Act, 1947.

Ans. to Que. No.55 : Yes. Interim orders regarding staying of or postponement of enquiry can be granted but it requires critical scrutiny.

The employers have a right to take disciplinary actions and to hold domestic enquiries against their erring employees. However, while doing so, the Standing Orders governing the field have to be followed by such employers. These Standing Orders give sufficient protection to the concerned employees against whom such departmental enquiries are proceeded with. If such departmental proceedings initiated by serving of charge-sheets are brought in challenge at different stages of such proceedings by the concerned employees invoking the relevant clauses of Item 1 of Scheduel IV of the Act before the final orders of discharge or dismissal are passed, the Labour Court dealing with such complaint should not lightly interfere with such pending domestic enquiries against the concern complainant. The Labour Court should meticulously scan the allegations in the complaint and if necessary, get the necessary investigation made in the light of such complaint and only when a very strong prima facie case is made out by the complainant, appropriate interim orders intercepting such domestic enquiries in exercise of powers under Section 30 (2) can be passed by the Labour Court. Such orders should not be passed for mere askance by the Labour Court. Otherwise, the very purpose of holding domestic enquiries as per the Standing Orders would get frustrated.

Ref. : i] **Hindustan Lever Ltd. vs. Ashok Vishnu Kate, 1995 I LLJ 899 (SC)**.

ii] **AIR 1996 (SC) 285**.

Ans. to Que. No.56 : No. If the gravity of misconduct is serious in nature and there is no undue haste on the part of the employer as full-fledged enquiry is conducted. Interim relief cannot and should not be granted unless pre-issues are decided.

Ref. : i] **MSRTC vs. Rajiv N. Bhagwatkar, 2003 Mh. L. J. 769**.

ii] **M. D. Parmar vs. State of Gujrat, 1991 (6) SLR 129**.

Ans. to Que. No.57 : Yes. It can be granted.

Ref. : Reliance Engergy Ltd. vs. Rastryawadi Kamgar Sanghtana, 2009 I CLR 771 also refer to Section 3 (13) of MIR Act, 1946 wherein contractor employees are included in the definition of employee.

Ans. to Que. No.58 : Yes. This is done in exceptional cases where it is found that the protection of the complainant against an injury has been shown and to preserve the status-quo so that the main relief does not become infructuous.

Ans. to Que. No.59 : In the event of an ex-parte ad interim order passed by the Labour Court, the aggrieved party should approach the Labour Court and not to the Industrial Court for vacating it.

Ref. : **Nashik Workers' Union vs. Mahindra and Mahindra Ltd., 1993 II CLR 707 (Bom. H. C.).**

Ans. to Que. No.60 : Yes. The Scheme of the MIR Act being

one of ensuring industrial peace and amicable industrial relations, the legislative intent appears to be that any change that is declared to be illegal within the meaning of Section 46 of the Act, which has the potential of disrupting industrial relations, is frowned upon by the statute. Not only is the Employer prevented from implementing an illegal change, but a corresponding right has been vested in the employees or representatives of employees to seek a declaration from the Labour Court that such change is illegal and also seek a direction for withdrawal of such an illegal change. Such proceedings though required to be disposed of expeditiously, take a long time during which the change about which the employees are complaining might cause hardship and prejudice to the employees. The very continuation of change, which is the subject matter before the Court might adversely affect industrial relations. To ensure that there is no break-down of industrial relations, even during the interregnum when an application is pending herein and decision before the Labour Court, the statute has made an extra ordinary provision empowering the Labour Court to direct the employer to withdraw the change, the legality of which is an issue pending for decision before the Labour Court. The legislature was equally aware that an order of such nature needs to be subjected to judicial review by an Appellate Court. By Section 84 of the Act, the legislature has invested the Industrial Court with the power of hearing appeals against the decision of the Labour Court under Sub-section (1) of Section 78.

Ref. : i] Cosmos Co-operative Bank Ltd. vs. R. K. Banswal, 1996 Mh. L. J. 955 (Bom. H. C.).

An order for temporary withdrawal of change is certainly a serious moment; it does vitally affects the parties and would cause

prejudice to them, if it happens to be erroneous and unjust. It is for this reason that such an order must be treated as a "decision" within the meaning of Section 84 (1) of the Act.

Ref. :i] Satara DCC Bank Ltd. vs. Narayan Appaji Chavan; 1983 FLR (47) 218.

ii] Babulal Khimji Shah vs. Jayaben D. Kania, AIR 1981 (SC) 1786.

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