Vol 4 Issue 5 Feb2015

ISSN No : 2249-894X

Monthly Multidisciplinary Research Journal

Review Of Research Journal

Chief Editors

Welcome to Review Of Research

RNI MAHMUL/2011/38595 **ISSN No.2249-894X**

Review Of Research Journal is a multidisciplinary research journal, published monthly in English, Hindi & Marathi Language. All research papers submitted to the journal will be double - blind peer reviewed referred by members of the editorial Board readers will include investigator in universities, research institutes government and industry with research interest in the general subjects.

Advisory Board

Address:-Ashok Yakkaldevi 258/34, Raviwar Peth, Solapur - 413 005 Maharashtra, India
Cell : 9595 359 435, Ph No: 02172372010 Email: ayisrj@yahoo.in Website: www.ror.isrj.org

Review Of Research
ISSN:-2249-894X
Impact Factor : 3.1402(UIF)
Vol. 4 | Issue. 5 | Feb. 2015
Available online at www.ror.isrj.org

INSTITUTIONALMACHANISM FOR SETTLEMENT OF DISPUTES BETWEEN WORKERS AND MANAGEMANT - AN ANALYSIS OF THE INDUSTRIAL DISPUTES ACT OF 1947

Joginder

Assistant Professor, Vinayaka Institute of Management,Kachwa(Karnal)

Abstract:-The relationship between labour and management is based on mutual adjustment of interests and goals. Both employers and employees try to augment their respective resources and improve their power position. The major issue involved in the industrial relation process are terms of employment, wages, allowances, bonus, fringe benefits, working conditions, leave, working hours, a conditions regarding health, safety and welfare, non employment including job security, personal issues such as discipline, promotional opportunities and reorganization of trade unions. So, in view of the sharply divided rival claims the objectives of labour and management are not amenable to easy reconciliation. Moreover, the means adopted to achieve the objectives which vary from simple negotiation to economic welfare adversely affect the community's interest in maintaining as uninterrupted and high level of production.However, the state with the legislative task of balancing the conflicting interest in the arena of labour management relations process has also remained active .The present paper will analyse different process involved in the adjudication of industrial disputes in India.

Keywords: Adjudication, Mediation,Consciliation,Arbitration,CollectiveBargaining, Enquiry, Tripartite, Frindge Benefits,Wages, Social Justice Labour Court & Tribunal.

INTRODUCTION

Social and economic justice is ultimate ideal of industrial adjudication and the basis lies in the guiding principles of social welfare, common good and the directive principles of State policy enshrined in the Constitution . The essential function of industrial adjudication is to assist the State by helping a solution of industrial dispute . Therefore, it has broadly to go by the social and economic policy followed by the state.

The twin objectives of any industrial adjudication are industrial peace and economic justice . The former implies restoration of industrial peace and goodwill in industry so as to established harmony between labour and capital. Industrial harmony helps in boosting production which would help in general economic progress of the community and strengthen national economy. The latter implies that restoration of industrial peace and goodwill should on a fair and just basis.

NATURE OF INDUSTRIALADJUDICATION MACHINERY

Today Governmental functions have increased tremendously and the executive exercises not only the executive functions but also quasi-legislative and quasi-judicial functions. But according to the traditional theory, the function of adjudication of disputes is the exclusive jurisdiction of the ordinary court of law. The traditional theory of "laissez faire" has been given up and old "police state" has now become a "welfare state." Today, state exercises not only Sovereign functions but also democratic functions. It regulates industrial relations, exercises

control over production and undertakes itself many enterprises.Modern welfare state requires more complex mechanism for dealing with various problems. Administrative and Industrial Tribunals are, therefore, established as the specialised bodies possesing certain attributes of the courts to decide various quasi-judicial issues speedily in place of the ordinary courts of law . The constitution of India envisages a welfare state and the Labour and Industrial Tribunals are therefore, recognized by it. See Article 32, 136, 226, 227 and also Article 323 A, 323 B.

MACHINERY FOR SETTLEMENT OF INDUSTRIAL DISPUTES

Principle techniques of dispute settlement provided in the Industrial Disputes Act,1947 are: -a)Collective Bargaining

As per Jagannatha Shelly, J.: "Collective bargaining is a technique by which disputes as to conditions of employment is resolved amicably in a peaceful manner by agreement rather than coercion. The final outcome of the bargaining may also depend upon the art, skill and dexterity of displaying the strength by the representatives of one party to the other. The best justification for collectively bargaining is that it is a system based on bipartite agreements, and as such, superior to any arrangement involving third party intervention in matters which essentially concern employers and workers .

The process of collective bargaining, though in a nebulous and limited form has been introduced in the year 1956 by amending the Industrial Dispute Act,1947 in the definition of 'settlement' in S.2(p) of the Industrial Disputes Act, 1947 as a written agreement "between the employer and workmen arrived at otherwise than in the course of conciliation proceeding" bas been included. Rule 58 of the Industrial Disputes (Central) Rules, 1957 prescribes the Memorandum of Settlement in Form H and also lays down the procedure of signing the settlement. Section 18(1) makes such a settlement binding on the parties to the prescribes the periods of operation inter alia of such settlement and S.29 prescribes penalty for the breach of such a settlement. It would thus appear that the process of collective bargaining yet rests on statutory crutches. Likewise, the provisions in the State legislations also, the system of collective bargaining is hedged by statutory safeguards. In practice, with the aid of these statutory provisions, the Government has retained ultimate control over the settlement of industrial disputes by resorting to compulsory adjudication .

COLLECTIVE BARGAINING V. COMPULSORY ADJUDICATION

In India the tradition of free collective bargaining has always been weaker. Consequently there is more continuous and systematic surveillance over industrial dispute on the part of the Government by resorting to compulsory adjudication. But neither system is free from its snags and snares on account of sharp clashes of interest and stormy quality of human nature. Collective bargaining contract is vulnerable for its encouragement of strikes, for its lack of principled and scientific decision and for its failure to protect the community's interests while compulsory adjudi¬cation, apart from its greatest drawback of third party intervention, is further vulnerable for its expense, its delays, its bitterness and acrimony, its frustrations and to its many wrong decisions. Hence with respect to the merits and demerits of collective bargaining vis-a-vis compulsory industrial adjudication, there is a serious conflict and overlapping of views .

B) MEDIATION AND CONCILIATION

Sec. 4 the Industrial Dispute Act,1947, authorizes the 'appropriate Govern¬ment' to appoint Conciliation Officers charged with the duty of mediation in and promoting the settlement of industrial disputes. A Conciliation Officer may be appointed for a specified area or for specified industries in a specified area or for one or more industries either permanently or for a limited period . Though it is discretionary for the Government to appoint the Conciliation Officers. Sec. 5 authorizes the appropriate Government to constitute a Board of Conciliation for promoting the settlement of industrial disputes . The Board has to be appointed ad hoc for a particular dispute. It consists of a Chairman and two or four other members. The Chairman of the Board must be an 'independent person' while the members represent the parties in equal number and are appointed on the recommendation of the parties. A Board of Conciliation is to be constituted when the issues involved are of a complex nature. But the constitution of the Boards has rarely been resorted to. In the recent years no board of Conciliation has been appointed by the Central Government.

The Act further makes conciliation compulsory in all disputes in 'public utility services' and optional in other industrial establishments. In the words of the National Commission on Labour, "over the years the optional provision appears to be acquiring compulsory status in non-public utilities also" .

Section 11 prescribes the procedure and powers, inter alia, of the Conciliation Officers and Boards. S. 12 deals with the Conciliation Officers and S. 13 deals with the duties of the Boards . Broadly speaking, conciliators either bring the contending parties to a conference table or endeavour at least to narrow the gulf of difference between them by removing the sources of friction and tension and help them to find common areas of agreement.

They have no power to decide the disputes. But by gaining the parties confidence in their fairness and impartiality, the conciliators are supposed to strive to find solutions, which the parties may not be able to find for themselves. They have no authority to pass a final or binding order on the parties. In the cases where a settlement is arrived at, they can record the settlement and in case of failure of the conciliatory negotiations, they can only send a failure report to the appropriate Government.

The failure of conciliation is likely to lead to adjudication by a Tribunal or a reference to some other authority under conciliation is treated as a preliminary step leading to the adjudication through the Labour Courts or Tribunals. In this state of affairs, the parties do not feel strong urge to arrive at a settlement . Though conciliation in this country has not made much progress .

c) Investigation

Sec. 6 empowers the appropriate Government to constitute a Court of Inquiry of enquiring into any matter appearing to be connected with or relevant to an industrial dispute . The procedure of the Court of Inquiry has been prescribed by Sec. 11 to 14 requires the Court to enquire into the matters referred to it and report thereon to the appropriate Government ordinarily within a period of six months from the commencement of its inquiry. The dispute is referred to the Court of Inquiry consisting of two or more' independent' members one of whom is the Chairman. It enquires into the merits of the issues and makes a report on them. While the report of the Court is not binding on the parties, it is "intended to serve as the focus of public opinion and of pressure from Government authorities, and thereby to pave the way to an agreement" . The task of the Court of Inquiry is to select those facts which it considers more pertinent and call them compellingly to the adoption of the public. Investigation or inquiry is generally used for the purpose of preventing damaging strikes. It is generally reserved for most important cases, and is employed routinely in some countries, such as, Canada and India .

d) Arbitration

The arbitration is a judicial process under which one or more outsiders render a binding decision based on the merits of the dispute. Voluntary arbitration is initiated by consent of the parties which leads to a final and binding award. Agreement to arbitrate implies willingness of the parties to abide by the award even though this is not expressly stated. Voluntary arbitration is suited to any type of dispute including those involving basic terms of employment, interpretation of existing agreement, the inter-union controversies . Voluntary arbitration being cheaper, less formal & speedy, appears to be the best method for settlement of all industrial disputes than the Tribunal adjudication under I.D. Act 1947 which is very slow, thus defeating the very purpose of the industrial adjudication. It has limited document discovery with quicker hearings and is less formal than trials. The greatest advantage of arbitration is that there is no right of appeal, review or writ petition. Besides, it may as well reduce company's litigation costs.

The award of the Arbitrator is to be communicated to the 'appropriate Government' and has to be published under S.17. The commencement of such award is subject to the provisions of S.17 A like the award of an adjudicator under S.10. Furthermore S.10A (5) makes the provisions of the Arbitration Act, 1940 (10 of 1940) inapplicable to the proceeding under S, 10A. In other words, the machinery of the Arbitration Act is not available to the parties. Thus the only difference between the voluntary arbitration and the compulsory adjudication left is that in the former case the parties have the liberty to make by mutual agreement, a reference to a private' Arbitrator' or 'Arbitrators' of their choice apart from the Presiding Officers of Labour Courts, Industrial Tribunals and National Tribunals. Once the reference is made there is no difference between the so-called 'voluntary arbitration' and the 'compulsory adjudication' . No wonder that "this method does not appear to have much attraction for Indian industry .

The parties select their' Arbitrator' by agreement, or they accept one appointed by an agreed third party . In India, the emphasis is mainly on compulsory adjudication and "the voluntary arbitration" has not taken root in spite of the influential advocacy for it in different policy making forums" .

The Indian Labour Conference of August 1962 reiterated the need for a wider acceptance of 'voluntary arbitration'. This Conference was of the view that "whenever conciliation fails, arbitration will be the next normal step except in cases where the employer feels that for some reasons he would prefer adjudication" . A proviso was also added by the Conference to this Resolution to the effect that the parties concerned must fully explain the reasons for refusal to agree to arbitration in each case and the matter be brought up for consideration by the implementation machinery. In the same year the Industrial Truce Resolution (November 1962) while reemphasizing 'voluntary arbitration' specified that complaints pertaining to dismissal, discharge, victimization and retrenchment of individual workmen which could not be settled by mutual negotiation should been settled by voluntary arbitration. The Third Five Year Plan went a step further in suggesting that "voluntary arbitration" should be the normal practice in preference to recourse to adjudication. Now to make "voluntary arbitration" more acceptable to the industrial employers and the workers and with a view to coordinating efforts for its promotion, the, Government of India has set up a National Arbitration Promotion Board (NAPB) with a tripartite composition. The function of this Board will

be to examine and review the factors inhibiting wider acceptance of this procedure and suggest measures to make it more popular. "The NAPB is also to evolve principles, norms and procedure for the guidance of arbitrators and parties. It would look into the causes of delay and expedite arbitration proceedings wherever necessary and also specify from time to time" .

e) Adjudication

Adjudication means a mandatory settlement of industrial disputes by Labour Courts, Industrial Tribunals or National Tribunals under the Industrial Disputes Act of 1947 or by any other corresponding authorities under the analogous State statutes with specialized jurisdiction in the labour¬ management field. The line between the scope of 'adjudication' and 'arbitration' in this country is rather blurred. The central theme of the Act is adjudication. From its scheme, it is clear that the Act does little more than lip-service to collective bargaining, relegates the conciliation to the position of a mere stepping stone to adjudication and gives step-motherly treatment to voluntary arbitration. By and large, the ultimate remedy of unsettled disputes, therefore, is by way of reference by the appropriate Government to the adjudicatory machinery for their adjudication. 7, 7A and 7B deal with the constitution of the adjudicatory authorities, viz. Labour Courts, Tribunals and National Tribunals, respec¬tively: and S.7C disqualifies certain persons from being appointed to or to continue in the office of Presiding Officers of the Labour Courts, Tribunals or National Tribunals. S.8 prescribes the mode of filling of vacancies created in the offices of these authorities. S.10 deals with the reference of dispute to Labour Courts, Tribunals and National Tribune proscribes strikes and lock-outs during the pendency of adjudicatory proceedings before these adjudicatory authorities. S. 12(5) lays down that the appropriate Government may make a reference for adjudication upon consideration of the failure report of the conciliation under S. 12(4) and in case of its refusal, this provision enjoins upon the appropriate Government to record and communicate to the parties concerned its reasons therefore. Sec. 11 prescribes the procedure and powers, inter alia, of the Labour Courts, Tribunals or National Tribunals. Section 15 makes it the duty of a Labour Tribunal or National Tribunal to hold the adjudication proceeding expeditiously and to submit its award to the appropriate Govern¬ment as soon as may be practicable, on the conclusion thereof. Sec. 6(2) prescribes the form the award of such authorities. S.17 1ays down the requirement of publication of the award. S17A deals with the commencement of the awards. Sec.8 makes the award binding on the parties mentioned in sub-section (3) thereof and S. 19 prescribes the period of operation of the award. S. 20 lays down the points of time at which the adjudication proceedings are deemed 10 have commenced and concluded before these adjudicatory authorities. S. 21, inter-se,did, enjoin the adjudicatory authorities to keep certain matters confidential. S. 29 describes penalties for the breach of awards. By S. 36 legal practitioners are banned from appearing before the conciliatory authorities, though they have been permitted to appear before the adjudicatory authorities with the consent of the opposing party and with the permission of the adjudicator. The reference to the Labour Courts or the Tribunal has to be made by the 'appropriate Government' while the reference to the National Tribunal can only be made by the Central Government. The Act does not make provision for 'appeals or revisions against the awards of the adjudicatory authorities. Hence the aggrieved parties have to seek only the constitutional remedies viz., writs under Arts. 226 and 217 of the Constitution to the High Courts having jurisdiction or by way of appeals by special court to the Supreme Court under Art. 136 of the Constitution. Appeals in certain cases also lie to the Supreme Court against the decisions of the High Courts under Arts, 132 and 133 of the Constitution.

CONCLUSION

Over the past half century,the adjudication system for the settlement of disputes between workers and management in this country has been remarkable in giving a more concrete shape to our progress towards the goal set by the Constitution and also one step forward in making quest for industrial harmony" .No doubt quite often industrial disputes have been dominated by purely political motives of the political parties controlling the Trade Unions. Industrial adjudication has endeavoured to resolve the disputes with a pragmatic approach keeping in view the sub-economic requirements of the society. Bearing in mind these principles, the Courts by interpretative process have striven to reduce the field of conflict and expand the area of agreement . But now the time is ripe when the compulsory adjudication should more and more give way to collective bargaining and voluntary arbitration. Spoon feeding must stop if the trade unionism in its proper perspective is to grow and progress. This ideal, however, will remain only a dream so long as political parties continue to exploit the trade unions for their political ends.

REFERENCES AND ENDNOTES

1. Crown Aluminium Works v. Their Workmen, AIR 1958 SC 30.
2. State of Mysore v. Workers of Gold Mines, AIR 1958 SC 923.
3. State of Bombay v. Hospital Mazdoor Sabha, AIR 1960 SC 610.
4. Surjit Singh vs. Presiding Officer, and Anr. 2008(2) PLR 625

5. Report of the National Commissioner of Labour, Ch. 23, Industrial Relations-1 at p. 325.
6. By Section 3 of the Act 36 of 1956,
7. Van D Canadi Unions, Employers & Govt. Ed. 1966.Judicial Perspective
8. [1987] I L.L.J. 300 (322) (Kant), per' Bonanja,.J.
9. Sec. 4 is based on S.18A inserted in the Trade Disputes Act, 1929 by the Amendment of 1938.
10. Sec. 5 of the Industrial Disputes Act, corre¬sponds to Sec. 6 of the Trade Disputes Act, 1929
11. Report of the National Commission on Labour. Chapter 3 -Industrial Relations-I; under the head¬ing 'Conciliation', para 23, 15, p.322.
12. See also Notes and Comments under Sec. 4, 5, II, 12, and 13.
13. For a detailed discussion of the subject and constructive recommendations, see the Report of the National Commission on Labour-Chapter 23, p. 323 el seq.
14. Foenander : Industrial Arbitration in Australia, Ed. 1969, p. 95
15. See notes and comments under S. 6.
16. International Encyclopedia of Social Scienc¬es, Vol. 8, p. 508.
17. Ibid. at p. 508
18. Kamal Leather Karamclwri Sanghalhan v. Liberty Foolwear Co. {Regd.}, [1990] Lab. I.e. 301 (307) (S.C.), per Jagannatha Shelly, J.at p. 308.
19. Indian Law Institute: "Labour Law and Labour Relations"- 1 968 (Edn.) p 181.
20. Mary Sur: 'Collective Bargaining'. 1965 (Edn.) p. 86.
21. Updegraff & MacCoy: Arbitration of Labour Disputes. 1961 (Edn.) at p. 67.
22. Report of the National Commission on labour, Chapter 23- Industrial Relations-l, para 23.25 at p. 324. The Commission the basis of the evidence before it has recorded the following factors which have contributed to the slow progress of arbitration in India:
23. Reproduced in the Report of National Com¬mission on Labour, Chapter 23-lndustrial Rela¬tions-I, paras 23, 24 at p. 324.
24. Ibid, paras 23, 25, at p. 324
25. Report of" the National Commission on Labour. Chapter 6---0ur approach-para 6.5 at 1'.56.
26. Ibid.. Chapter 6- Our approach-para 6.50 at 1'- 56.
27. Workmen of Hindustan Lever Ltd. Vs. Hindustan Lever Ltd. [1984] Lab. I.c. 276 (286) (S.C.),per Desai. J.