before the commencement of the said proceedings which prejudicially affected them. Although the learned counsel appearing on behalf of the respondent has taken us through the certified standing orders as applicable to the appellants, he has not been able to point out anything therein to indicate that the Company could terminate the services of the appellants on the ground of abandonment of service because of their going on strike in enforcement of their demands. Thus, there being no provision in the certified standing orders by virtue of which the Company could have terminated the services of the appellants in the aforesaid circumstances, the impugned action on the part of the Company clearly amounted to a change in the conditions of service of the appellants during the admitted pendency of the industrial dispute before the Labour Court which adversely affected them and could not be countenanced. We are fortified in this view by the aforesaid decision of this Court in Express Newspapers (P) Limited v. Michael Mark where repelling an identical contention to the effect that the failure of the workmen to return to work by a notified date clearly implied abandonment of their employment, it was held that the management cannot by imposing a new term of employment unilaterally convert the absence of work into abandonment of employment. It was further held in that decision that if the strike was in fact illegal, the management could take disciplinary action against the employees under the standing orders and dismiss them. If that were done, the strikers would not have been entitled to any compensation under standing orders but that was not what the appellants purported to do and the respondents were, therefore, entitled to relief.

For the foregoing reasons, we are unable to uphold the impugned action of the Company and the award under appeal which are manifestly illegal. In the result, we allow the appeal, set aside the aforesaid award of the Industrial Tribunal and direct the Company to reinstate the appellants. . . .

(Appeal allowed.)

SECTION II

NOTICE OF CHANGE

Introductory

There was no provision in the Industrial Disputes Act, 1947, providing for notice of change and the employer could alter the service conditions of the workmen at his sweet will. As a result of persistent demand by the workmen that 'Notice of change' should be given to them whenever the employer proposed to make any change in the conditions of

their service, chapter II-A was, therefore, inserted by the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956 (Act 36 of 1956) with effect from March 10, 1957. Section 9-A of the Amendment Act reads as follows :

> No employer, who proposes to effect any change in the conditions of service applicable to any workmen in respect of any matter specified in the Fourth Schedule, shall effect such change—
>
> (a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or
>
> (b) within twenty-one days of giving such notice : Provided that no notice shall be required for effecting any such change—
>
> (a) where the change is effected in pursuance of any settlement or award or decision of the Appellate Tribunal constituted under the Industrial Disputes (Appellate Tribunal) Act, 1950 (48 of 1950) or;
>
> (b) where the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply.

By the introduction of Section 9-A in the Industrial Disputes Act, 1947, provisions similar to Section 42 of the Bombay Industrial Relations Act, 1946, have now found a place in the Central Act. This is clear from the decision of the Supreme Court in *Chagan Lal Textile Mills Private Ltd. v. Chalisgdon Girni Kamgar Union*[1] in which the Supreme Court held that it is not essential that a notice of change should be issued under Section 9A of the Industrial Disputes Act, 1947, before a notice of retrenchment is issued under Section 25-F of the Act. It has been pointed out that the notice of change relates to the 'posts which are to be reduced and not to the personnel occupying the posts'. However, there is an important distinction between the provisions of the Bombay Act and the Central Act in that the notice of change under the Bomay Act has to be given to the representative union of the workmen while in the Central Act the notice has to be given to the workmen likely to be affected by such change.

1. A.I.R. 1959 S.C. 722.

The object of enacting S. 9A is :

> "To afford an opportunity to the workmen to consider the effect of the proposed change and if necessary, to represent their point of view on the proposal. Such consultation further serves to stimulate a feeling of Common Joint interest of the management and workmen in the Industrial progress and increased productivity. This approach on the part of the industrial employer would reflect his harmonious and sympathetic co-operation in improving the status and dignity of the industrial employee in accordance with the egalitarian and progressive trend of our industrial jurisprudence, which strives to treat the capital labour as co- sharers and to break away from the tradition of labour's sub-servience to capital."[2]

The effect of S. 9A is that the employer shall not introduce any change in respect of matters specified in the Fourth Schedule,[3] without giving to the workmen likely to be affected by such a change a notice of the nature of the change. It is further enjoined upon the employer not to effect the proposed change within twenty one days of giving of the notice.

It has to be noticed that while under S. 9-A of the Central Act, the duty of giving notice for effecting any change in the conditions of service is cast only on the employer, some of the State Acts[4] cast such duty on the employees as well.

As a result of this section the employer is prevented from taking unilateral action and thereby changing the conditions of service to the prejudice of the workmen. The legislature has contemplated three stages in making provision for the notice of change under S. 9-A. The first stage is the proposal by the employer to effect a change; the second stage is the time when he gives a notice and the third stage is when he effects the change on the expiry of 21 days from the date of notice.

In *Northbrook Jute Co. Ltd.* v. *Their Workmen*[5], Das Gupta, J., pointed out that the conditions of service do not stand changed, either when the proposal is made or the notice is given but they are effected only when the change is actully made, i.e., when the new conditions of service are actually introduced.

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2. *M/s Tata Iron and Steel Co. Ltd.* v. *The Workmen* A.I.R., 1972, S.C., 1919.
3. For details see The Fourth Schedule of the Industrial Disputes Act.
4. E.g., see the Bombay, Madhya Pradesh and C.P. & Berar Acts.
5. (1960) I L.L.J. 580 (S.C.). See also p. 224 of this book.

For attracting the requirement of S. 9-A, firstly there should be a change in the conditions of service and secondly, such change should be related only to the conditions specified in the *Fourth Schedule*. If there is no such change, S. 9-A does not come into operation.[6]

INDIAN OXYGEN LTD. v. U.N. SINGH

Supreme Court, (1970) 2 L.L.J. 413

[The workmen requested the management that carbide drums should be sold to them at concessional rates and the management acceded to the request at the meeting of the Works Committee. It was also recorded at the meeting that not more than one drum at a time would be sold to an employee, at a reasonable interval. A copy of the minutes so recorded is Ext. C-2. Consequently, the company published a notice (Ext. B-2), indicating the price of various types of drums and also that the drums would be distributed twice a month and the sale to an individual employee would be on the understanding that the purchase was for his personal and private use. Sometimes later a complaint under Section 33-A was filed by some of the workmen alleging that the employer company was guilty of contravention of Section 9-A on the ground that the sale of drums by the management at a concessional rate to the workmen, had become a part of their conditions of service, and that the company had committed a breach of the condition, by refusing to sell the carbide drums at concessional rates. The tribunal held that the sale of drums to the employees had become a condition of service and that the management was not entitled to alter the conditions of service except in accordance with the provisions of S. 9-A. There upon, the company appealed to the Supreme Court by special leave. Excerpts from the judgment of the Court delivered by Vaidialingam, J. follow.]

In our opinion, the Tribunal has committed a grave error in construing what is contained in Exts. C-2 and B-2, as constituting an agreement between the management and the union. It has also further erred in holding that the matters, mentioned in Ext. C-2, had become part of the conditions of service of the workmen, and that, in the instant case the management had committed a breach of that condition of service, by not selling carbide drums to the workmen... It cannot in the case before us, be held that the management, by acceding to a request made by the workmen, and evidenced by Ext. C-2, in any manner intended that the sale of carbide drums on a concessional basis, to the workmen should form part of the conditions of service of the workmen. Exhibits C-2 and B-2 clearly show that the management was only considering a

6. See *Workmen of Sur Iron & Steel Co. (P) Ltd.*, v. *Sur Iron & Steel Co. (P) Ltd.*, (1971) 1 L.L.J. 570 (S.C.).

request, made by the workmen, for sale of drums, as and when available, at concessioeal rates, and at reasonable intervals. There is no indication in these two exhibits that any obligation was, as such, imposed on the management, or of any right being vested in the workmen to compel the management to sell the drums to them...

Once it is held that the matters, referred to in Exts. C-2 and B-2 do not form part of the conditions of service, it follows that, by the management declining to sell drums, it cannot be considered to have committed any alteration in the conditions of service, which is the very basis for a complaint under S. 33 A. Section 9 A of the Act does not apply, as wrongly assumed by the Tribunal, because there is no alteration of a condition of service....

(Appeal allowed.)

HINDUSTAN LEVER LTD. v. R.M. RAY
A.LR. 1973 S.C. 1156

[The company introduced a rationalisation scheme in 1966 and reorganised its marketing organisation into two divisions which was earlier in three divisions. The Government of West Bengal referred the dispute to the industrial tribunal for adjudication. Pending adjudication seven workers filed applications under Section. 33 A of the Industrial Disputes Act before the same tribunal alleging that during the pendency of the adjudication their service conditions had been changed adversely and the salary for the month of October 1966 had not been paid. The tribunal decided in favour of the workers. Thereupon the employer appealed to the Supreme Court by special leave. The main reference was finally disposed of on 11-1-69 by the same tribunal holding in favour of the employer and the workers appealed by special leave. Excerpts from the judgment of the Court, delivered by Alagiriswami, J., follow :]

We shall first of all deal with the appeal by the workers. Two points were raised by Mr. Tarkunde :

Standardisation can be of anything, not necessarily of wages. It may be standardisation of workload, standardisation of product, standardisation of working hours or standardisation of leave privileges....

The whole question whether this reorganisation falls under item 10 depends upon whether it was likely to lead to retrenchment of workmen. On this question, as already indicated, the two Tribunals have arrived at two different conclusions. But, as already indicated, it depended upon the evidence in each case. It is not disputed that the reorganisation has not resulted in any retrenchment....

Hindustan Lever Ltd. being a large organisation covering the whole of the country there was no difficulty about giving effect to this organisation scheme without retrenching anybody. It was, however, urged on behalf of the workers that there have been a number of voluntarily induced retirements and that many posts were not filled after the holders of those posts had retired or left. We are of opinion that the retrenchment contemplated under item 10 is retrenchment as defined in clause (oo) of section 2 where it is defined as the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include voluntary retirement of the workmen. The workers cannot, therefore, make a grievance of the voluntary retirement and non-filling of vacancies and try to bring it under item 10.

As regards item 11 it was urged that as one department out of three has been abolished, this item applies. Though to bring the matter under this item the workmen are not required to show shat there is increase in the workload, it must be remembered that the 4th Schedule relates to conditions of service for change of which notice is to be given and S. 9 A requires the employer to give notice under that section to the workmen likely to be affected by such change. The word "affected" in the circumstances could only refer to the workers being adversely affected and unless it could be shown that the abolition of one department has adversely affected the workers it cannot be brought under item 11. The same consideration applies to the question of change in usage under item 8....

It is hardly necessary to refer to the various dicisions which were cited before us as to what would constitute conditions of service the change of which would require notice under S. 9 A of the Act. In Dharangadhara Chemical Works Ltd. v. Kanju Kalu and Others, [1955-I.L.L.J. 316], the Labour Appellate Tribunal of India held that the increase in the weight of bags to be carried from 1 cwt. to 1½ cwt. was a change in the workload and the company was bound to pay wages as the workmen were willing to work but did not work on account of the unreasonable attitude adopted by the management. In Chandramalai Estate v. Its Workmen [1960-II L.L.J. 243], the payment of cumbly allowance was held to have become a condition of service. In Graham Trading Co. (India) Ltd. v. Its Workmen, [1959-II L.L.J. 393]; (1960) 1 S.C.R. 107, it was held that the workmen were not entitled to puja bonus as an implied term of employment. In Workmen of Hindustan Shipyard Ltd. v. ILT [1961-II L.L.J. 526], in the matter of withdrawal of concession of coming late by half an hour (than the usual hour), it was held that the finding of the Industrial Tribunal that S. 9 A did not apply to the case did not call for

interference. But the decision proceeded on the basis that the Court will not interfere in the jurisdiction unless there was any manifest injustice. In Mcleod & Co. v. Its Workmen, [1964-I L.L.J. 386], the provision for tiffin was held to be an amenity to which the employees were entitled, and the provision of cash allowance in lieu of free tiffin directed to be made by the Industrial Tribunal could not be considered to be erroneous in law. In India Overseas Bank v. Their Workmen, (1967) 33 F.J.R. 457, "key allowance" was treated as a term and condition of service. In Indian Oxygen Limited v. Udeynath Singh, [1970-II L.L.J. 413], withdrawal by the management of the supply of one empty drum at a time at reasonable intervals was held not to contravene Ss. 9 A and 33. In Oil & Natural Gas Commission v. Their Workmen, [1973-I L.L.J. 18]; (1972) 42 F.J.R. 551, where there was nothing to show that it was a condition of service that a workman should work for 6½ hours only, no notice of change was held to be required under S. 9 A for fixing the hours of work at eight. In Tata Iron & Steel Co. v. Workmen, 1972-II L.L.J. 259; A.I.R. 1972 S.C. 1917, change in weekly days of rest from Sunday to some other day was held to require notice. A close scrutiny of the various decisions would show that whether any particular practice or allowance or concession had become a condition of service would always depend upon the facts and circumstances of each case and no rule applicable to all cases could be culled out from these decisions. In the face of the elaborate—consideration of the evidence and findings made by the Tribunal we are unable to hold that there has been any change in the terms and conditions of service of the workers in this case to their detriment. It follows, therefore, that S. 9 A is not attracted.

Mr. Gupta (appearing for the employer) contended that non-payment of wages is not an alteration of conditions of service and that no application under S. 33 A could be made in such cases as the remedy available was under S. 33 C. We are not able to appreciate this argument. Indeed payment of wages is one of the most important among the workers' conditions of service....

It is in evidence that the workers presented themselves for work every day and offered to work according to the old scheme but that they were not given any work according to the old scheme. They were told that as long as they refused to work under the new scheme they would be paid no wages. The refusal to pay, therefore, was not a solitary instance in respect of which an application could have been made under S. 33 C. It was a continued refusal. It was, therefore, a permanent alteration of the conditions of service. The cause of action, so to say, arises de die in diem. If the refusal of the workers to work under the reorganisation scheme is justified then the refusal of the management to

pay unless they worked under the reorganisation scheme would amount to alteration of the conditions of service of workers. If on the other hand the workers were not justified in doing so then no other question arises. But in the face of the finding of the Tribunal that the reorganisation scheme rendered some workers surplus and that the scheme had seriously prejudiced the workers, and that the apprehension of the workers that the reorganisation would result in some members of the staff becoming surplus came true, it cannot be said that the failure of the employer to give notice under S. 9 and introducing the scheme of reorganisation without such notice is justified. It means that the workers were justified in refusing to work under the new scheme. It follows that the refusal to pay their wages amounted to alteration of conditions of service and the applications were therefore, rightly made under S. 33 A....

[F]ailure or refusal to pay wages for certain period may necessitate proceeding under S. 33 C, but refusal to pay wages indefinitely on the refusal of the workers to work according to a scheme of reorganisation which was not a valid one, because of the failure to give notice under S. 9 A, cannot but be considered to be an alteration in the conditions of service of the workers....

We thus come to the conclusions (1) that non-payment of wages in the circumstances of this case amounts to an alteration in the conditions of service, (2) the fact the scheme was introduced before the reference under S. 10 was made does not bar an application under S. 33 A, and (3) that the Tribunal was justified in coming to the conclusion that the alteration in the conditions of service could not have been made without notice under S. 9 A....

(Appeals dismissed.)

INDIAN OIL CORPORATION LTD. v. ITS WORKMEN A.I.R. 1975 S.C. 1856

[The management took a voluntary decision in September 1959 to grant Compensatory allowance as granted to Central Government employees although the circulars of the Central Government were not binding on the management to refinary employees. Thereafter in July 1960 the management unilaterally, without giving any notice to the workers, withdrew the concession of the compensatory allowance which had been earlier granted to the workers, and instead decided to pay house rent allowance because the employees of the Central Government were to get either the compensatory allowance or the house rent allowance and not both by virtue of a notificaiion by the Central Government dated

December 8, 1960. A dispute arose regarding the competency of the management to withdraw the concession granted by it unilaterally which was referred by the Government to the tribunal for adjudication. The tribunal held that there was a dispute between the parties and as S. 9-A of the Industrial Disputes Act has not been complied with by the company, the management was not legally entitled to withdraw the concession of the Assam Compensatory Allowance granted to the employees. The company preferred an appeal by special leave. Excerpts from the judgment of the Court delivered by Fazl Ali, J. follow :]

In the instant case, however, we are satisfied (1) that the grant of the compensatory allowance was an implied condition of service; and (2) that by withdrawing this allowance the employer sought to effect a change which adversely and materially affected the service conditions of the workmen. In these circumstances, therefore, Section 9 A of the Act was clearly applicable and the non-compliance with the provisions of this section would undoubtedly raise a serious dispute between the parties so as to give jurisdiction to the Tribunal to give the award. If the appellant wanted to withdraw the Assam Compensatory allowance it should have given notice to the workmen, negotiated instead of withdrawing the compensatory allowance overnight....

[T]he compensatory allowance and housing subsidy are two different and separate categories of the terms of service conditions and they cannot be clubbed together, nor can the one be made dependent on the other. The object of these two concessions is quite different and both of them serve quite different purposes....

(Appeal dismissed.)

NOTES

1. In *L. Robert D' Souza* v. *Executive Engineer, Southern Railway* (1982) I. L.L.J. 330 the Supreme Court held that "...When a workman is retrenched it cannot be said that change in his conditions of service is effected. The conditions of service are set out in Fourth Schedule. No item in Fourth Schedule covers the case of retrenchment. In fact, retrenchment is specifically covered by item 10 of the Third Schedule. Now, if retrenchment, which connotes termination of service, cannot constitute change in conditions of service, in respect of any item mentioned in Fourth Schedule, S. 9A would not be attracted. In order to attract S. 9A the employer must be desirous of effecting a change in conditions of service in respect of any matter specified in Fourth Schedule. If the change proposed does not cover any matter in Fourth Schedule, S. 9A is not attracted and no notice is necessary. (See Workmen of Sur Iron & Steel

Co. (P) Ltd. v. Sur Iron & Steel Company (P) Ltd., [1971—I L.L.J. 570], Tata Iron & Steel Company Ltd. v. Their Workmen, [1973—II L.L.J. 153], and Assam Match Co. Ltd. v. Bijoy Lal Sen, [1973—II L.L.J. 149]). Thus, if S. 9A is not attracted, the question of seeking exemption from it in the case falling under the proviso would hardly arise. Therefore, neither S. 9A nor the proviso is attracted in this case. The basic fallacy in the submission is that notice of change contemplated by S, 9A and notice for a valid retrenchment under S. 25F are two different aspects of notice, one having no co-relation with the other. It is therefore, futile to urge that even if termination of the service of the petitioner constitutes retrenchment it would nevertheless be valid because the notice contemplated by S. 25F would be dispensed with in view of the provision contained in S. 9A, proviso (b)..."

2. In *Workmen of Sur Iron and Steel Co. (P) Ltd.* v. *Sur Iron and Steel Company (P) Ltd.* (1971) I L.L.J. 570 (S.C.), the State Government imposed certain restrictions on the use of electricity and curtailed supply of electricity on Saturdays. Consequently, the management declared Saturdays instead of Sundays to be weekly off-days in the factory. The workers even though acknowledged the circulation of the notice regarding the change in weekly-off not only remained absent on Saturday but also did not work on Sunday. Since the workers refused to work which constituted a strike the management declared a lock-out. The tribunal held that the lock-out consequent upon the unjustified strike, was justified. In appeal by special leave, the Supreme Court negatived the contention on behalf of the workmen that the change in weekly-off days required compliance with the provisions of S. 9A. It was held that S. 9A applies to matters enumerated in the Fourth Schedule to the Act which does not contain any specific entry covering the condition of service relating to weekly-off days.

3. The following line of decisions show as to what would constitute a change in the conditions of service which would require notice under S. 9A of the Act.

In *Dharangadhara Chemical Works Ltd.* v. *Kanju Kalu* (1955) 1 Lab LJ 316 (L.A.T.I.) it was held by the Labour Appellate Tribunal of India that the increase in the weight of bags to be carried from 1 Cwt to 1½ Cwt was a change in the workload and the Co. was bound to pay wages as the workmen were willing to work but did not work on account of the unreasonable attitude adopted by the management.

In *Chandramalai Estate* v. *Its Workmen* (A.I.R. 1960 S.C. 902)) the payment of Cumbly allowance was held to have become a condition of service.

In *Graham Trading Co.* v. *Its Workmen* (A.I.R. 1959 S.C. 1151) it was held that the workmen were not entitled to Puja bonus as an implied term of employment.

In *McLeod & Co.* v. *Its Workmen* (A.I.R. 1964 S.C. 1449) the provision for tiffin was held to be an amenity to which the employees were entitled, and the provision of cash allowance in lieu of free tiffen directed to be made by the Industrial Tribunal could not be considered to be erroneous in law.

In *Indian Overseas Bank* v. *Their Workmen* (1967-68) 33 FJR 457 (SC) "Key allowance" was treated as a term and condition of service.

In *Oil and Natural Gas Commission* v. *Their Workmen* (1973) Lab IC 233 S.C. where there was nothing to show that it was a condition of service that a workman should work for 6½ hours only, no notice of change was held to be required under Section 9A for fixing the hours of work at eight.

In *Tata Iron & Steel Co.* v. *Their Workmen* A.I.R. 1972 S.C. 1917 change in weekly days of rest from Sunday to some other day was held to require notice.

The aforesaid decisions clearly show that whether any particular practice or allowance or concession had become a condition of service would always depend upon the facts and circumstances of each case.