PART XI

UNFAIR LABOUR PRACTICE AND VICTIMISATION

Section 2(ra) of the Industrial Disputes (Amendment) Act, 1982 defines unfair labour practice to mean, "any practices specified in the Fifth Schedule". The Fifth Schedule enumerates the unfair labour practices:

I. *On the part of employers and trade unions of employers*:

1. To interfere with, restrain from, or coerce, workmen in the exercise of their right to organise, form, join or assist a trade union or to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, that is to say:—
   (a) threatening workmen with discharge or dismissal, if they join a trade union;
   (b) threatening a lock-out or closure, if a trade union is organised;
   (c) granting wage increase to workmen at crucial periods of trade union organisation, with a view to undermining the efforts of the trade union organisation.
2. To dominate, interfere with or contribute support, financial or otherwise, to any trade union, that is to say:—
   (a) an employer taking an active interest in organising a trade union of his workmen; and
   (b) an employer showing partiality or granting favour to one of several trade unions attempting to organise his workmen or to its members, where such a trade union is not a recognised trade union.
3. To establish employer sponsored trade unions of workmen.
4. To encourage or discourage membership in any trade union by discriminating against any workman, that is to say:—
   (a) discharging or punishing a workman, because he urged other workmen to join or organise a trade union;

(b) discharging or dismissing a workman for taking part in any strike (not being a strike which is deemed to be an illegal strike under this Act);

(c) changing seniority rating of workmen because of trade union activities;

(d) refusing to promote workmen to higher posts on account of their trade union activities;

(e) giving unmerited promotions to certain workmen with a view to creating discord amongst other workmen, or to undermine the strength of their trade union;

(f) discharging office-bearers or active members of the trade union on account of their trade union activities.

5. To discharge or dismiss workmen—

(a) by way of victimisation;

(b) not in good faith, but in the colorable exercise of the employer's rights:

(c) by falsely implicating a workman in a criminal case on false evidence or on concocted evidence;

(d) for patently false reasons;

(e) on untrue or trumped up allegations of absence without leave;

(f) in utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste;

(g) for misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record or service of the workman, thereby leading to a disproportionate punishment.

6. To abolish the work of a regular nature being done by workmen, and to give such work to contractors as a measure of breaking a strike.

7. To transfer a workman mala fide from one place to another, under the guise of following management policy.

8. To insist upon individual workmen, who are on a legal strike to sign a good conduct bond, as a pre-condition to allowing them to resume work.

9. To show favouritism or partiality to one set of workers regardless of merit.

10. To employ workmen as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen.

11. To discharge or discriminate against any workman for filing charges or testifying against an employer in any enquiry or proceeding relating to any industrial dispute.

12. To recruit workmen during a strike which is not an illegal strike.
13. Failure to implement award, settlement or agreement.
14. To indulge in acts of force or violence.
15. To refuse to bargain collectively, in good faith with the recognised trade unions.
16. Proposing or continuing a lock-out deemed to be illegal under this Act.

II. *On the part of workmen and trade unions of workmen.*

1. To advise or actively support or instigate any strike deemed to be illegal under this Act,
2. To coerce workmen in the exercise of their right to self-organisation or to join a trade union or refrain from joining any trade union, that is to say—
   (a) for a trade union or its members to picketing in such a manner that non-striking workmen are physically debarred from entering the work places;
   (b) to indulge in acts of force or violence or to hold out threats of intimidation in connection with a strike against non-striking workmen or against managerial staff.
3. For a recognised union to refuse to bargain collectively in good faith with the employer.
4. To indulge in coercive activities against certification of a bargaining representative.
5. To stage, encourage or instigate such forms of coercive actions as wilful "go slow", squatting on the work premises after working hours or "gherao" of any of the members of the managerial or other staff.
6. To stage demonstrations at the residences of the employers or the managerial staff members.
7. To incite or indulge in wilful damage to employer's property connected with the industry.
8. To indulge in acts of force or violence or to hold out threats of intimidation against any workman with a view to prevent him from attending work.

While Section 25 T prohibits an employer or workman of a trade union (whether registered under the Trade Unions Act, 1926, or not) to commit any unfair labour practice, Section 25 U penalises the person committing any unfair labour practice with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.

Prior to 1947 there was no legislation to deal with unfair labour practice. However, in 1947 the Trade Unions (Amendment) Act, 1947 treated the following to be an unfair practices on the part of a recognized trade union:

(a) for a majority of the members of the trade union to take part in an irregular strike;

(b) for the executive of the trade union to advise or actively support or to instigate an irregular strike;

(c) for an officer of the trade union to submit any return required by or under this Act containing false statements." And the following were " deemed to be unfair practices on the part of employers, namely:-

(a) to interfere with, restrain, or coerce his workmen in the exercise of their right to organize, form join or assist a trade and to engage in concerted activities for the purpose of mutual aid or protection;

(b) to interfere with the formation or administration of any trade union or to contribute financial or other support to it;

(c) to discharge or otherwise discriminate against any officer of a recognised the union because of his being such officer;

(d) to discharge or otherwise discriminate against any workmen because he has made allegations or given evidence in an inquiry or proceeding relating to any matter such is referred to in sub-section (1) of Section 28-F;

(e) to fail to comply with provisions of Section 28-F; provided that the refusal of an employer to permit his workmen to engage in trade activities during their hours of work shall not be deemed to be an unfair practice on his part."

The aforesaid Act, however, never came into force and was allowed to lapse.

In the absence of any law relating to unfair labour practices one has to rely on the criteria laid down by various pronouncements of the Court. Moreover the Code of Discipline in 1958 included various activities as unfair on part of employers, on part of trade unions and also certain practices were referred as unfair on part of both employers and trade unions. But it remained only as gentlemen agreement.

In 1969 the National Commission on Labour recommended that law should enumerate various unfair labour practices on the part of employers and workers Union. A need was, therefore, felt to amend the Industrial Disputes Act, (1947. In the absence of any central Act Maharastra took a lead. It enacted the Maharashtra Recognition of Trade unions and Prevention of Unfair Labour Practices Act, 1971 which is said to be a land mark in the area of unfair labour practice. Under the Act unfair labour practices has been defined to mean any of the practices listed in Schedules II, III and IV of the Act. The Industrial and Labour Courts have been empowered to deal with unfair practices under Chapter VI. VII and VIII. They are not only empowered to issue cease and desist orders but also empowered to punish with imprisonment and fine on finding the delinquent person guilty of contempt. At the same time the employee may be reinstated with or without back wages as the case deem fit.

EVEREADY FLASH LIGHT COMPANY v. LABOUR COURT, BAREILLY
Allahabad High Court, (1961) 2 L LJ 204

[The company appointed Sharma as a workman on a temporary daily rated basis, on 8th January 1958, after trying him for four days. On 12th April, it issued a letter of appointment putting Sharma on probation for a period of six months. The probation could be extended from time to time in the company's discretion. On 9th September, Sharma was elected a member of the union's working committee. On 10th September, he was given a written warning that in spite of several oral warnings he had shown no improvement in his work. On 11th October, the warning was repeated. On 21st November, his services were terminated. The union raised an industrial dispute over this issue. The labour court held that there was no justification for putting him on probation after he had been tried, that the condition in the alleged letter of appointment of 12th April putting him on indefinite probation was unjustified and "was done just to avoid or delay making him a permanent hand", and, hence, it amounted to an unfair labour practice. The company filed a writ petition in the Allahabad High Court Excerpts from the judgment delivered by Dhavan. J. follow:]

The most important question raised by counsel for the petitioner centres round the finding of the labour court that the employer was guilty of unfair labour practice. Shri Khare [counsel for the company] contended that this phrase should be given a restricted meaning. He referred to the definition of "unfair practice" contained in the Indian Trade Unions (Amendment) Act, 1947 (XLV of 1947). There is a special chapter in this Act dealing with unfair practice. Section 28 J* defines unfair practice by recognised trade unions and S 28k** deals with unfair practice by employers.....

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* Section 28 J. *Unfair Practices by recognised Trade Unions*:
The following shall be deemed to be unfair practices on the part of a recognised trade union, namely:
(a) for a majority of the members of the Trade Union to take part in an irregular strike;
(b) for the executive of the Trade Union to advise or actively to support or to instigate an irregular strike;
(c) for an officer of the Trade Union to submit any return required by or under this Act containing false statements.

** Section 28 K. *Unfair practices by employers*—The following shall be deemed to be unfair practices on the part of an employer, namely:—
(a) to interfere with, restrain or coerce his workmen in the exercise of their rights to organise, form, join or assist a Trade Union and to engage in concerted activities for the purpose of mutual aid or protection;
(b) to interfere with the formation or administration of any Trade Union or to contribute financial aid or other support to it;
(c) to discharge, or otherwise discriminate against any officer of a recognised Trade Union because of his being such officer ....

It is conceded that there is no authoritative decision by the Supreme Court of India on the nature of what may be regarded as unfair labour practice. I am not inclined for several reasons to agree with the learned counsel's contention that the meaning of this phrase must be restricted to the definition contained in the Indian Trade Unions (Amendment) Act, 1947. First, that Act has never come into effect. Its first section provided that it would come into force on a date to be appointed by the Central Government by a notification. It appears that no such notification was ever made. Therefore, the definition of "unfair labour practice" contained in Ss. 28J and 28K does not have the force of law...

[E]ven assuming that this definition to some extent reflected the mind of the legislature at the time of the passing of that Act, it was intended to apply only for the purposes of that Act and no further. The purpose was to regulate the relations between the employer and the trade union, and it was provided that in his relations with the trade union the employer must not do anything which was calculated to weaken the trade union. But the definition of "unfair labour practice" in S. 28K has no application in the matter of the employer's relations with his individual employees. The Act was not intended to regulate the employer's relations with the employees arising out of the terms of employment which is the purpose of the Trade Disputes Act.

Furthermore, the weight of authority is against the argument that unfair labour practice should be limited to any act discouraging trade union activities. It has been held in several cases that the employer who lays off workers with the object of depriving them of their legitimate dues, or makes his workmen sign on temporary contracts and compels them to work for years on permanent jobs with the object of depriving them of the status and the privileges of permanent workers, is guilty of unfair labour practice. If the argument of the petitioner-company is accepted, the labour courts would have no power to condemn this type of practice as unfair, for it has nothing to do with restriction of trade union activity.

In *L.H. Sugar Mills* v. *Its Workmen*, (1961 I LLJ 686) I held that it was not possible to give an exhaustive definition of the phrase "unfair labour practice" and that each question must be considered according to its own circumstances. It is not possible to lay down any exhaustive test of unfair labour practice, but as a working principle, I would hold that any practice which violates the principles of Art. 43* of the Constitution and other articles declaring decent wages and living

* Art. 43: The State shall endeavor to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavor to promote cottage industries on an individual or co-operative basis in rural areas.

conditions for workmen and which if allowed to become normal would tend to lead to industrial strife, should be condemned as unfair labour practice...

Learned counsel for the petitioner then argued that an employer cannot be held guilty of unfair labour practice simply on the basis of one contract of employment. He contended that there must be a number of transactions to constitute an unfair practice. I do not agree. The dictionary meaning of the word "practice" includes a single transaction. A single transaction of cheating may be condemned as what is known as shady practice. Moreover, the argument that an employer must have committed a series of a unfair transactions before he could be held guilty of unfair labour practice will lead to peculiar results. It would mean that he must be permitted to victimize several workmen before he can be stopped. In my view unfair labour practice may arise even out of a single transaction and the labour court has power to give a finding even on the basis of one act of the employer. The purpose of the Industrial Disputes Act is to prevent industrial strife—in other words, to prevent anything from happening which would lead to industrial disputes. Their [sic] function is to prevent unfair labour practice and not merely to punish it after it has been practiced. It is in the public interest, in my opinion, that even a single act of an employer should be condemned if it amounts to an unfair labour practice, for the policy of the legislature is to weed out any such practice before it has spread and become a danger to the industrial peace.

Learned counsel for the petitioner also argued that the labour court had no power to change the case of the workman who has pleaded that he had been victimized but not alleged that he was subjected to unfair labour practice. I am not impressed by this argument. The dividing line between victimization and unfair labour practice is very thin and what is unfair labour practice may also be a victimization and *vice versa* .....

Counsel for the petitioner finally submitted that the labour court was wrong in holding that the workman was entitled to the privileges of a permanent worker on the date when his services were terminated. He relied on several decisions in support of his contention that a workman can never acquire the status of a permanent employee without a formal order of confirmation. This argument cannot be accepted in such broad terms. If a workman cannot become permanent unless and until the employer issues a formal order to this effect, the result would be that an employer could, by the simple device of not issuing formal orders, keep every employee as temporary. The labour courts have been given the power to interfere with any such unfair practice by the employer. In this case the finding is that the employer used this device to deprive the workmen of his permanent status. On the material before it, was entitled to reach that conclusion. Its award is very fair for though it has directed the reinstatement of the workman it has not allowed him any wages for the interim period when he did not work for the company.

In the result the petition fails and is dismissed with costs... .

REGIONAL MANAGER, S.B.I. v. RAKESH KUMAR TEWARI
Supreme Court, 2006 LLR 209

[For facts of the case see Part VII. Excerpts from the judgment of the Court relating to unfair labour practice delivered by Ruma Pal J. follow:]

The conclusion of the Tribunal in both appeals that the circulars endorsed an unfair labour practice being followed by the appellant or that the appellant had indulged in unfair labour practice was ... incorrect. Unfair labour practice has been defined in Clause (ra) of section 2 of the Act as a meaning any of the practices specified in the Fifth Schedule. The Fifth Schedule to the Act contains several items of unfair labour practices on the part of the employer on the one hand and on the part of workmen on the other. The relevant item is item 10, which reads as follows:

"To employ workman as 'badlis', casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen."

We have already dealt with this issue in ... *Regional Manager, State Bank of India* v. *Raja Ram*, (2004) 8 SCC 164 where we had said:

"before an action can be termed as an unfair labour practice it would be necessary for the Labour Court to come to a conclusion that the badlis, casuals and temporary workmen had been continued for years, as badli casuals or temporary workmen, with the object of depriving them of the status and privileges of permanent workmen. To this has been added the judicial gloss that artificial breaks in the service of such workman would not allow the employer to avoid a charge of unfair labour practice. However, it is the continuity of service of workmen over a period of years which is frowned upon. Besides, it needs to be emphasized that for the practice to amount to unfair labour practice it must be found that the workman had been retained on a casual or temporary basis with the object of depriving the workman of the status and privileges of a permanent workman. There is no such finding in this case. Therefore, item 10 in List 1 of the Fifth Schedule to the Act cannot be said to apply at all to the respondent's case and the Labour Court erred in coming to the conclusion that the respondent was in the circumstances likely to acquire the status of a permanent employee."

CEAT LTD. v. ANAND ABASAHEB HAWALDAR & ORS.
Supreme Court, 2006 LLR 335

[On 30 June, 1992 CEAT Ltd, a public limited company (appellant) introduced a Voluntary Retirement Scheme (hereinafter referred to as the 'VRS-I') for its employees which was accepted by the 337 employees. On 16th March, 1994 the appellant introduced another Voluntary Retirement Scheme which was accepted by

179 employees. Thereafter respondents 1 to 6 who had accepted VRS-I filed a complaint before the industrial court, alleging that the appellant-company had committed an unfair labour practice in terms of item nos. 5, 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 by denying them benefits which was given to the employees who had accepted VRS-II, namely, payment of a sum of Rs. 90,000 *ex-gratia*, This according to them was, illegal, unlawful and amounted to unfair labour practice. The industrial court accepted the plea of the complainant. It accordingly, directed the appellant to pay Rs. 90,000 to each of the employees who had retired under VRS-I. Against this order the appellant filed a writ petition in the Bombay High Court. A single judge dismissed the writ petition. Then a Letters Patent Appeal was filed before the Division Bench which was also dismissed. The appellant then filed an appeal before the Supreme Court. Excerpts from the judgment of the Court delivered by Arijit Pasayat J. follow:]

The appellant submitted that (t)here was no discrimination, favouritism or partiality whatsoever in any manner. Those who are covered by VRS-II stood at a different footing from those who accepted VRS-I and, therefore, the complaint should not have been entertained. It was further submitted that mere fact that subsequently some more amount had been paid does not *per se* establish favouritism or partiality. Learned counsel for the respondents on the other hand submitted that the act of paying amount higher than what was paid to those who had accepted VRS-I itself showed favouritism and partisan approach, VRS-I which was accepted by 337 employees was not voluntary and was on account of the threat perceptions.

In order to appreciate rival submission the entries in Schedule IV of the Act need to be noted. They read as follows:

SCHEDULE IV

Unfair Labour Practices on the part of Employers

1. To discharge or dismiss employees
   (a) by way of victimization;
   (b) not in good faith, but in colourable exercise of employer's rights,
   (c) by falsely implicating an employee in a criminal case on false evidence or on concocted evidence;
   (d) for patently false reasons;
   (e) on untrue or trumped up allegation of absence without leave;
   (f) in utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste;

(g) for misconduct of a minor or technical character, without having any regards to the nature of the particular misconduct or the past record of service of the employee so as to amount to a shockingly disproportionate punishment.

2. To abolish the work of a regular nature being done by employees, and to give such work to contractors as a measure of breaking a strike.

3. To transfer an employee *mala fida* from one place to another under the guise of following management policy.

4. To insist upon individual employees, who were on legal strike, to sign a good conduct-bond as a precondition to allowing them to resume work.

5. To show favouritism or partiality to one set or workers, regardless of merits.

6. To employ employees as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees.

7. To discharge or discriminate against any employee for filing charges or testifying against an employer in any enquiry or proceeding relating to any industrial dispute.

8. To recruit employees during a strike which is not an illegal strike.

9. Failure to implement award, settlement or agreement.

10. To indulge in act of force or violence.

It will be appropriate to first deal with item (5) which relates to the act of favouritism or partiality by the employer to one set of workers regardless of merit.

According to learned counsel for the appellant, a complaint of unfair labour practice can be made only by the existing employees. Under clause (5) of section 3 of the Act the expression "employee" only covers those who are workmen under clause (s) of section 2 of the Industrial Disputes Act, 1947 (in short the 'ID Act"). The expression "workman" as defined in clause (s) of section 2 of the ID Act relates to those who are existing employees. The only addition to existing employees, statutorily provided under section 2(s) refers to dismissed, discharged and retrenched employees and their grievances can be looked into by the forums created under the Act. In the instant case, the complainants had resigned from service by voluntary retirement and , therefore, their cases are not covered by the expression 'workman'. On the factual scenario, it is submitted that after the 337 employees had accepted VRS-I, others had raised disputes and had gone to court. Order was passed for paying them the existing salary and other emoluments. This went on for nearly two years and, therefore, with a view to curtail litigation a Memorandum of Understanding was arrived at in 1994. This basic difference in the factual background was not noticed by either the Industrial Court or the High Court.

In item (5) of Schedule IV to the Act, the Legislature has consciously used the words 'favouritism or partiality to one set of worker' and not differential treatment. Thus, the mental element of bias was necessary to be established by cogent evidence. No evidence in that regard was led. On the contrary the approach of the Industrial Court and the High Court was different. One proceeded on the basis of breach of assurance and the other on the ground of discrimination. There was no evidence brought on as regards the prerequisite *i.e.* favouritism or partiality. Favouritism means showing favour in the matter of selection on circumstances other than merit (per Advanced Law Lexicon by P. Ramanatha Aiyar, 3rd Edition, 2005). The expression 'favoritism' means partiality, bias. Partiality means inclination to favour a particular person or thing. Similarly, it has been some times equated with capricious, not guided by steady judgment, intent or purpose. Favouritism as per the Websters' Encyclopedic Unabridged Dictionary means the favouring of one person or group over others having equal claims. Partiality is the state or character of being partial, favorable, bias or prejudiced.

According to Oxford English Dictionary "favouritism" means – a deposition to show, or the practice of showing favour or partiality to an individual or class, to the neglect of others having equal or superior claims; under preference. Similarly, "partiality" means the quality or character of being partial, unequal state of judgment and favour on one above the other, without just reason, Prejudicial or undue favoring of one person or party: or one side of a question; prejudice, unfairness, bias.

Bias may be generally defined as partiality or preference. It is true that any person or authority required to act in a judicial or quasi-judicial matter must act impartially:

"If however, 'bias' and 'partiality' be defined to mean the total absence of preconceptions in the mind of the Judge, then no one has ever had a fair trial and no one ever will. The human mind, even at infancy, is no blank place of paper. We are born with predispositions and the processes of education, formal and informal, create attitudes which precede reasoning in particular instances and which, therefore, by definition, are prejudices." [per Frank, J. in Linahan, Re, (1943) 139 F 2d 650, 652].

It is not every kind of differential treatment, which in law is taken to vitiate an act. It must be a prejudice, which is not found on reason, and actuated by self-interest - whether pecuniary or personal.

Because of this element of personal interest, bias is also seen as an extension of the principles of natural justice that no man should be a judge in his own cause. Being a state of mind, a bias is sometimes impossible to determine. Therefore, the courts have evolved the principle that it is sufficient for a litigant to successfully impugn an action by establishing a reasonable possibility of bias or proving circumstances from which the operation of influences affecting a fair assessment of the merits of the case can be inferred.

As we have noted, every preference does not vitiate an action. If it is rational and unaccompanied by considerations of personal interest, pecuniary or otherwise, it would not vitiate a decision. The above position was highlighted in *G.N. Nayak* v. *Goa University and Ors.*, JT 2002 (1) SC 526: 2002 (2) SCC 712.

The factual scenario does not establish any favouritism or partiality. When VRS-I Scheme was introduced same was offered to every employee: It is nobody's case that there was any hidden intent and/or that the employer had any previous knowledge at the time of introducing the scheme that some of the employees would not accept it. It is not the case of the complainants that the employer had at that point of time intended to pay something more to those who did not accept VRS-I. The Memorandum of Understanding which was the foundation of the VRS-II, of course gives a different package, but on the clear understanding that litigations of all types were to be withdrawn.

In order to bring in application of Item 9, it was submitted by the respondents that there was an agreement/assurance which was not implemented. It has been urged that a letter can also be construed as an agreement. But that logic is not applicable in all cases. It will depend upon the nature of the letter/communication. As a matter of fact, there is no dispute that there was no Memorandum of Understanding or agreement in writing. The letter of Vice-President on which the Industrial Court and the High Court have placed reliance does not any where indicate that even if the fact situation was different the same amount would be paid at all future times. Mere breach of assurance is not favouitism of partisan approach. It has to be definitely pleaded and proved to show that Item 9 of Schedule IV was attracted. As noted above, the Memorandum of Understanding in 1994 came to be arrived at because some of the employees went to court after not accepting VRS-I. The background facts do not establish that the appellant-company was guilty of favouritism or partiality. There is also no plea or proof that the employer indulged in any violence or force to coerce 337 employees to accept VRS-I. Therefore, the complaint of unfair labour practice is not established under Items 5, or 9 or 10 of Schedule IV to the Act.

That being the factual position the relief granted by the Industrial Court to the complainants cannot be maintained. The judgment of the High Court upholding the view of the learned single Judge and the Industrial Court stands set aside. In view of this finding of fact it is not necessary to go into the question of maintainability of the proceeding before the Industrial Court, by employees who retired voluntarily from service.

The appeal is allowed but in the circumstances without any order as to costs.

THE HARYANA STATE AGRICULTURAL MARKETING BOARD v. SUBHASH CHAND &ANR.

Supreme Court, 2006 LLR 393

[For the facts of the case see Part VII. excerpts from the judgment of the Court delivered by SB Singh J. follow:]

Reliance placed by Mr. Mahabir Singh upon Fifth Schedule of the Industrial Disputes Act is again of no assistance. Clauses (b), (d) of Item No. 5 as also clause (10) of the Fifth Schedule are as under:

"5. To discharge of dismiss workmen

(b) not in good faith, but in the colourable exercise of the employer's rights;

(d) for patently false reasons;

(10) to employ workmen as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen."

No case has been made out for attracting clauses (b) and (d) of Item No. 5. As regard applicability of clause (10) thereof, we may notice the meaning of 'status' and privilege.

In P. Ramanatha Aiyar's Advanced Law Lexicon, 3rd edition, Volume 4, at page 4469, the expression "status" has been defined as under:

"Status is a much discussed term which, according to the best modern expositions, includes the sum total of a man's personal rights and duties (Salmond, Jurisprudence 253, 257), or, to be verbally accurate of his capacity for rights and duties. (Holland. Jurisprudence 88).

The status of a person means his personal legal condition only so far as his personal rights and burdens are concerned. *Duggama* v. *Ganeshayya,* AIR 1965 Mys 97, 101. [Indian Evidence Act (1 of 1872), section 41]

In the language of Jurisprudence status is a condition of membership of a group of which powers and duties are exclusively determined by law and not by agreement between the parties concerned. (*Roshan Lal* v. *Union* 1967 SLR 832)." See also the judgment of this Court delivered in *BHEL* and *Anr v. B.K. Vijay and Ors.*, 2006 (2) SCALE 195.

The word 'privilege' has been defined, as under:

"Privilege is an exemption from some duty, burden of attendance to which certain persons are entitled; from a supposition of Law, that the stations they fill, or the offices they are engaged in, are such as require all their care; that therefore, without this indulgence, it would be impracticable to execute such offices, to that advantage which the Public good requires.

A right or immunity granted as a peculiar benefit; advantage or favour; a peculiar or personal advantage or right, especially when enjoyed in derogation of a common right.

Immunity from civil action may be described also as a privilege, because the word "privilege" is sufficiently wide to include an immunity.

The word 'privilege' has been defined as a particular and peculiar benefit or advantage enjoyed' by a person. Privileges are liberties and franchises granted to an office, place town or manor, by the King's great charter, letters patent, or Act of Parliament."

In view of the aforementioned definitions of the expressions 'status' and 'privilege' it must be held that such 'status and 'privilege' must emanate from a statute. If legal right has been derived by the respondent herein to continue in service in terms of the provisions of the Act under which he is governed, then only, the question of depriving him of any status or privilege would arise. Furthermore, it is not a case where the respondent had worked for years. He has only worked, on his own showing, for 356 days whereas according to the appellant he has worked only for 208 days. Therefore, Fifth Schedule of the Industrial Disputes Act, 1947 has no application in the instant case. In view of the above, the dispensing with of the engagement of the respondent cannot be said to be unwarranted in law.

WORKMEN OF M/s. WILLIAMSON MAGOR & Co. LTD.
v.
M/s. WILLIAMSON MAGOR & CO. LTD.,
Supreme Court, (1982) IL LJ 33

The word ''victimization" has not been defined in the statute. The term was considered by this Court in the case of *Bharat Bank Limited* v. *Employees of Bharat Bank Limited*, reported in [1950 LLJ 921]. This Court observed. "It (victimization) is an ordinary English word which means that a certain person has become a victim, in other words, that he has been unjustly dealt with. "A submission was made on behalf of the management in that case that "victimization" had acquired a special meaning in industrial disputes and connoted a person who became the victim of the employer's wrath by reason of his trade union activities and that the word could not relate to a person who was merely unjustly dismissed." This submission, however, was not considered by the Court. When, however, the word "victimization" can be interpreted in two different ways, the interpretation which is in favour of the labour should be accepted as they are the poorer section of the people compared to the management. This Court in the case of *KCP Employees' Association, Madras* v. *Management of KCP Limited, Madras and others*, reported in [1977 I LLJ, 322], observed :

"In Industrial Law interpreted and applied in the perspective of part IV of the Constitution, the benefit of reasonable doubt, on law and facts, if there be such doubt must go to the weaker section, labour. The Tribunal will dispose of the case making this compassionate approach but without overstepping the proved facts".

We would, therefore, accept the interpretation of the word "victimization" in the normal meaning of being the victim of unfair and arbitrary action, and hold that there was victimization of the superseded workmen.

Even if promotion may not be a condition of service in a private company and promotion may be the function of the management, it may be recognized that there may be occasions where the Tribunal may have to cancel the promotions made by the management where it is felt that persons superseded have been so superseded on account of legal mala fide or victimization [See (1966) 1 LLJ 402]. Although in spite of the allegations of mala fide, the union has not been able to prove factual mala fide, in this case malice in law and effectual victimization are obvious due to the fact that unjustified promotions of some junior persons were made superseding, without any reason or necessity, the case of a large number of senior persons.

As a result of the foregoing considerations, we allow the appeals and accepting the findings of the Tribunal, give the following directions :

1. The management, in consultation with the workmen or their representatives and under the direction, supervision and control of the Labour Commissioner of the region shall frame norms/rules fixing quota for the grades and for promotion/upgradation of its workmen, in the light of the observations made above, within two months from the date of the receipt of a copy of this judgment by the Labour Commissioner.
2. The upgradation and/or promotion shall be made by the management in terms of the norms/rules so framed.
3. That meanwhile the promotions/upgradations of Sharbashree Saroj Kumar Mukherjee, Anil Chandra Ghosh and Parameshwar Banerjee from General Grade to Special Grade Clerks in preference to the twelve workmen.... and the promotions/upgradations of the persons ...from the General Grade to Special Grade or Supervisor Grade in preference to the workmen.... are cancelled ; and the workmen whose promotions are cancelled and the workmen who were superseded shall be at par with effect from the date of this judgment till promotions/upgradations are made by the management in terms of the norms/rules to be prepared; and no future promotions/ upgradations shall be made until the norms/rules are framed. [Appeals allowed.]