ADDENDA

PART I

A. TRADE UNIONS

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, S. 20(2) : Validity of

In *Balmer Lawrie Workers Union, Bombay* v. *Balmer Lawrie and Company Ltd.*, (1985 1 L.L.J. 314, a clause of settlement between the employer and recognised union authorised the employer to deduct 15 percent of gross arrears payable to workmen towards union fund. A writ petition was filed by a non-recognised union challenging the Constitutional validity of Section 20(2)(*b*) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (MRTUPULP) on the ground that it violated fundamental freedom and right guaranteed under Art. 19(1)(*a*) and (*c*) of the Constitution. It was contended that if Section 20(2)(*b*) of the Act permits such compulsory exaction without the consent of the workmen concerned it will be unconstitutional in as much as such union levy would force and compel the workmen against their will to join the union which has acquired the status of recognised union. The writ petition was dismissed by the High Court and the non-recognised union filed the appeal.

The Supreme Court rejected the contention of the appellant that Section 20(2)(*b*) was unconstitutional. The Court held :

> Section 20, sub-section 2 while conferring exclusive right on the recognised union to represent workmen in any proceeding under the Industrial Disputes Act, 1947 simultaneously denying the right to be represented by any individual workman has taken care to retain the exception as enacted in Section 2A (of the Industrial Disputes Act)....

> [A]n individual workman, who has his individual dispute with the employer arising out of his dismissal, discharge, retrenchment or termination of service will not suffer any disadvantage if any recognised union would not espouse his case and he will be able to pursue his remedy under the Industrial Disputes Act, 1947...[R]estriction on the right to appear and participate in a proceeding under the Industrial Disputes Act, 1947, to a workman who is not prepared to be represented by the recognised union in respect of a dispute not personal to him alone such as termination of his service (does not deny) him the freedom of speech and expression or to form an association....
>
> The Legislature has in fact taken note of the existing phenomenon in trade unions where there would be unions claiming to represent workmen in an undertaking or industry other than recognised union. Section 22 of 1971 Act confers some specific rights on such non-recognised unions, one such being the right to meet and discuss with the employer the grievances of individual workman. The Legislature has made a clear distinction between individual grievance of a workman and an individual dispute affecting all or a large number of workmen. In the case of even an unrecognised union, it enjoys the statutory right to meet and discuss the grievance of individual workman with employer. It also enjoys the statutory right to appear and participate in a domestic or departmental enquiry in which its member is involved. This is statutory recognition of an unrecognised union. The exclusion is partial and the embargo on such unrecognised union or individual workman to represent workman is in the large interest of industry, public interest and national interest. Such a provision could not be said to be violative of fundamental freedom guaranteed under Article 19(*a*) or 19(1)(*c*) of the Constitution. (*Id.* at 322-23)

The Court rejected the contention that by permitting deductions towards union fund of one union the management discriminated between union and union, and between members of the recognised union and non-members and thereby violated Article 14 of the Constitution. The Court observed :

> Where a representative union acts in exercise of the powers conferred by Section 20 (2) it is obligatory upon it to act in a manner as not to discriminate between its members and other workmen of the undertaking who are not its members. However, when a settlement is reached in a proceeding under the Industrial Disputes Act

> in which a representative union has appeared, the same is to be binding on all the workmen of the undertaking.... There shall not be the slightest trace of discrimination between members and non-members both as regards the advantages and also as regards the obligations and liabilities. (*Id.* at 325).

On facts the Court upheld the validity of the clause of settlement which authorised the employer to deduct 15 percent of gross arrears payable to workmen towards union fund and observed :

> It is well-known that no deduction could be made from the wages and salary payable to a workman governed by the Payment of Wages Act unless authorised by that Act. A settlement arrived at on consent of parties can however permit a deduction as it is the outcome of understanding between the parties *even though such deduction may not be authorised or legally permissible under the Payment of Wages Act.* (*Id.* at 325). (*Emphasis added*).

PART III

B. WORKMAN

Employer—Employee Relationship

In *Workmen of the Food Corporation of India* v. *Food Corporation of India*, (1985) 2 L.L.J. 4, the corporation initially engaged a contractor for handling foodgrains at Siliguri depot. The contractor in his turn engaged 464 workers to get the work done. The corporation had nothing to do with the manner of handling the work done by contractor, the labour force employed by him, and payments made by him to the workers etc. In 1973 the system of direct payment was introduced whereby (*i*) name of every workman engaged to handle food grains at Siliguri depot, was required to enter in the muster roll and his out turn were to be specified, (*ii*) the payment was to be made by piece-rate basis as was prevalent in the contract system; (*iii*) the bill was prepared by the depot staff; (*iv*) the payment was to be made by corporation but was to be distributed to each workman through Sardar/Mondal on piece-rate basis. On these facts, the Supreme Court held that since the introduction of the direct payment system, the workmen became the workmen of the corporation and a direct master-servant relationship came into existence. It also held that once some of the workmen became workmen of the corporation, it was not open to the corporation to induct a contractor and treat its workmen to be the workers of the contractor.

Workman : Definition of

In *Arkal Gavind Raj Rao* v. *Ciba Geigy of India Ltd.* (1985) 2 L.L.J. 401 a person who was primarily engaged to perform duties of clerical nature was held to be a workman under Section 2 (*s*) of the Act though he was required incidentally to look after the work of other members of the group who were two in number. On these facts the Supreme Court ruled :

Where an employee has multifarious duties and a question is raised whether he is a workman or some one other than a workman, the Court must find out what are the primary and basic duties of the person concerned and if he is incidentally asked to do some other work,...these additional duties cannot change the character and status of the person concerned (*Id.* at 403).

PART IV

ADJUDICATION

Government's Power of Reference under S. 10

In *M.P. Irrigation Karamchari Sangh* v. *State of M.P.* (1985) 1 L.L.J. 519, the union raised three demands for grant of *chambal* allowance, dearness allowance on par with central government employees and wages for the period of strike. The state government however, referred the dispute relating to wages for the strike period to the tribunal for adjudication ; but declined to refer the other two issues on the ground that (i) the government was not in a position to bear the additional burden; and (ii) grant of the special allowance would invite similar demands by other employees which would affect the entire administration. The order declining to refer the dispute was challenged unsuccessfully before the High Court. The union preferred an appeal by special leave. Disapproving the government's refusal to make the reference, the Supreme Court observed :

> When a reference is rejected on the specious plea that the Government cannot bear the additional burden, it constitutes adjudication and thereby usurpation of the power of a quasi-judicial tribunal by an administrative authority, namely, the appropriate Government. In our opinion, the reasons given by the State Government to decline reference are beyond the powers of the Government under the relevant sections of the Industrial Disputes Act.... Same is the case with the conclusion arrived at by the High Court accepting the stand of the State Government that the employees were not entitled to the *chambal* allowance as the same was included in the consolidated pay. This question, in fact, relates to the conditions of service of the employees. What exactly are the conditions of service of the employees and in what manner their condions of service could be improved are matters which are the special preserve of the appropriate Tribunals to be decided in adjudicatory

> processes and are not one to be decided by the Government on a *prima facie* examination of the demand. This demand again can never be said to be either perverse or frivolous (*Id.* at 522).

In view of this, the Court held that the government had exceeded its jurisdiction in refusing to refer the dispute to the tribunal and hence allowed the appeal.

In *Ram Avtar Sharma* v. *State of Haryana* (1985) 2 L.L.J. 187, the government refused to make a reference of an industrial dispute arising out of termination of service of the appellant workman on the ground that such termination of the workman was made after charges against him were proved in a domestic enquiry. The reason given by the government showed that it was satisfied that the domestic enquiry was legal and valid and there was adequate evidence to hold the charges proved. Further the government appeared to be satisfied that the enquiry was not biased and that the punishment was not disproportionate to the gravity of the misconduct charged. The validity of the government's refusal to make a reference of the said dispute to an industrial tribunal was challenged in a writ petition filed before the Supreme Court. The Court held that the reasons given by the government were tantamount to adjudication which were not permissible. According to the Court the government could not arrogate to itself functions of the tribunal.

In *Workmen of Syndicate Bank, Madras* v. *Government of India* (1985) 1 L.L.J. 93, the government refused to make a reference on the ground that (i) the charges of misconduct against the worker were proved in the domestic enquiry and (ii) penalty was imposed on the worker after following the required procedure.

Setting aside this order the Supreme Court observed :

> If such a ground were permissible it would be the easiest thing for the management to avoid a reference to adjudication and to deprive the worker of the opportunity of having the dispute referred for adjudication, even if the order holding the charges of misconduct proved was unreasonable or perverse or was actuated by *mala fides* or even if the penalty imposed on the worker was totally disproportionate to the offence said to have been proved. The management has simply to show that it has held a proper inquiry after complying with the requisite procedure and that would be enough to defeat the worker's claim for adjudication. (*Id.* at 94).

The Court accordingly directed the government to reconsider the question of making reference of the industrial dispute for adjudication without taking into account the aforesaid irrelevant ground.

PART V

STRIKES AND LOCK-OUTS

Distinction between Lock-out and Closure

In *General Labour Union (Red Flag)* v. *B.V. Chavan* (1985) 1 L.L.J. 82, the Supreme Court determined the distinction between lock-out and closure and laid down the following tests.

[W]here the parties are at variance whether the employers have imposed a lock-out or have closed the establishment it is necessary to find out what was the intention of the employer at the time when it resorts to lock-out or claims to have closed down the industrial undertaking. It is to be determined with accuracy whether the closing down of the industrial activity was a consequence of imposing lock-out, or the owner—employer —had decided to close down the industrial activity.... In lock-out the employer refuses to continue to employ the workmen employed by him even though the business activity was not closed down nor intended to be closed down. The essence of lock-out is the refusal of the employer to continue to employ workmen. There is no intention to close the industrial activity. Even if the suspension of work is ordered, it would constitute lock-out. On the other hand closure implies closing of industrial activity as a consequence of which workmen are rendered jobless....

While examining whether the employer has imposed a lock-out or has closed the industrial establishment, it is not necessary to approach the matter from this angle that the closure has to be irrevocable, final and permanent and that lock-out is necessarily temporary or for a period.... [T]he true test is that when it is claimed that the employer has resorted to closure of industrial activity, the Industrial Court in order to determine whether the employer is guilty of unfair labour practice must ascertain on evidence produced before it whether, the closure was a device or pretence to terminate services of workmen or whether it is *bona fide* and for reasons beyond the control of the employer. The duration of the closure

may be a significant fact to determine the intention and *bona fides* of the employer at the time of closure but is not decisive of the matter (*Id.* at 83-84).

Forfeiture of Service due to Illegal Strike :

In Shiv Shankar v. *Union of India*, (1985) I.L.L.J. 437, the running staff of the mechanical department of Ratlam division, Western Railway, participated in an illegal strike and absented themselves from duty. Thereupon the divisional manager passed orders without notice and without giving an opportunity to the concerned employees for the forfeiture of their past service. The validity of the orders issued by the Railway Administration was challenged by the employees in the Supreme Court. The Court allowed the writ petitions and held that the principles of natural justice should be observed when an order of forfeiture of service on the ground of participation in an illegal strike was to be made. The Court held that neither para 1301 nor para 1304 of the Railway Establishment Manual excluded the observance of the principles of natural justice either expressly or by necessary implication.

PART VI

A. LAY OFF AND RETRENCHMENT

Non-compliance of Section 25 F

In *Workmen of American Express International Banking Corporation* v. *Management*, (1985) 2 L.L.J. 539, the services of a temporary typist clerk were terminated by the corporation without complying with the provisions of S. 25F of the Industrial Disputes Act on the ground that the employee was not in continuous service for one year as prescribed by S. 25F read with S. 25B of the Act. The workmen raised an industrial dispute contending that the concerned employee had actually worked for 275 days during the period of 12 months preceding the termination and for this purpose the workmen included and counted Sundays and other paid holidays. This claim was resisted by the management by contending that Sundays and other paid holidays should not be included and counted as days on which the employee had actually worked. The tribunal to whom the dispute was referred for an adjudication upheld the contention of the management. The Supreme Court allowed the appeal preferred by the workmen and held that Sundays and other paid holidays should be taken into account for reckoning the number of days in which a workman was said to have actually worked.

Appropriate relief in lieu of reinstatement

In *Delhi Cloth and General Mills Ltd.* v. *Shambhunath Mukherjee*, (1985) 1 L.L.J. 36, the respondent workman was removed from service by the appellant company—Delhi Cloth and General Mills Ltd.—under the provisions of the relevant standing order with effect from 24th August 1965. An industrial dispute raised by the workman was referred to the labour court for adjudication. The employer raised a preliminary issue contending that the dispute was not an industrial dispute and hence the reference was bad. The labour court

answered the preliminary issue in favour of the workman and held that in view of the provisions contained in S. 2A of the Industrial Disputes Act, 1947 any dispute regarding discharge, dismissal, or retrehchment or termination of service of an individual workman, even if not espoused by a union amounted to an industrial dispute. The labour court further held that the termination was illegal and invalid and hence directed the company to reinstate the workman. The company filed a writ petition in the Delhi High Court *inter alia* questioning the validity of S. 2A. After an unsuccessful appeal under the letters patent the matter was brought to the Supreme Court by certificate granted by the High Court. The Supreme Court by its decision reported in *Delhi Cloth and General Mills Ltd.* v. *Shambhu Nath Mukherjee and Others* (1978) II.L.J. 1, rejected all the contentions on behalf of the employer and confirmed the award of the labour court. In implementation of the award the company had to reinstate the workman in service. As the appellant did not implement the award the workman filed a civil miscellaneous petition for appropriate orders. However. during the pendency of proceedings the workman died. Since physical reinstatement became impossible the Supreme Court held that wages due to the workman till the date of death should be paid. The Court accepted the labour court's finding that there was no rule under which the workman could have retired on superannuation at the age of 58 years. It, however, confined the finding to the facts of this case alone and not as a precedent. The Court ordered that in total satisfaction of all the claims of the workman against the employer a sum of Rs. 1,10,000/- was to be paid over and above the sum of Rs. 46,151.60 already paid to the workman as per orders of the Court.

PART IX

TERMINATION OF SERVICE AND DOMESTIC ENQUIRY

Termination on the Ground of Loss of Confidence

In *Chandulal* v. *The Management of M/s Pan American World Airways Inc.*, (1985) 2 L.L.J. 181, the Supreme Court considered termination on loss of confidence as amounting to stigma for which enquiry was necessary. In this case the mangement terminated the services of one of its employees without holding an enquiry on the ground of loss of confidence. The dispute relating to such termination was referred to the Labour Court, Delhi for adjudication. The labour court found that the mangement was justified in its action as it had reasonable grounds to be satisfied that the employee was involved in an act of smuggling. It however, proceeded to decide the question whether such termination constituted retrenchment in law and held that it amounted to retrenchment. The management preferred an appeal by special leave. The Supreme Court held that termination of service for loss of confidence did not constitute "retrenchment" as it amounted "to a dereliction on the part of the workman". However, the Court allowed the appeal partly and held:

> It is difficult to agree with the finding of the Labour Court that when service is terminated on the basis of loss of confidence the order does not amount to one with stigma and does not warrant a proceeding contemplated by law preceding termination. Want of confidence in an employee does point out to an adverse facet in his character as the true meaning of the allegation is that the employee has failed to behave up to the expected standard of conduct which has given rise to a situation involving loss of confidence.... [T]his amounts to a dereliction on the part of the workman and, therefore, the stand taken by the management that termination for loss of confidence does not amount to a stigma has

to be repelled.... If the termination...is...grounded upon conduct attaching stigma to the appellant, disciplinary proceedings were necessary as a condition precedent to infliction of termination as a measure of punishment. (*Id.* at 182-83).

On facts, the Court held that the employee was not entitled to reinstatement, but was entitled to be adequately compensated. The Court accordingly awarded not only compensation in lieu of reinstatement but also back wages for a period on which the workman remained not in employment which was determined at Rs. 2 lakhs.

Labour Court's Jurisdiction to set aside an Exparte Award after Publication

In *Satnam Verma* v. *Union of India,* (1985—IL.L.J. 79) an industrial dispute relating to the termination of service of a bus conductor working in Chandigarh transport undertaking was referred for adjudication to the labour court. Since the concerned workman was absent at tbe time of hearing, the labour court proceeded against the workman exparte. It found that there was no evidence to show that the termination was illegal or invalid and concluded that the appellant was not entitled to any relief. Application filed by the employee for setting aside the said order was dismissed by the labour court on the ground that since the award was already published it had no jurisdiction to recall the award or set aside the exparte award. This view of the labour court was affirmed by the High Court which dismissed the writ petition *in limine.* On appeal the Supreme Court held that the Court has got power to set aside an *ex-parte* award even after its publication. In reaching this conclusion the Court relied on its earlier decision in *Grindlays Bank Ltd.* v. *Central Government Industrial Tribunal* (1981—IL.L.J. 32).

In *Sant Raj* v. *O.P. Singla* (1985) 2 L.L.J. 19, two loaders employed by a foreign air-transport company, posted to work at Delhi airport were terminated from service. The dispute relating to such termination was referred to the labour court for adjudication. The labour court found that the termination amounted to retrenchment within the meaning of S. 25F of the Industrial Disputes Act, and that it was effected in contravention of the aforesaid provision. The labour court instead of reinstatement granted one year wages as compensation for each of the workmen because the termination was according to service rules and *bona fide.* The Suprem Court allowed the appeal preferred by the workmen and held :

> Ordinarily where the termination of service is found to be bad and illegal, in the field of industrial relations a declaration follows that the workman continues to be in service and has to be reinstated in service with full back wages (*Id.* at 20).

The Court held that there was an error apparent on the face of the record and the discretion exercised by the labour court was based on irrelevant and extraneous considerations or considerations not germane to the determination of the dispute.

The Court held that the employees were entitled to full back wages for twelve years they had been out of employment and compensation in lieu of reinstatement.

PART XI

STANDING ORDERS

Termination Simpliciter : Validity of

In *Workmen of Hindustan Steel Ltd.* v. *Hindustan Steel Ltd.* (1985) 1 L.L.J. 267, the management, a public sector undertaking, dismissed a workman without holding any inquiry and without giving any opportunity to the workman under Standing Order 32 of the company which enjoined the general manager to dismiss an employee by merely recording the reasons for dispensing with the inquiry if it is inexpedient or against the interests of the security of the State to continue to employ the workman. The Supreme Court held that this provision of the Standing Order was violative of the principles of natural justice. It observed :

> Reasons for dispensing with the enquiry and reasons for not continuing to employ the workman stand wholly apart from each other. A Standing Order which confers such arbitrary, uncanalised and drastic power to dismiss an employee by merely stating that it is inexpedient or against the interests of the security to continue to employ the workman, is violative of the basic requirement of natural justice in as much as that the General Manager can impose penalty of such a drastic nature as to affect the livelihood and put a stigma on the character of the workman without recording reasons why disciplinary inquiry is dispensed with and what was the misconduct alleged against the employee (*Id* at 270).

In view of this the Court emphasised the need to recast Standing Order 32 in order to bring it in conformity with the philosophy of the Constitution.

In *West Bengal State Electricity Board* v. *Desh Bandhu Ghosh* (1985) 1 L.L.J. 373, the Supreme Court relied on its decision in the *Hindustan*

Steel Ltd. case (supra), (1985) I L.L.J. 267 and struck down Regulation 34 of the West Bengal State Electricity Board which conferred power on the Board to terminate services of any permanent employee by giving 3 months notice or on payment of 3 months' salary in lieu thereof as unconstitutional and violative of Art. 14 of the Constitution. The Court observed :

> [T]he regulation is totally arbitrary and confers on the Board a power which is capable of vicious discrimination. It is a naked "hire and fire" rule, the time for banishing which altogether from employer-employee relationship is fast approaching (*Id.* at 375).

In *K.C. Joshi* v. *Union of India* (1985) 2 L.L.J. 416 the services of the appellant who was appointed as an assistant store keeper in the Oil and Natural Gas Commission on probation were terminated in accordance with the conditions of appointment which provided for termination of services by giving a month's notice. After unsuccessfully challenging the order of termination before the High Court of Allahabad, the appellant preferred an appeal by special leave. On the facts of the case the Court found that the employee was appointed as a probationer and on completion of the probationary period eontinued in service on regular basis until further orders. In view of this, the Court held that the appellant could not be characterised as a temporary employee, and hence his services could not be terminated by one month's notice. The Court further held that if the services of the appellant were terminated by way of punishment it would be violative of the principles of natural justice as no opportunity was given to the employee to elear himself of the alleged misconduct. If it was discharge simpliciter it would be violative of Art. 16 for many store keepers junior to the employee were retained in service.

The Court observed that discharge simpliciter in exercise of contractual power was inconsistent with Art. 14 and 16 of the Constitution. In view of this it was held by the Court that dismissal "must be in accordance with the prineiples of natural justice after enquiry". The appeal was allowed by the Court.