

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8853 OF 2021
ALONG WITH
WRIT PETITION NO.8086 OF 2021

M/s. Bata India Ltd.] ... Petitioner

Vs.

State of Maharashtra & Ors.] ... Respondents

...

Mr. Sudhir Talsania, senior advocate with Mr. Avinash K. Jalisatgi for the petitioner in both the petitions.

Mr. C.D. Mali, A.G.P. for the State, in both the petitions.

...

CORAM : RAVINDRA V. GHUGE, J.

DATED : 02ND FEBRUARY, 2022.

P.C:-

1. In both these petitions, the petitioner is the same company and respondent No.3 are the employees, at issue. Respondent Nos.1 and 2 are the State authorities under the Industrial Disputes Act, 1947 (for short, “**the ID Act**”). Both the cases are identically placed.

AJN

2. The issue that I am deciding in these cases is, whether rejection of an application for condonation of delay in a ULP complaint filed under Section 28(1) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, (for short, **“the 1971 Act”**) would attract the Bar of Section 59 of the said Act.

3. The learned senior counsel representing the petitioner is aggrieved by the orders of Reference of the industrial disputes, by the competent authority, dated 15/03/2019 and 21/03/2019. By the said orders, the competent authority has concluded that the industrial dispute raised by the respondent-employees needs to be referred to the Labour Court for considering whether they should be reinstated in service with continuity and full back wages from the dates of their termination.

Bar of Section 59

4. The learned senior counsel submits that initially, these two employees approached the Labour Court after a delay of 200 days, under Sections 28(1) of the 1971 Act. The limitation prescribed is 90 days. The Labour Court declined to condone the delay by its order dated 12/03/2009. Both the employees approached the Industrial Court by preferring Revision (ULP) under Section 44 of the 1971 Act. By judgment dated

19/04/2010, the revision application was dismissed. The employees then approached this court in Writ Petition No.8489 of 2012. By an order dated 17/02/2014, this court declined to interfere with the refusal of the condonation of delay, by the Labour and Industrial Courts and, therefore, dismissed the petition.

5. The learned senior counsel, therefore, submits that as these employees have availed of a remedy under the 1971 Act, they cannot raise an industrial dispute under the ID Act as they are barred by the effect of Section 59 of the 1971 Act.

6. The other ground for challenging the orders of Reference is that there has been a delay, which is unexplained. The employees cannot be permitted to rise any time, after one or two decades, and raise an industrial dispute. The law would not assist a sleeping litigant. An industrial dispute may not exist due to passage of time. In these circumstances, the orders of Reference are unjustified.

7. The learned A.G.P. representing respondent Nos.1 and 2 submits that as the Conciliation Officer noticed that there was an industrial dispute and, because the conciliation failed, he tendered a failure report with reasons to the competent authority. The competent authority, which is the Appropriate Government, considered the failure report and, upon noticing an industrial

dispute pertaining to the termination of the employees and loss of employment, that the Reference orders have been rightly made.

8. The learned senior advocate, in rebuttal, submits that it is not that the management was determined to terminate the services of the employees. In fact, it was set out in the letter of termination dated 01/03/2007 that if the employee agrees to tender a good conduct bond (Undertaking), within 72 hours of the receipt of the termination letter, in the format as is annexed to the termination order, his termination would be reviewed and reconsidered. Since the employees were not interested, they did not submit the undertaking and did not avail of the opportunity. This indicates that they did not desire to work with the petitioner. After 12 years, they have raised an industrial dispute and, therefore, the Appropriate Government was not justified in referring the dispute to the Labour Court. The learned senior advocate relied upon the view taken by the learned Division Bench of this court in the matter of **Association of Engineering Workers v. V.K. Date & Ors**¹.

9. In **Association of Engineering Workers (supra)**, the Union had preferred a Reference under Section 25 of the M.R.T.U. & P.U.L.P. Act, thereby seeking a declaration that the lockout is illegal. During the pendency of the said Reference, an industrial

¹ 2006 Vol. 1 CLR 318

dispute was sought to be raised before the Conciliation Officer. Since the said authority declined to make a Reference, the Union approached this court. This court has held in paragraph Nos. 6 and 7 as under:

“6. Section 59 bars the proceedings under Industrial Disputes Act or Bombay Industrial Relations Act, if any proceeding in respect of the matter falling under MRTU & PULP Act is instituted under that Act. Section 59 reads thus:

"59. Bar of proceedings under Bombay or Central Act:- If any proceeding in respect of any matter falling within the purview of this Act is instituted under this Act, then no proceeding shall at any time be entertained by any authority in respect of that matter under the Central Act or, as the case may be, the Bombay Act; and if any proceeding in respect of any matter within the purview of this Act is instituted under the Central Act, or, as the case may be, the Bombay Act, then no proceeding shall at any time be entertained by the Industrial or Labour Court under this Act."

“7. That on 19th June, 1996 the Union made the Reference to the Labour Court for declaration that the lock-out effected by the employer on 5th June 1996 under Section 25(2) was illegal is not in dispute. Such Reference under Section 25(2) is a proceeding in respect of the matter within the purview of MRTU & PULP Act is beyond doubt and we are unable to accept the submission of Mr.N.M. Ganguli that proceeding contemplated under Section 59 is the proceeding by way of complaint under section 28 of the MRTU & PULP Act. The expression ‘proceeding’ in respect of the

matter within the purview of MRTU & PULP Act cannot be read to exclude the reference under Section 25(2) of that Act. That would mean excluding something from the provision which it does not exclude. The object of Section 59 is to prohibit duplicating the proceedings in respect of the matter which falls within the purview of MRTU & PULP Act. Though, in the demand, the Union used the expression, "unjustified lockout", yet it appears that it was loosely used for illegal lockout. This is apparent from the fact that prayer made in the writ petition is that direction be issued to the Assistant Commissioner of Labour (Conciliation Officer) to initiate conciliation proceedings with regard to the demand raised by the Union for lifting of illegal lockout (emphasis supplied by us). The declaration of lockout illegal or otherwise on the Reference made by the Union is a matter within the purview of MRTU & PULP Act and during the pendency of that Reference. Section 59 bars the initiation of proceedings under Industrial Disputes Act. In the circumstances, the Assistant Commissioner of Labour cannot be said to have erred in declining to intervene in the matter because of the pendency of the proceedings before the 6th Labour Court under MRTU & PULP Act."

10. I would first deal with the contentions of the petitioner that the Section 59 bar would apply to these two cases, in the backdrop of the legal position that no litigant can be rendered remedy-less. Section 59 of the 1971 Act reads as under:

"59. If any proceeding in respect of any matter falling within the purview of this Act is instituted under this Act, then no proceeding shall at anytime be entertained by any authority

in respect of that matter under the Central Act or, as the case may be, the Bombay Act ; and if any proceeding in respect of any matter within the purview of this Act is instituted under the Central Act, or as the case may be, the Bombay Act, then no proceeding shall at anytime be entertained by the Industrial or Labour Court under this Act.”

11. These two employees were issued with charge sheet-cum-suspension orders dated 22/02/2007. Within six days thereafter, they have been issued with letters of termination dated 01/03/2007 and 07/03/2007. Apparently, the letters of termination are stigmatic since the first paragraph itself indicates that a charge sheet-cum-suspension order was issued. The third paragraph of the letters indicates that a good and sufficient reason is available to the management to terminate the services of these two employees under clauses 27 of the Company's Rules in the first matter and under clause 22 in the second matter.

12. It is thus obvious that both these employees have suffered a stigmatic removal from service. The employees approached the Labour Court belatedly and, an application for condonation of 200 days' delay along with the ULP complaint was filed. It is undisputed that the application for condonation of delay was rejected by the Labour Court and, as such, there was no occasion for the Labour Court to register the complaint, much less deal with the merits of the pleadings in the complaint. The Industrial

Court dismissed the revision in relation to the order of the Labour Court.

13. In **Consolidated Pneumatic Tool Company (I) Ltd. v. R.A. Gadekar**², it was held that when a complainant/worker simply files a complaint and does not proceed with the same, no effective steps are taken by him. The court also does not get an occasion to exercise its jurisdiction, save and except the registry of the court registering the complaint. It was held that the bar of Section 59 of the 1971 Act will not apply.

14. In **C.S. Dixit v. Bajaj Automobile Co. Ltd.**³, the learned Full Bench of this Court held that the bar of section 59 of the Act will not operate on the basis that in a pending matter before the Industrial Court under the Act an attempt to get the pending application amended had failed. Similarly, the bar of limitation having the effect of shutting out the remedy even if the question is decided at the end of the trial, would have the effect of shutting the doors of the Court, on account of non-maintainability and the proceedings having been rejected on account of limitation, would not operate as a bar as contemplated under section 59 of the Act. This Court also held that the question of bar under section 59 of the Act would not arise when the matter, sought to be agitated, is based on a new cause of

² 1986 (1) Bom.C.R. 484

³ 2000 (II) CLR 719

action and similarly if, before any effective steps are taken by the Industrial Court under the Act the matter is withdrawn, the bar under section 59 of the Act would not apply.

15. In **Johnson & Johnson Ltd. v. Gautam Hari Vedi & Ors.**⁴ this court concluded that when the court exercises its jurisdiction, by dealing with the merits of the matter, the bar of Section 59 of the 1971 Act for preferring any proceedings under the Central Act or the Bombay Act, would come into play. The relevant paragraphs are as under:

“20. It must be emphasised that the recognised union issued two notices (i) on 23rd August, 1997 and (ii) on 15th September, 1997 listing out the demands in support of the strike to be commenced from 30th September, 1997, conciliation proceedings were conducted in respect of the said demands as contemplated under section 12 of the I.D. Act, the Labour Commissioner invoked his powers under section 10(1)(d) of the said Act and passed an order referring the demands the adjudication to the Industrial Tribunal, the parties arrived at a settlement, signed a joint pursis and an application came to be filed before the Industrial Tribunal praying for award in terms of the said joint pursis and, thereafter, the Tribunal has passed an award on 24th December, 1999. It is not a case that the proceedings under the I.D. Act in respect of the issues regarding the termination of the service of respondents were only instituted and pending under the scheme of the I.D. Act and, in fact, the issues referred for adjudication to the Tribunal had finally

4 2001 (1) Bom.C.R. 335

culminated in an award and the reference was, thus, answered in terms of the said award. Under these circumstances, the submission that the bar of section 59 of the Act will not operate against the respondents in respect of their complaints filed before the Labour Court under the said Act, is fallacious. The reasoning given by the learned Judge of the Labour Court, in support of his finding that the bar of section 59 does not operate is manifestly erroneous. It appears that the learned Judge of the Labour Court was under an erroneous impression that the reference was still pending before the Industrial Tribunal. Once the award was passed by the Tribunal on 24th December, 1999 the reference was finally disposed of in terms of the said Award and the proceedings instituted under the I.D. Act, right from the stage of submission of demands, stood concluded and, therefore, the ouster of jurisdiction of the Labour Court under section 59 would certainly be attracted. The observations of the learned Judge that in his view no proceeding was instituted against their dismissal before any Competent Court by the complainants which operate bar under section 59 of the said Act is grossly erroneous. There is no provision that the proceedings should be instituted by the complainants only and the learned Judge lost sight of the fact that the charter of demands, in terms of the above referred notices, was submitted under the signatures of the respondents alone on two different occasions and they had prayed for adjudication in respect of those issues. Including the issue of termination of their services. It is another matter that in the course of time they were not re-elected as office-bearers but that by itself will not imply that the respondents were not a party to the proceedings under the I.D. Act. The record clearly shows that the demand regarding the alleged illegal termination of their service and reinstatement consequently was referred to

adjudication to the Tribunal by the Commissioner of Labour.

21. We, therefore, hold that in the instant case the bar of section 59 of the Act will operate against the complaints filed by the respondents under section 28 of the said Act challenging the orders of termination, in view of the Award passed by the Industrial Tribunal in Reference (IT) No. 1 of 1999 on 24th December, 1999. In view of this affirmative finding on issue No. 1 framed by us in the foregoing paragraph, we need not answer the issue regarding the bar under section 59 of the Act against the complaints filed by the respondents on account of the pendency of the approval applications filed by the management under section 33(2)(b) of the I.D. Act and we leave the said issue open for the time being.”

16. In **MSRTC v. Yadao & Ors.**,⁵ the learned Division Bench of this court held as under:

“6. Section 59 of the ULP Act reads:

“If any proceeding in respect of any matter falling within the purview of this Act is instituted under this Act, then no proceeding shall at any time be entertained by any authority in respect of that matter under the Central Act or, as the case may be, the Bombay Act; and if any proceeding in respect of any matter within the purview of this Act is instituted under the Central Act, or as the case may be, the Bombay Act, then no proceeding shall at any time be entertained by the Industrial or Labour Court under this Act”.

7. As the long title to the ULP Act suggests, the Act was intended inter alia to facilitate collective

⁵ 1985 LIC 1012

bargaining and to define and provide for the prevention of certain unfair labour practices and to constitute independent machinery for carrying out the purposes of the Act. Needless to say, the legislature was aware of the existence of the I.D. Act of 1947 when it enacted the ULP Act of 1971 and the presumption would be that the legislature did not create an impotent, unworkable machinery under the ULP Act.

8. The ambit of the bar of proceedings under S.59 of the ULP Act can best be understood by comparing it with the text of the next following S. 60 of the same Act which bars the civil courts from entertaining "any suit which forms or which may form the subject matter of the complaint under the Act". In contradistinction to the language of S. 60, the Act in S. 59 adds an additional pre-requisite, namely that the proceedings should be "in respect of any matter falling within the purview of this Act", That is to say, the bar under S. 59 of the ULP Act is not an absolute one - not impervious, impregnable wall to all manner of sorts of proceedings - but a sieve through which certain type of proceedings can permeate. It only prohibits duplicating of proceedings if some, in respect of matter which falls within the purview of ULP Act, are already pending under the I.D. Act.

9. The question to ask is: Does the action of the employer in obtaining an express permission in writing under cl. (b) sub-sec. (1) of S. 33 or in obtaining "approval" under the proviso to cl. (b) sub-sec. (2) of S. 33 of the I.D. Act amount to a proceeding "falling within the purview of ULP Act"? It has been valiantly argued by Shri Mehadia on behalf of the corporation that Schedule IV to the ULP Act which deals with matters pertaining to the discharge or dismissal of the employees can be called a matter falling

within the purview of the ULP Act. We find that the philosophy behind the bar of S. 59 of the ULP Act is akin to that of S. 10 or S. 11 of the Civil Procedure Code which enjoins upon a court not to proceed with trials of suits where similar issues were also directly and substantially in issue in another suit. The intention is to prevent the multiplicity of proceedings, possibility of contradictory verdicts and wastage of judicial time. As we read S. 33 of the I.D. Act together with marginal note thereto it appears to us that the section was inserted with a view to preventing an employer - powerful as he is - to take preemptive action of dismissing some ring leaders of strike, decimate workmen's agitation by taking the wind out of their sails. The legislature in enacting S. 33 puts fetters on the common law powers of the employer to hire and fire at will. It tells the employer that if an industrial dispute is pending he will have to obtain an express permission in writing or ex post facto approval to effect a change in the conditions of service to the detriment of the employee or to terminate his services. This fetter was imposed in the larger interest of industrial production and peace. The authority under the I.D. Act, does not act in a judicial capacity while according express permission or an approval in a convoluted administrative process, very many factors have to be taken into consideration by that authority before granting permission or approval which factors fade into penumbra of zone of consideration in a judicial process. It may be permissible for the competent authority under the I.D. Act to come to the conclusion that even though the employer's proposal to dismiss the employee can be defended on merits, the industrial climate, the nature of the product which the industry is producing, the urgency of supply for defence purposes etc.; are such matters that it would not make for a better labour management

relations if at a particular juncture the employee is dismissed.

10. As true construction of statute gets facilitated by reference to and drawing analogies from analogous provisions, it may be useful to compare the provisions of the English statute on the subject. The policy of the English statute was to introduce a bar to an Industrial Tribunal deciding whether a dismissal was fair or unfair when it took place at a time when the employee was on strike or engaged in other industrial action unless there was victimisation. To Illustrate, S. 62 of the (English) Employment Protection (Consolidation) Act, 1978, provides:

"(1) The provisions of this section shall have effect in relation to an employee who claims that he has been unfairly dismissed by his employer where at the date of dismissal.....

(a) the employer was conducting or instituting a lock-out, or (2) the employee was taking part in a strike or other industrial action.

(2) In such a case an industrial tribunal shall not determine whether the dismissal was fair or unfair unless it is shown.....

(a) that one or more relevant employees of the same employer have not been dismissed, or (b) that one or more such employees have been offered re-engagement and that the employee concerned has not been offered engagement".

11. There is no definition in the English statute of the phrase 'other industrial action' and it has been held that what constitutes 'other Industrial action' should be left to the good sense of the Industrial Tribunal. The object was, as Lord Scar-man puts it in *N. W. L. Ltd. v. Woods* (1979) 1 WLR 1294, at

1312, to exclude trade disputes from judicial review by the courts and to substitute an advisory, conciliation and arbitration process. The complexity of the Industrial disputes warrant that their determination should be left to the good sense of the members of the tribunal who being locally situated, know the local employment. position, the industries areas, the condition in the area etc: and thus would be able to provide cheap and speedy hearing of unfair dismissal complaints.

12. In contrast, while drafting S. 59 of the U.L.P. Act, the legislative draftsman has avoided using words of the widest amplitude like 'other industrial action' which would provide a fertile ground for various interpretations of that phrase. The accordion like quality of that phrase becomes evident from *Power Packing Case Makers Ltd. v. Faust (C. A)* (1983) 2 WLR 43B at 443 wherein Stephenson L. J. when called upon to pronounce whether refusal of workman to do overtime constitutes an industrial action said:

"If he merely refused to do something which he is not contractually bound to do, he cannot be taking part in industrial action. I would agree that if he refuses because he has private commitment to visit a sick friend, or a personal preference for a football match, he is not taking industrial action. But that is not this case. If he refuses because he and others who refuse with him hope to extract an increase of wages out of his employers because their business will be disrupted if they do not grant it, that continued application of pressure is industrial action in the common sense of the words."

13. Thus in a situation arising out of the English Act, the court will have to delve into the mind of the worker and conclude whether the worker is refusing overtime to exert pressure on the

employer or whether he has a date at a football match or movie theatre. All such factual inquiry has been done away with by S. 59 which asks a simple question; Does the action of the employee fall within the purview of the U.L.P. Act?

14. In the result the appeals fail and are dismissed. Under the circumstances there would be no order as to costs.”

17. It was thus concluded by this court in **Yadao (supra)** that the object of Section 59 of the 1971 Act is to ensure that there is no duplication of the proceedings, in the sense that the same cause of action should not be adjudicated upon in two proceedings, one under the 1971 Act and the other under the Central Act.

18. In the case in hand, the employees were standing at the door step of the Labour Court, praying for condonation of delay, prior to which the ULP complaint cannot be registered. The application for condonation of delay was rejected on the ground that they have approached the court with a delay of 200 days. It is not the case that the delay was condoned, that the complaints were registered and, that the Labour Court proceeded further to take effective steps for the adjudication of their claim of illegal termination. Once the workers were declined condonation of delay, their attempt to commence litigation under Section 28(1) of the 1971 Act, failed. Therefore, it cannot be said that the Labour Court had exercised its jurisdiction on the merits of the

matter and, hence, these workers should be disallowed from questioning their purported unlawful termination, which is stigmatic, under the Central Act. In these circumstances, I hold that rejection of the application for condonation of delay would not mean that the worker has effectively utilised a statutory remedy available to him. The Bar of Section 59 would not be applicable to their reference cases. Hence, the challenge to the impugned orders of Reference by the petitioner-company on this ground, fails.

Delay

19. The learned senior counsel has then assailed the impugned order on the ground of delay of 12 years.

20. It cannot be ignored that the ID Act did not provide for a limitation for an employee to raise an industrial dispute. Nevertheless, it cannot be said that such an industrial dispute can be raised, at any time, even after a long passage of time, post the cause of action. The attending circumstances have a significant bearing and the time spent by them in the Court has a nexus with the raising of the industrial dispute. Had it been the case that after the termination dated 01/03/2007 and 07/03/2007, both these employees went into deep slumber and woke up only in 2019 to raise an industrial dispute, it would have been appropriate to consider the act of the employees of sleeping over

their purported cause of action for 12 years. It cannot be said in these cases that these two employees were in deep slumber. After their termination dated 01/03/2007 and 07/03/2007, they preferred their application for condonation of delay on 16/01/2008. The management tendered its reply on 03/03/2008. Thereafter, both the litigating parties adduced evidence on the aspect of delay of 200 days and finally, the Labour Court concluded vide order dated 12/03/2009 that the reasons assigned were not sufficient to condone the delay of 200 days.

21. These employees then approached the Industrial Court by preferring revision petitions. These revision petitions were dismissed on 19/04/2010. These employees then preferred Writ Petition No.8489 of 2012 before this court and by order dated 17/02/2014, the petition was dismissed.

22. In the peculiar sequence of events as recorded above, it does not require any discussion that these employees had spent time on litigation at three different levels, till 2014. Thereafter, they approached the Conciliation Officer by preferring applications dated 28/03/2019 and 14/08/2018. By the impugned order dated 21/12/2019, the competent authority referred the dispute to the Labour Court.

23. It is the contention of the management that even if it is to be accepted that the employees were litigating before the Labour

Court, the Industrial Court and then before this court and spent about six years in litigation, thereafter, with the passage of about five years, they have raised an industrial dispute. Reliance is placed on **Nedungadi Bank Ltd. v. K.P. Madhavankutty & Ors.**⁶

24. Reliance placed by the petitioner on **Nedungadi Bank (supra)** is of no assistance. The employees in the said case were in slumber after they were dismissed from service, for seven years. Disciplinary proceedings were initiated against them on the charges of misappropriation and falsification of record. This ended in dismissal from service, which was upheld by the appellate authority. The respondent received the dues under the relevant rules. Thereafter, he let 7½ years to pass by and then served a demand notice on the bank. In the case in hands, both these workers had approached the Labour Court within six months for challenging their illegal termination. Charges were levelled upon them while issuing termination orders, though no enquiry was conducted and no reasons were assigned, as to why it was not possible for the petitioner to conduct an enquiry. Their litigation journey ended in 2014 on the issue of condonation of delay in this court. Five years thereafter, they have approached the Conciliation Officer.

25. In **Haryana State Co-op. Land Development Bank v.**

⁶ (2000) 2 SCC 455

Neelam⁷, the Hon'ble Supreme Court held that the object of imparting social justice to the workmen is of paramount importance. Nevertheless, the object of the Act is not to automatically entitle a workman to a relief against the employer, irrespective of his conduct. A person in a certain situation may even be held to be bound by the doctrine of "acceptance sub silentio". In the case in hands, these two workers were constantly in litigation with the petitioner and it was not that they had been in deep slumber.

26. In **Prabhakar v. Joint Director, Sericulture Department & Anr.**⁸, the Hon'ble Supreme Court dealt with the words "at any time" with regard to the reference of an industrial dispute for adjudication under Section 10(1) and Section 2-A. It was held that no grievance was made by the workmen qua his alleged termination for 14 years. Though the words "at any time" used in Section 10 may carry a meaning that there is no period of limitation for making a reference, the Appropriate Government must ensure that the dispute is still existing or is a live dispute and has not become stale. Denial of relief can be on the ground of unexplained delay and laches and/or on the presumption that such person had waived his right or acquiesced. Where the court finds existence of a dispute, though raised belatedly, it is always open to the court to mould the relief accordingly, either by

7 (2005) 5 SCC 91

8 (2015) 15 SCC 1

granting reinstatement without back wages or lesser back wages or granting compensation instead of reinstatement. It was further held that the doctrine of laches has its applicability from the maxim of “delay defeats equities”.

27. It is thus obvious that in the facts and circumstances of these cases, and the attending circumstances, it cannot be said that no industrial dispute exists or that the employees should be restrained from raising a challenge to their termination orders. If such a contention is accepted, in the facts and circumstances of these two cases, it would amount to virtually closing the doors of the court on these two employees, who would not be able to challenge their termination orders before any court, only because they spent five years in contemplating as to what is to be done, after this court dismissed their writ petition. Moreover, the termination or dismissal from service is defined to be a deemed industrial dispute under Section 2A of the ID Act, which reads as under:

“[2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.--

²[(1)]Where any employer discharges, dismisses, retrenches, or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to

the dispute.]

[(2)Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1)may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1).”

28. It is apparent that the employees adopted the course under Section 2A(1) of the ID Act to raise an industrial dispute, keeping in view that it was not possible for them, due to the peculiar facts of their cases, to invoke sub-section (2) or (3) of Section 2A of the ID Act. If they are prohibited from exercising this right, they would be prevented from challenging their termination orders during their lifetime.

29. Considering the above, I do not find any merit in these two petitions. The same are, therefore, dismissed.

[RAVINDRA V. GHUGE, J.]