

JUDICIAL CONTROL OF LABOUR TRIBUNALS (1983). By Gyan Chand, N.M. Tripathi Pvt. Ltd., 164, Samaldas Gandhi Marg, Bombay-400 002. Pp. xxiii + 335. Price Rs. 130.

THE BOOK<sup>1</sup> under review is based on Gyan Chand's thesis for Ph.D. It is a study of decisional law and the author has compared and contrasted the law applied by labour tribunals and ordinary law courts in India. He has attempted "to focus attention on those issues which have found favour with the Ordinary Courts of Law"<sup>1a</sup> and in his opinion "the currents of law have gone to obliterate the concept of social and economic justice."<sup>2</sup>

The book has been divided into seven chapters. Chapter I introduces the subject and shows the development of labour law as a new branch of jurisprudence. Highlighting the complex human problem of capital and labour in industry, the author puts the main emphasis on socio-economic justice oriented dispute resolution by labour tribunals.

Chapter II examines the constitution and jurisdiction of labour tribunals and points out how in resolution of industrial disputes their role differs from that of an ordinary court of law. The author argues:

[I]n settling industrial disputes, the function of the tribunal is not confined merely to administration of justice in accordance with law. Adjudication by Labour Tribunal is only an alternative form of settlement of an industrial dispute on a fair and just basis having regard to all the prevailing conditions in the industry.<sup>3</sup>

Painting the picture that ordinary courts of law have laissez faire orientation in their approach whereas labour tribunals have social justice orientation the author points out that in resolving industrial disputes the tribunals have applied the principle of social engineering.

Chapter III examines certain basic constitutional objections against judicial control of labour tribunals. Giving a historical account of the development of the principle of reviewability of legislative enactments and administrative actions, the author argues that the case of industrial tribunals is different. According to him, on the one hand "Labour Tribunals are not part and parcel of the Administrative bodies or agencies, for such tribunals do not administer or discharge executive function",<sup>4</sup> and on the other, the institution of labour tribunals is different from the hierarchial structure of ordinary courts of law as well. He

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1. Gyan Chand, *Judicial Control of Labour Tribunals*, preface (1983).

1<sup>a</sup>. *Id.*, preface.

2. *Ibid.*

3. *Id.* at 46.

4. *Id.* at 92.

criticises the majority view of Mahajan J. in *Bharat Bank Ltd. v. Employees of the Bharat Bank*<sup>5</sup> which held that though outside the hierarchy of ordinary courts of law, the labour tribunals were courts.

In the opinion of the author Parliament is incompetent to constitute a concurrent judicial institution under the name of labour tribunals. However, it is submitted that no such lacuna exists. Parliament has enacted the Industrial Disputes Act 1947 under entry 22 of List III—"industrial and labour disputes"—and this power to legislate also includes power to provide for resolution of disputes arising under the Act. The control of High Courts under article 226 and of the Supreme Court under article 136 is obvious in view of the language of these articles. But the author only half-heartedly accepts the jurisdiction of the High Courts and the Supreme Court over labour tribunals.

Chapters IV-VI examine the respective roles of labour tribunals and courts in determination of various concepts like wages, dearness allowance and bonus. The study in these chapters shows how labour tribunals have viewed the whole thing not as a contractual relationship between two sets of individuals but as a relationship of capital and labour representing two different classes. In determining minimum wages, the tribunals take into consideration the minimum requirement of an ordinary family of three and fair wages have been treated as a just and reasonable adjustment of conflicting claims of industrial employer and employees. The concept of living wage presents an ideal to be achieved through wage determination. The author points out:

In revising the wage structure and in determining its extent the Labour Tribunals have followed their own individual norm depending upon various factors like gap between the last revision, material changes in the cost of living, environments, in the regional wage structure, etc.<sup>6</sup>

He points out that labour tribunals have given weightage to collective bargaining and in respect of technical rules, they "have been touchy as not to follow them as it will create more problems both of psychological and economic nature and would lead to industrial disharmony".<sup>7</sup> Here the author contrasts the role of the Supreme Court and points out that in determining the capital-labour relations it has not shown the initiative to solve the problems and has instead hardened the norms evolved by the labour tribunals. He also asserts that the "insistence of the Court was on the norms and standards which would go to protect the interest of capital as against labour class."<sup>8</sup> But, so far the determination

5. A.I.R. 1950 S.C. 188.

6. *Supra* note 1 at 216.

7. *Ibid.*

8. *Ibid.*

of dearness allowance as a separate component of wages is concerned, the author concedes that the Supreme Court has generally followed "a pragmatic approach and toed the line adopted by the labour tribunals."<sup>8a</sup>

As regards the handling of the problem of bonus, the author points out that the labour appellate tribunal's "Full Bench Formula" has been the guiding factor for the court. But he complains that the Supreme Court has not shown the initiative in readjusting the priorities of the formula and it is here where Parliament has played the vital role.

At the end the author offers certain suggestions which include not only better organisation of labour tribunals and redefinition of certain concepts like wages, dearness allowance and bonus, but also conferring of a constitutional status on the tribunals independent of the Supreme Court and other courts. That the jurisdiction of the Supreme Court under article 136 is intended to unify the entire adjudicatory system of the country is a fact known to the author. It is only the military tribunals which are exempted from this. He has not been able to give any cogent arguments for adding one more exception. That the industrial disputes have certain specialities of their own which have warranted creation of special tribunals cannot be denied. It can also not be disputed that special leave jurisdiction of the Supreme Court is to be sparingly used. But the author has failed to give any statistical data which could enlighten the reader on the fact as to how frequent have been the interferences. Perhaps the revival of the labour appellate tribunal may lessen the necessity for Supreme Court interference. However, the author's objection to such interference is basic. He asserts that the Supreme Court and labour tribunals work with different norms and perspectives. In his view, whereas labour tribunals have been more actuated by principles of social justice which help the helpless working class, the Supreme Court is more influenced by common law jurisprudence which is avowedly pro-capital. It is respectfully submitted that this assertion is unwarranted. The judges of labour tribunals are trained in the same system of law and jurisprudence as the Supreme Court judges. If anything the latter are expected to and do breathe fresh air. To say that the Supreme Court is unmoved by the current ideas of social justice is nothing less than blasphemy!

Moreover, the present study does not examine the whole of the complex problems facing the industrial society. Nowadays, it is not the interest of workers and employer alone which needs to be taken into account in industrial disputes. Social interest is equally important. This much is implicitly recognised by the author because he accepts the necessity of adjudication of industrial disputes. But the author's conclusions are based on the wrong premise that the task of industrial adjudication is only to save the workers' interest. In his own words:

The Labour Tribunal's functioning in labour disputes indicates

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8a. *Id* at 246.

that its role is not impartial. It takes into account the economically and socially weaker aspect of labour and provides relief as far as practicable to remove inherent weakness in the working class of wage-earners.<sup>9</sup>

This he equates with the principle of social engineering propounded by Roscoe Pound. It is submitted that social engineering is not a one-sided coin. It requires the proper weighing of different interests—workers', employers' and social—and then to achieve a proper balance between them. This is what is done by the Supreme Court. Further, socio-economic justice oriented societal commitment is clearly demonstrated in the Supreme Court decisions on wage determination.<sup>10</sup> Appreciating the social justice oriented concept of minimum wages the Supreme Court has bluntly refused the employer the right to carry on business without paying the minimum wages. It has allowed fixation of minimum wages irrespective of the consideration of the employer's financial capacity. Again it is also not true that labour tribunals have always taken a pro-workmen view. *Workmen Employed by Hindustan Lever Ltd. v. Hindustan Lever Ltd.*<sup>11</sup> is an obvious example. In this case the labour tribunal did not allow reference of a dispute relating to employees who were working continuously in higher grades for more than three months and seeking confirmation in their respective grades. The tribunal thought that promotion was a managerial function and did not involve an industrial dispute. The Supreme Court quashed the award of the tribunal and ruled that it involved re-classification of grades and, therefore, involved an industrial dispute.

However, in view of the paucity of literature in the area of industrial jurisprudence, the book is a welcome addition. Its get up is attractive, though printing and other errors are considerable.

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9. *Id.* at 63.

10. See *Edward Mills Co. Ltd. v. State of Ajmer*, (1955) 1 S. C. R. 735; *Bijay Cotton Mills Ltd. v. State of Ajmer*, 1955 1 S.C.R. 752; *U. Unchoyi v. State of Kerala*, (1962) 1 S.C.R. 946.

11. A. I. R. 1984 S. C. 1683.

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