

NATIONAL CONFERENCE OF THE PRESIDING OFFICERS OF LABOUR COURTS/ TRIBUNALS

P- 920

10th - 12th April 2015

PROGRAMME REPORT

PROGRAMME CO-ORDINATOR:

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PREPARED BY:

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NATIONAL JUDICIAL ACADEMY

1. Number And Name Of The Programme:

National Conference of the Presiding Officers of Labour Courts/ Tribunals (P-920) from 10th - 12th April 2015.

2. Resource Persons And Number Of Participants:

There were 20 participants. The chairpersons and resource persons present during the Conference were:

Justice V. Gopala Gowda (Judge, Supreme Court of India), Justice Ruma Pal (Former Judge, Supreme Court of India), Justice Sudhanshu Jyoti Mukhopadhaya (Former Judge, Supreme Court Of India), Justice B.P. Dharmadhikari (Judge, Mumbai High Court), Prof. (Dr.) B.T. Kaul (Chairperson, Delhi Judicial Academy), Mrs. Jane Cox (Advocate, Mumbai High Court), Mr. Sanjay Singhvi (Senior Advocate, Supreme Court), Prof. Debi S. Saini (MDI, Gurgaon), Ms. Meena Doshi (Advocate, Mumbai High Court), Mr. Lalit Bhasin (Partner, Bhasin and Company), Ms. Seema Jhingan (Partner, Lex Counsel), Mr. Jamshed Cama (Senior Advocate, Supreme Court of India), Ms. Narmadha Sampath (Advocate, Madras High Court), Mr. Parthasarathi Sengupta (Senior Advocate, Calcutta High Court), Dr. Rajendra Hittanagi (Karnataka State Law University), Mr. Anand Malathi (Senior Member, International Litigation and Dispute Resolution, Nishith Desai Associates), Mr. Ashok Panda (Senior Advocate, Supreme Court of India).

3. Main Objectives Of The Programme:

The objective of the Conference was to provide an aid to the Presiding Officers through recent labour law judgments which would assist them in dispensing justice effectively and in timely manner. Moreover, this Conference is meant to create a platform for discussion and consideration of issues like retrenchment, reinstatement, etc. thereby bringing clarity and predictability in labour law jurisprudence. Labour Courts acts as a forum to resolve labour disputes which is not limited to a single legislation but includes a broad range of legislations so the Conference attempts to review diverse issues dealt by the Presiding Officers heading Labour Courts acting as a specialist body in adjudication of industrial matters having requisite technical knowledge and an understanding about the inter-relation between the parties and the dispute.

4. List Of Main Points Discussed:

Indian Labour Law Jurisprudence, Constitutional Basis Relating To Labour Laws; Adjudication Process of Industrial Disputes: Access to Adjudicatory Authorities, Unfair Labour Practices; Legal Consequences of Dismissal or Discharge of Workman; Issue of Retrenchment: Legal Implications; Reinstatement and Back Wages; Recovery of Money under Industrial Disputes Act; Contract Labour (Regulation and Abolition) Act: Nature of Work and Issues Relating To

Regularization; Recent Legislative Developments in Labour Law; Judicial Review (Limitation and Extent of Powers of Labour Courts And Industrial Tribunals); Discussion on Employees State Insurance Act.

5. Summary Of The Discussion/Presentation Made By Resource Persons:

SESSION- 1

Themes- Indian Labour Law Jurisprudence; Constitutional Basis Relating To Labour Laws

The session was started by Hon'ble Justice Ruma Pal. She introduced the speakers to the participants and gave a brief description of the three day conference on labour laws. Then the participants introduced themselves. Then Hon'ble Justice Ruma Pal mentioned about the specific philosophies on labour law and how the court with respect to labour jurisprudence have brought in the tenets from international conventions also even if later ratified.

Prof. (Dr.) B. T. Kaul started his session on the theme "*Indian Labour Law Jurisprudence*" by stating that the labour law jurisprudence can be divided in constitutional and pre-constitutional era. In the pre- constitutional era, he pointed out that there was no coherent or rational policy with respect to labour laws. Mrs. Jane Cox continued the session on the same theme stating that the jurisprudence of Indian labour law goes against the very tenets of classic civil law and privity of contract. She further went on to elaborate this position through some judgments from the past decade which happened to be more on US line of compensation in lieu of reinstatement by referring to *Deepali Gundu Surwase v. Kranti Junior A.M. And Ors.* [(2013)10 SCC 324]. She also explained the power of the tribunal to change the existing contract between the management and the workman laying down the service conditions of the workman. A catena of Supreme Court judgments was discussed. She referred to the amendment to the Industrial Disputes Act, 1947 by which Section 2A was incorporated whereby certain individual disputes of workmen could be adjudicated. She further enumerated the concept of collective bargaining. She concluded with mentioning that various countries have evolved different approaches to labour and industrial laws.

The session was then addressed by Mr. Sanjay Singhvi on the theme "*Constitutional Basis Relating to Labour Laws*". He referred to the mandate of Article 37 of the Indian constitution which makes the principles mentioned herein fundamental in the governance of the country. Labour laws and principals depending upon Articles 38, 39, 41, 43 were discussed with the help of following case laws: *Harjinder Singh v. Punjab State Warehousing Corporation* [(2010) 1 SCR 591], *Randhir Singh v. Union of India* [(1982) 1 SCC 618], *Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguly* [(1986) 3 SCC 156]. He further enumerated the Articles 23, 15, 16 of the Constitution of India in relation to their impact on the jurisprudence of labour law. He concluded his speech by mentioning that the Directive Principles of State

Policy have breathed a new life into the law and they have become a beacon to guide the adjudicator in the field of labour laws.

SESSION- 2

Themes- Adjudication Process of Industrial Disputes: Access to Adjudicatory Authorities; Unfair Labour Practices

Prof. Debi S. Saini began his session on the theme “*Adjudication Process of Industrial Disputes: Access to Adjudicatory Authorities*” by stating the dispute resolution mechanism under the Industrial Dispute Act and mentioning the accessibility to labour adjudicatory bodies. He further elaborated the complete adjudication process. In his view globalization had led to economic integration and a new world of business had developed. A comparison of pre globalization business era and the current business era was done. The role of government in helping employers’ new values in the converging world was also discussed. Then the objectives of labour adjudication were focused upon. He mentioned that there existed two types of disputes namely interest dispute and rights dispute. He also mentioned that better accessibility of the parties would mean knowledge of the existing forum, perception of approachability of the forum, availability of competent representatives, perception of no-victimization, etc..

Then the theme titled “*Unfair Labour Practices*” was addressed by Ms. Meena Doshi. She started her discussion with stating the legislative history of unfair trade practices. She made a mention about the amendment to the Industrial Disputes Act whereby unfair labour practices was included in the Act. She further mentioned the meaning of unfair trade practice. The applicability of unfair labour practices was also dealt with. She mentioned judgments like *Murlidhar Atmaram Wani v. Dharamgaon Nagar Palika* [(2008)1 CLR 825], *Shramik Utkarsha Sabha v. Raymond Woollen Mill Ltd.* [(1995) 3 SCC 78].

In the next part of his address, Prof. Debi S. Saini talked about the unfair labour practices. With reference to the fifth schedule he mentioned the unfair labour practices on the part of employers and trade union of the employers’ and of workmen and the trade unions of the workman. The session was then concluded with a winding up discussion by Hon’ble Justice Ruma Pal.

SESSION- 3

Themes - Legal Consequences of Dismissal or Discharge of Workman

The session was chaired by Hon’ble Justice Ruma Pal. The first part of the session was taken by Mr. Lalit Bhasin. He discussed the issue on dismissal of an employee by the employer. He started the session with not only discussing the consequences of dismissal but the situations in which the dismissal per se would be challenged. He pointed out the dismissal is preceded by the incident triggering the disciplinary action which could be misconduct on the part of workman, followed by issuance of chargesheet then enquiry being conducted by the management which

should be based on principles of natural justice. Then enquiry is then followed by the Report. He further pointed out that the workman can challenge the dismissal on the grounds like where the principles of natural justice are not followed or where the punishment is disproportionate.

The session was then addressed by Ms. Seema Jhingan address which started with legal provisions relating to dismissal or discharge. Then she pointed out the procedure to be followed in cases relating to dismissal or discharge. She mentioned rights of workman in cases of wrongful retrenchment and illegal dismissal for misconduct. She further discussed rights of workmen when misconduct is proved but punishment is excessive. The other two areas which she addressed under the theme were rights of workman when rightfully retrenched and rights of workman being rightfully dismissed for misconduct.

The session ended with the discussion on the powers vested in Labour Court when an adjudication is referred to the Labour Court/Tribunal and it was pointed out in the discussion that the Labour Court/ Tribunal can only look into the question referred to it by the appropriate Government. Another issue which was discussed was that even when the enquiry on the part of management was justified, even then the Labour Court/Tribunal can look into the quantum and can alter it. Yet another question was raised in relation to the representation on the part of workman as some of the Presiding Officers made an observation that in cases where the workman wants to represent his case himself but is generally unaware of the legal nuisances, then to this issue Justice Ruma Pal opined that the workman can be provided with legal aid.

SESSION- 4

Theme- Issue of Retrenchment: Legal Implications

Prof. (Dr.) B.T. Kaul began the session with the discussion on the history of the Industrial Dispute Act. He further went on to discuss the position of labour laws at the time of independence. *Hindustan Tin Works Pvt. Ltd. v. The employees of Hindustan Tin Works Pvt. Ltd. And Ors* [MANU/SC/0272/1978], *Bombay Union of Journalist v. The Hindu Bombay, And Another* [1963 AIR 318] were discussed as a part of the history of the Industrial Disputes' Act. The meaning of retrenchment and termination were discussed in detail with reference to *State Bank of India v. N. Sundramoney* [AIR 1976 SC 1111]. He further pointed out towards the rule of 'last come first go'.

Mr. Lalit Bhasin then addressed the session on the theme and he discussed the provisions of the Industrial Disputes Act and dealt with the definition of the word retrenchment and he mentioned that layoff, closure and retrenchment applies to the workman as a class. The issue in relation to termination of employment due to continued ill health was posed. Mr. Lalit Bhasin said that it has been laid down in a number of Supreme Court decisions that such a situation would not amount retrenchment.

The last lap of the session was followed by the discussion relating to retrenchment and it was pointed out by the Chair that to fill in the gaps in the labour laws, judiciary has always tried to fill in the loopholes to further the interests of justice.

SESSION-5

Theme- Reinstatement and Back Wages

The session was chaired by Hon'ble Justice Sudhanshu Jyoti Mukhopadhaya. The first speaker of the day on the topic of reinstatement and back wages was Ms. Narmada Sampath. She started the session by explaining the various relevant provisions of the Industrial Act. She was of the view that the Industrial Disputes Act needs to emphasize on the cordial relationship between the management and the worker. Few relevant case laws mentioned were: *Delhi Cloth And General Mills v. Its Workmen* [AIR 1967 SC 469], *Southern Roadways Ltd, Bangalore v. K. Padmanabhan And Another* [1979(1) LIC 234]. The role of the judiciary is to solve the disputes in a speedy effective way. She then explained the definition of retrenchment and the grounds under which the employee cannot be retrenched. The decision given in *State Bank of India v. N. Sundramoney* [AIR 1976 SC 1111] was mentioned. Procedure of retrenchment was discussed. On the issue that when backwages can be granted, she mentioned *Hindustan Tin Works Pvt. Ltd. v. Employees of Hindustan Tin Works* [AIR 1979 SC 75].

Thereafter, Mr. Jamshed Cama addressed the session. He mainly emphasized on the practical difficulties being faced by the people in litigation. He said that labour law is subjective and the purpose of any law is to stay consistent but inconsistency is the only thing consistent in the field of labour law. He further went to explain the provisions of the Industrial Act in regard to reinstatement and back wages. He also said that the back wages is a way to help the employee to get into the position where he was before getting fired from his job. He mentioned few relevant case laws in regard to the issue relating to labour law. He also pointed out that initially the burden to prove that the workman was not gainfully employed after his termination was on the employer, then it shifted on to the workman, and now its again on the employer or the management.

Hon'ble Justice B. P. Dharmadhikari further enumerated on the concept of reinstatement and backwages and pointed out that there can't be a straight jacket formula as to whether reinstatement and backwages have to granted and to what extent. Hon'ble Justice Sudhanshu Jyoti Mukhopadhaya then took over the session. He said that as judges of the labour courts we depend on the facts, circumstances and evidences presented before us in the court of law. The court has to apply their conscience with the relevant facts and come to a just conclusion. He also said that it was very important for us to understand the real intention behind such a piece of legislature.

SESSION- 6

Theme- Recovery of Money under Industrial Disputes Act

The session was chaired by Justice Sudhanshu Jyoti Mukhopadhaya. Mrs. Jane Cox then started her address referring to various provisions of the Industrial Disputes Act. Recovery of amounts due from an award or settlement was also dealt with. How Section 33(C) (2) had a broader perspective than Section 33(C)(1) was also discussed. She further pointed out that Section 33(C)(2) is a mix of recovery proceedings and adjudication proceeding. Then in addressing her session she dealt with the discussion on the issue of limitation period which exists under Section 33 (C)(1) and not under Section 33(C)(2). She referred to *The Central Bank of India Ltd. v. Rajagopalan* [1964 AIR 743]. The broader view of the Supreme Court of section 33(C)(2) which was further reiterated in the case of *Chief Mining Engineer East India Coal Co. Ltd. v. Rameswar and Ors.* [1968 AIR 218] was then focused upon.

The next speaker Ms. Narmada Sampath started her session with the discussion on provisions related to the recovery of money due from an employer. She discussed the difference between Section 33(C)(1) and Section 33(C)(2) by referring to the judgment *M/s. Agencia E. Sequeira M/S. Fabril Gasosa v. Labour Commissioner & Others* [1997 (3) SCC 150]. She mentioned the advantages of Section 33(C)(2) like no limitation, no court fee, etc.. She further pointed out that the benefit enforced under Section 33(C)(2) of the Act is a pre-existing benefit or one flowing from a pre-existing right and referred to *State of Uttar Pradesh & Anr v. Brijpal Singh* [2005 (8) SCC 58].

Justice B.P. Dharmadhikari then referred a few judgments referring to the issue of recovery under the Industrial Disputes Act. Justice Sudhanshu Jyoti Mukhopadhaya pointed out that after the entitlement is determined the process for computation of amount comes into play. One of the Presiding Officers' raised a question that whether workman can claim recovery of his amount in case of voluntary retirement on the part of workman, which was answered in affirmative by the Speakers.

SESSION- 7

Theme- Contract Labour (Regulation and Abolition) Act: Nature of Work and Issues Relating To Regularization

The session was chaired by Hon'ble Justice Sudhanshu Jyoti Mukhopadhaya. Mr. Parthasarathi Sengupta then started his discussion on nature of work and the issues related to regularization. He mentioned that the inference regarding the nature of the work is to be drawn from various landmark decisions of the courts. He then discussed the definition of regularization. He also mentioned that regularization is something of real concern to industries as it relates to Article 14 of the Constitution of India. Article 12 and Article 14 of the constitution of India were referred in this regard. He said that regularization has to be understood in reference to works which are

perennial in nature. He further discussed the definition of a contractor in detail with the help of various case laws. He discussed the definition of an employee with the help of case laws. He mentioned that the Courts have considered the nature of relationship between principal employer and the employees of the contractor by lifting the veil, in cases where the facts required such a consideration.

Mr. Jamshed Cama mentioned the test of supervision that was to be followed in order to categorize it to be a contractor employee relationship. In this discussion he mentioned the relation of article 14 and article 16 of the Constitution of India in regard to the contract labour. The principal employer to contractual employee relationship was also dealt with. He also said that there must be a complete administrative control over the contract worker by the contractor. The definition of contract labourer and the approach of the courts in India towards the meaning of contract labourer was discussed.

Hon'ble Justice B. P. Dharamadhikari then summed up the discussion by referring to various issues pertaining to the contract labour. After which Hon'ble Justice Sudhanshu Jyoti Mukhopadhaya dealt with the issues related to the regularization when it comes to the recruitment of the employees.

Hon'ble Justice Ruma Pal concluded the session by stating that the principle of supervision plays a very important role on the concept of contract labour and that supervision would relate to the appointment, salary, dismissal and the supervisory control over the employee.

SESSION- 8

Theme- Recent Legislative Developments in Labour Law

The session was chaired by Hon'ble Justice Sudhanshu Jyoti Mukhopadhaya. The address to the session was started by Dr. Rajendra Hittanagi. He started the session by referring to the difference between free enterprise and state regulation and also discussed the industrial policy resolution, 1948. He discussed how the overall thrust was towards the better functioning, efficiency and social responsibility on the part of industrial undertakings. He then pointed out towards the liberalization and that there is a growing trend towards weakening of worker protected laws.

He also mentioned that one should seek to locate the debate over the future of labour law in India in the context of global trends. He emphasized that one should take note of the movement of labour market theory away from equilibrium- based models, with their emphasis on labour law as a distortion of competition, towards an evolutionary understanding of labour market institutions which takes a more nuanced view of their efficiency effects.

Few important case laws mentioned were *Empire Industries Ltd. v. State of Maharashtra and Ors.* [AIR 2010 SC 1389], *Mackinnon Mackenzie and Company Ltd. v. Mackinnon Employees*

Union [MANU/SC/0188/2015]. It was referred that there is a recent legislative movement towards amending labour laws like The Factories (Rajasthan Amendment) Act, 2014, The Industrial Disputes (Rajasthan Amendment) Act, 2014.

Hon'ble Justice Sudhashu Jyoti Mukhopadhaya referred to The Factories (Amendment) Bill, 2014. The session concluded with a note that the quest for justice, especially social justice and relief of human sufferings is the paramount motivation for judicial action.

SESSION- 9

Theme- Judicial Review (Limitation and Extent of Powers of Labour Courts And Industrial Tribunals)

The session was chaired by Justice Ruma Pal. The session was started by Mr. Ashok Panda. He started his discussion mentioning that the industrial disputes act gives extra judicial powers to a judge of a labour tribunal to decide issues related to different aspects in the field of law. The *Bharat Bank Ltd., Delhi v. The Employees of the Bharat Bank* [1950 AIR 188] was discussed in this regard. He also mentioned that in earlier time's majority of the cases that came for adjudication to the labour courts were in relation to the issues of settlement whereas after liberalization, most of the cases are in regard to the process of regularization or that of equal pay. There has been a drastic shift in the intent of litigation.

After which Mr. Ananth Malathi discussed on the meaning of judicial review with the help of *Kameshwar Prasad And Others v. The State of Bihar And Another* [1962 AIR 1166]. He discussed the position of substantive and procedural laws in India. The concept of wrongful termination, the importance of material facts, process of adjudication in labour courts, injunction was also discussed with the help of case laws.

Hon'ble Justice V. Gopala Gowda started his discussion stating the importance of labour laws in a developing country like India. He said that the labour laws have got it own pre-historical background and said that labour laws are special forums with definite purpose. He also said that it is of great importance for the judicial officers of the labour courts to understand the scope, duty and responsibility towards the subject and do justice to it. The interest and welfare of the public must be taken into keen notice while adjudicating any case related to labour laws. He also referred to the judgment of *Olga Tellis And Ors. v. Bombay Municipal Corporation And Ors.* [AIR1986SC180]. He concluded stating that the judicial review is only the jurisdictional approach of the High Court and the Supreme Courts. He also pointed out that the Industrial Disputes Act is a central act but besides central legislations related to labour law states have got their own enactments and amendments to the laws relating to labour issues. He also said that to maintain industrial peace and tranquility, it is very important for judges to adjudicate the matters in a speedy and an effective manner so that the industry sector in our country never collapses. He also pointed out that for a topic of discussion like judicial review it would be more beneficial to

devise such a scheme of deliberation and discussion without time constraint of a single session so that the topic for consideration is discussed in detail.

SESSION- 10

Theme – Discussion on Employees State Insurance Act

Hon'ble Justice Ruma Pal chaired the session. The session was started by Mr. Ashok Panda wherein while discussing the legal provisions he mentioned that there are very few studies which have been conducted in relation to this legislation. He made a mention of following two reports in his deliberation: “*Social Security Legislation-III: The Employees’ State Insurance Scheme*” published in Economic and Political Weekly (October 14, 1967) authored by Manorama G Savur and “*How Equitable is Employees’ State Insurance Scheme in India?: A Case Study of Tamil Nadu*” of the Consortium for Research on Equitable Health Systems (CREHS) (June 2011) authored by Dash U and Muraleedharan VR.

The session was then continued by Mr. Parthasarathi Sengupta. He started his discussion with the introduction of the Employees State Insurance Act. He further discussed the definition and meaning of the work ‘factory’ and what all falls under the ambit of a factory. Any place where manufacturing of any particular thing takes place or any place where the raw material is converted to something of use is referred to a factory according to the definition under the Factories Act, 1948. The decision of *The Bangalore Turf Club Ltd. v Regional Director, Employees State Insurance Corporation* [MANU/SC/0681/2014] was also discussed.

Hon'ble Justice V. Gopala Gowda then opined that the Employees State Insurance Act was a social security legislation meant for the benefit of the employee and his family members. The various medical and health benefits that were now available to the employees after the amendments were also referred to. He concluded by saying that the judicial officers of the labour courts must understand the implications of a particular case and then give decisions. The cases must be carefully, diligently and properly adjudicated. Few doubts were discussed by the participants.

Lastly, Dr. Geeta Oberoi (Director, National Judicial Academy) delivered the vote of thanks and ended the session by conveying her heartfelt thanks to the audience present.

Hon'ble Justice Ruma Pal suggested that the National Judicial Academy to provide the facility of crèches in regard to a problem raised by one of the participants wherein she was unable to bring her children alongwith her. Hon'ble Justice Ruma Pal also recommended that the National Judicial Academy should also have a resident doctor.