intimation was given by the judgment-debtors to the petitioner-decree holder under sub-rule (2) or (3) of Rule 1 of order 21 CPC. Accordingly, all the three revision petitions are hereby allowed. The impugned orders are set aside.

J.S.T.

Before Hon'ble G. S. Singhvi & S. S. Sudhalkar, JJ.

RAM KUMAR,—*Petitioner.*

versus

PRESIDING OFFICER, INDUSTRIAL-CUM-LABOUR COURT-I, FARIDABAD AND ANOTHER,—*Respondent.*

C.W.P. 4273 *of* 1996

31st May, 1996

Industrial Disputes Act, 1947—*Ss.* 2*A*, 10(1)(c) *and* 25J(1)—*Punjab Shops and Commercial Establishments Act*, 1958—*Ss.* 22 *and* 33—*Reference—Reinstatement—Industrial worker cannot be denied reinstatement on the ground that the establishment is registered under the Shops and Commercial Establishments Act and that he would be entitled only to claim compensation under section* 22 *of the* 1958 *Act—Remedy under* 1958 *Act is of very limited character and does not bar remedy under the* 1947 *Act—Both the Acts operate in different fields and there is no inconsistency between the same—The provisions of the* 1947 *Act are more beneficial than the* 1958 *Act and would prevail in view of proviso to S.* 25J(1) *of the* 1947 *Act—S.* 33 *of the* 1958 *Act saves rights and privileges of employees on the date of enforcement of the* 1958 *Act—Award of Labour Court finding termination unjustified and denying relief of reinstatement on the ground of S.* 22 *of the Shops and Commercial Establishments Act quashed.*

The Nawanshahr Central Co-operative Bank Limited *versus* The Presiding Officer, Labour Court, Jullundur, 1980(3) SLR 358 over-ruled.

Held that, though there may appear to be some overlapping of the provisions of '1947 Act' and '1958 Act' in certain respects, the two enactments operate in different fields and there is no inconsistency between the same. No doubt Section 22 of 1958 Act provides remedy of an employee in a case of unreasonable termination of service and where the employer fails to comply with Section 22(1) but the remedy available to the workman is of a very limited character, namely, compensation of two months' salary. For contravention of Section 22(1), the employer can also be made liable to pay penalty in the

form of fine under Section 26. However, the provisions of Section 22 cannot be said to have the effect of excluding or barring the remedy available to the employee under the 1947 Act against wrongful termination of service. The remedy available to an employee under '1947 Act' against wrongful termination of service is not restricted to the case of retrenchment but the same is available in the cases of all kinds of wrongful termination of services. The magnitude of power available to the adjudicating body under Section 11-A is also much wider. Moreover, if Section 25J of 1947 Act is read alongwith Section 33 of 1958 Act any doubt regarding the applicability of the provisions of 1947 Act to the employees of shops and commercial establishments stands removed. A conjoint reading of these provisions show that the employee has a right to take advantage of the more beneficial provision. If the provisions of the 1947 Act are more beneficial then those would prevail in view of proviso to Section 25J(1). This is also the purport of Section 33 of 1958 Act which saves rights and privileges available to an employee on the date of enforcement of 1958 Act. 1947 Act is a statute which was affective on the date of commencement of 1958 Act and, therefore the benefit of provisions of Sections 25F, 25G and 25H, which were available to the employees of shops and commercial establishments will continue to be available to them after the commencement of 1958 Act.

(Para 16)

Further held, that even if for a moment it assumed that the remedy available to an employee under section 22 is construed as an alternative remedy available to him the relief of reinstatment which can be given to the employee on a reference under Section 10 cannot be denied to him merely because Section 22(2) of 1958 Act gives limited delief in the form of compensation. In our opinion, option will be always available to an employee to pursue any of these remedies. If the employee chooses to seek reference of the dispute then his remedy will be governed by the provisions of 1947 Act and the competent adjudicatory body will have the right to give appropriate relief including reintatement if it finds that service of the employee has been terminated in violation of the provisions of 1947 Act or that it is otherwise arbitrary or unfair.

(Para 17)

Further held, that with great respect to the learned Single Judge. The Nawanshahr Central Co-operative Bank Limited *versus* The Presiding Officer, Labour Court, Jullundur, 1980(3) SLR 358, we are unable to agree with the view that in a reference case reinstatement of the workman cannot be ordered by the Labour Court etc. in view of the provisions of Section 22 of the Punjab Shops and Commrcial Establishments Act. From the judgment of the learned Single Judge, it is evident that the provisions of Section 25J of 1947 Act and Section 33 of 1958 Act have not been considered, nor has the learned Single Judge considered or discussed the scope of Section 22 *vis-a-vis* the provisions of 1947 Act. Rather the learned Single Judge has straightaway recorded a conclusion that workman is not entitled to be reinstated in view of Section 22(1) of 1958 Act without discussing

the issue in a correct perspective. Therefore, that judgment cannot be treated as laying down correct law.

(Para 24)

Anil Shukla, Counsel, *for the Petitioner.*

None, *for the Respondent.*

JUDGMENT

G. S. Singhvi, J.

(1) An important question of law which requires determination in this writ petition filed by the workman against the award dated 30th January, 1995 passed by the Industrial Tribunal-cum-Labour Court-I, Faridabad is whether relief of reinstatement in service can be denied to workman on the ground that the establishment of the employer is registered under the Punjab Shops and Commercial Establishments Act, 1958, even though his service is found to have been illegally terminated.

(2) Before proceeding further it will be useful to refer to some of the facts. The petitioner-workman was engaged as Helper in the service of respondent No. 2 with effect from 28th August, 1986. He is said to have proceeded on leave with effect from 22nd April, 1990 but did not join after the expiry of leave. The petitioner says that he has sent medical certificate to the employer because he had fallen ill during the period of leave. He reported for duty on 7th May, 1990 but was not allowed to join. Treating it to be a case of illegal termination of service, the petitioner raised an industrial dispute which came to be referred to the Industrial Tribunal-cum-Labour Court,—*vide* order dated 12th December, 1990 passed by the Government of Haryana under Section 10(1)(c) of the Industrial Disputes Act, 1947 (hereinafter referred to as '1947 Act'). In his statement of claim the petitioner asserted that he had been in employment since 28th August, 1986 and that his service was illegally terminated without any enquiry and without any notice. In reply respondent No. 2 admitted that the petitioner had been appointed with effect from 28th August, 1986 and his monthly salary was Rs. 675. It was, however, pleaded by the employer that termination of service was brought about by removing his name from the muster-roll because the petitioner-workman had been remaining absent from job and there was no justification in his claim for reinstatement.

(3) The Industrial Tribunal considered the pleadings and evidence produced by the parties and held that the action of the management terminating the Services of the workman is neither reasonable

nor justifiable. However, relief of reinstatement as been denied to the petitioner on the ground that the establishment is registered under the Punjab Shops and Commercial Establishments Act, 1958 (hereinafter referred to as '1958 Act') and in terms of the provisions of '1958 Act', he was entitled to compensation equivalent to two months pay. For taking this view the Industrial Tribunal relied upon the decision of this Court in *The Nawanshahr Central Co-operative Bank Ltd.* v. *The Presiding Officer, Labour Court, Jullundur* (1).

(4) In the year 1920 the first Trade Disputes Act was enacted which provided for Courts of Inquiry and conciliation Board and prohibited strikes in public utility services without one month's notice in writing. A strike intended to cause hardship on the community or to coerce a Government decision was also declared illegal. However, no provision was made for any machinery for settlement of disputes. This Act was replaced by the Trade Disputes Act, 1929 in which provision for the first time was made for the intervention of the State in the settlement of industrial disputes. The main purpose of this Act was to provide a conciliation machinery to bring about peaceful settlement of industrial disputes. In the year 1938 the 'Act of 1929' was amended authorising the central and provincial governments to appoint Conciliation Officers for mediation in industrial disputes and settlement thereof. Thereafter, the Government of India promulgated the Defence of India Rules to meet with the situation created by the second World War. Rule 81-A of these rules gave powers to the appropriate government to intervene in Industrial disputes, appoint Industrial Tribunals and enforce the award of such tribunals against the employers as well as the employees. Thus the modern concept of resolution of industrial disputes through adjudicatory process took its birth in the form of Rule 81-A of the Defence of India Rules. The Industrial Disputes Bill was introduced in the Central Legislative Assembly on 8th October, 1946 and was passed in March, 1947. It came into force with effect from 1st April, 1947. This Act has been enacted to provide machinery and forum for the investigation of industrial disputes and for the settlement thereof and for certain other purposes. The concept of collective bargaining and the approach of last conflict between the interest of the workman and the industry got firm foot hold with the enactment of '1947 Act'. The '1947 Act' enables the State to compel the parties to resort to industrial arbitration and for the purpose different forums

(1) 1980 (3) S.L.R. 358.

have been set up for the resolution of such disputes. This Act is intended to be a self-contain code. It seeks to achieve social justice during the process of collective bargaining. Conciliation, arbitration and in case of failure of these by compulsory adjudication. As observed by the Supreme Court in *Life Insurance Corporation of India* v. *D. J. Bahadur* (2) :—

> "The personality of whole statute, as a welfare basis, it being a beneficial legislation which protects labour, promote their contentment and regulate situations of crisis and tension where production may be imperilled by untenable strikes and blackmail lock-outs. The mechanism of the Act is geared to conferment of regulated benefits to workman and resolution, according to a sympathetic rule of law, all the conflicts, actual or potential, between managements and workman. Its goal is the amelioration of the conditions of workers, tampered by a practical sense of peaceful co-existence, to the benefit of both not a neutral position but restrains on a lesser fair and concerns for the welfare of legal law."

(5) In *Labour Relations Board of Saskatchewan* v. *John East Iron Works Ltd.* (3), Lord Simonds observed :—

> "The Act deals with industrial disputes, provides for conciliation, adjudication and settlements, and regulates the rights of the parties and the enforcement of awards and settlements. Thus, by empowering the adjudicatory authorities under the Act, to give reliefs such as "reinstatement" of wrongfully dismissed or discharged workmen, which may not be permission in common law or justified under the terms of contract between the employer and such workmen, the legislature has attempted to frustrate the unfair labour practices and secure the policy of collective bargaining as a road to industrial peace."

(6) In *Workmen of Dinakuchi Tea Estate* (*Assam Chah Karamchari Sangha* v. *Dinakuchi Tea Estate* (4), S. K. Dass J., speaking for a majority of the Supreme Court, has succinctly summed up the principal objects of the Act as follows :—

> "(i) promotion of measures for securing and preserving amity and good relations between the employer and workmen ;

(2) 1980 Lab I.C. 1215.

(3) 1949 P.C. 119.

(4) (1958)1 LLJ 500 (506) (S.C.)

(ii) an investigation and settlement of industrial disputes, between employers and employers, employers and workmen or workmen and workmen, with a right of representation by registered trade union or a federation of trade unions or an association of employers or a federation of associations of employers ;

(iii) prevention of illegal strikes and lock-outs ;

(iv) relief to workmen in the matter of lay-off and retrenchment; and

(v) collective bargaining."

(7) Chapter-I of '1947 Act' contains definition of various terms including award, industry, industrial dispute, retrenchment, Section 2-A has been added in this chapter by the Industrial Disputes (Amendment) Act, 1965, whereby an individual dispute in the cases of discharge, dismissal, retrenchment and termination of service has been treated to be an industrial dispute Chapter-II specifies various authorities like works committee, conciliation officers, board of conciliation, courts of inquiry, Labour Courts, Tribunals, National Tribunals. Chapter-IIA which consists of Section 9A and 9B was inserted by the Industrial Disputes (Amendment) Act No. 36 of 1956. It refers to the requirement of notice before conditions of service applicable to the workmen in respect of any matter specified in the fourth Schedule can be changed. Chapter III deals with reference of disputes. Chapter IV lays down the procedure, powers and duties of various authorities constituted under the Act, Section 11A has been added in this chapter by the Industrial Disputes (Amendment) Act No. 45 of 1971 so as to confer wide powers on Labour Courts. Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen. Chapter V deals with strikes and lock-outs. Chapter VA contains provisions relating to lay-off and retrenchment. This chapter has been inserted by Industrial Disputes (Amendment) Act No. 43 of 1953. Chapter VB which contains special provisions relating to law-off retrenchment and closure in certain establishment have been added by the Industrial Disputes Act No. 32 of 1976. Chapter VC which relates to unfair labour practice came to be added by the Industrial Disputes (Amendment) Act No. 46 of 1982. Chapter VI prescribes penalties for illegal strikes, lock-outs, breach of settlement or award etc. Chapter VII contains miscellaneous provisions.

(8) In order to give effect to the provisions of '1947 Act', the Central Government as well as various State Government have framed Industrial Disputes Rules. These provisions constitute a complete code unto themselves. Chapter VA of '1947 Act' deals with lay-off and retrenchment and provides certain conditions which must be satisfied before the employer can resort to lay-off and retrenchment. It also provides for grant of compensation to the workmen. At the same time it provides for re-employment of retrenched workmen. Section 25J(1) contains *non obstante* clause and gives overriding effect to the provisions of Chapter VB *vis-a-vis* other laws. For the purpose of this case it would be useful to quote Sections 2A, 11A, 25F and 25J which reads thus :—

> "2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.—Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute."

> "11A. Powers of Labour Court, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen. Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require :

> Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter."

"25F. Conditions precedent to retrenchment of workmen.—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of notice ;

(* * * * * *)

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay (for every completed year of continuous service) or any part there of in excess of six months ; and

(c) notice in the prescribed manner is served on the appropriate Government (for such authority as may be specified by the appropriate Government by notification in the Official Gazette)."

"25J. Effect of Laws inconsistent with this Character.—(1) The provisions of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in any other law (including standing orders made under the Industrial Employment. (Standing Orders) Act, 1946 (20 of 1946)) :

(Provided that where under the provisions of any other Act or rules, orders or notifications issued thereunder or under any standing orders or any award, contract of service or otherwise, a workman is entitled to benefits in respect of any matter which are more favourable to him than those to which he would be entitled under this Act ; the workman shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that he receives benefits in respect of other matters under this Act.)

(2) For the removal of doubts, it is hereby declared that nothing contained in this Chapter shall be deemed to affect the provisions of any other law for the time being in force in any State in so far as that law provides for the settelment of industrial disputes, but the rights and liabilities of employers and workman in so far as they relate to lay-off and retrenchment shall be determined in accordance with the provisions of this Chapter.)"

(9) The '1958 Act' has been enacted by the legislature of the State of Punjab. It received the assent of the President on 25th April, 1958 and was published in the gazette on 1st May, 1958. It is an Act to provide for regulation of conditions of work and employment in shops and commercial establishments. Section 2 of '1958 Act' contains definition of various terms including commercial establishments, employee, employer, establishment, factory, hours of work, shop etc. Sections 3 and 4 enumerate certain establishments and persons to which the provisions of '1958 Act' do not apply. Section 5 empowers the Government to extend the provisions of the Act to any class and establishment or persons. Section 6 lays down the condition of employment for young persons. Section 7 deals with hours of employment. Section 8 provides for intervals for rests and meals. Sections 9 to 12 contain provisions regarding opening and closing hours, close day, weekly off day and holidays. Sections 13 to 16 deal with registration of establishments, leave, wages for close days and during leave period and also the wage period. Section 17 lays down that wages of employee shall be paid to him without deduction except those authorised by or under the Payment of Wages Act. Section 18 empowers the Judicial Magistrate to award compensation to the employee who has not been paid wages according to the provisions of Section 17. Sections 19 and 20 relate to appointment of inspection staff and maintenance of records by the employer. Section 21 imposes a duty on the employer to make available for inspection all accounts and other records required to be kept for the purposes of the Act and to give information as may be called for by the prescribed officer. Section 22(1) prohibits removal of an employee from service unless and until one month's previous notice or pay in lieu thereof has been given to him. However, this requirement is not applicable where removal of the employee is on account of misconduct and in cases where the employee has served for a period of less than three months continuously. Section 22(2) empowers the Judicial Magistrate to award compensation is to the employee equivalent to two months salary in any case instituted for contravention of the Section 22(1) provided that such Magistrate is satisfied that the employee has been removed without any reasonable cause and such an application is made within a period of six months from the date of removal. The amount of compensation is in addition to the fine payable under Section 26. Under sub section (4) of Section 22, a person is barred from filing civil suit in respect of his claim for compensation once an order under sub-section (2) is passed. Section 26 provides for punishment in the firm of fine for contravention of the provisions to the 'Act of 1958' and the Rules framed thereunder,

Section 33 contains certain rights and privileges which are admissible to employee under any other law, contract, customor usage. For the purpose of this case, it will be useful to reproduce Sections 22 and 33 of '1958 Act' :—

"22. Notice of removal.—(1) No employee shall be removed from service unless and until one month's previous notice or pay in lieu thereof has been given to him :

Provided that :—

(a) no employee shall be entitled to the notice or pay in lieu thereof if he is removed on account of misconduct established on records ;

(b) no employee shall be entitled to one month's notice or notice pay unless and until he has been in the service of the employer continuously for a period of three months.

(2) If any case instituted for a contravention of the provisions of sub-section (1), if a (Judicial Magistrate) is satisfied that an employee has been removed without reasonable cause, the (Judicial Magistrate) shall, for reasons to be recorded in writing, award compensation to the employee equivalent to two months salary :

Provided that no such claim shall be entertained unless it is preferred by the employee within six months from the date of his removal.

(3) The amount payable as compensation under this section shall be in addition to, (and recoverable as) fine payable under section 26.

(4) No person who has been awarded compensation under this section shall be entitled to bring a civil suit in respect of the same claim."

"33. Saving of certain rights and privileges.—Nothing in this Act shall affect any rights or privileges to which an employee in any establishment is entitled on the date this Act comes into force, under any other law, contract, custom or usage applicable to such establishment or any award, settlement or agreement binding on the employer and the employee in such establishment, if such rights or privileges are more favourable to him than those to which he would be entitled under this Act.

(10) From the survey of various provisions of the Industrial Disputes Act, as it stands amended from time to time, it is revealed that this enactment has got three fold objectives.

(11) Firstly, it makes an attempt, to maintain industrial peace by prohibiting strikes, lock-outs, lay-off etc. except on fulfilment of the conditions enumerated in various provisions. And thereby it ensures coontinuing production of material resources meant for the society at large.

(12) Secondly, it provides security to the employees by prohibiting of use of unfair practice and wrongful termination of service of the employees by way of retrenchment and otherwise. At the same time it prohibits the workers and trade unions from resorting to unfair labour practice and unwarranted strikes and thereby protect the employer and industry from coercion by the employees and their unions.

(13) Thirdly, it provides for machinery of adjudication of disputes between the employees *inter-se*, the employers *inter-se* and between the employers and employees. By inserting Section 21 the parliament has introduced a fiction and an an individual dispute which could not otherwise be treated as an industrial dispute has been treated as an industrial dispute in case it relates to dismissal or discharge or retrenchment or termination of service of the employee. Section 11, vests wide powers in the Labour Courts, Industrial Tribunals and National Tribunals to interfere with the punishment awarded by the employer to the employees by way of dismissal or removal from service. Section 25F read with Section 25B imposes a mandatory condition that the employer must give one month's notice and pay in lieu of retrenchment compensation before terminating service of the employees by way of retrench. Section 25G incorporates the principle of 'last come first go' and Section 25H imposes a duty on the employer to give preference to the ex-employees at the time of fresh employment. Section 33 imposes certain conditions which are to be satisfied before the employer can terminate the services of the employees during the pendency of the disputes. By virtue of Section 25J provisions of Chapter VA have been given over-riding effect *vis-a-vis* other statutes.

(14) The constitutional legitimacy of the provisions of '1947 Act' can be traced in Entries 22 and 23 of List 3-Concurrent List (7th Schedule) of the Consttiution of India.

(15) Similarly a survey of the various provisions of '1958 Act' shows that the legislature has made an attempt to regulate the conditions of employees in shows and commercial establishments. At the time contravention of the provisions of the '1958 Act' and the rules framed thereunder have been made punishable. Section 22 of this Act imposes restriction on the right of the employer to remove an employee from service except after giving one month's previous notice or pay in lieu thereof. However, this requirement is restricted to the cases where removal of the employee has been brought about otherwise than by way of punishment and to cases where the employee has served for a minimum period of three months. Section 33 of '1958 Act' saves the rights and privileges of employees in any establishment which are available to such employees under the provisions of any other law, contract, customor usage applicable to such establishment under any award, settlement or agreement binding on the employer and employee in such establishments. The only rider is that this saving clause applies only where rights of privileges are more favourable to the employee. The constitutional legitimacy of '1958 Act' can be traced in Entry 24 of List 3 of 7th Schedule.

(16) Though there may appear to be some overlapping to the provisions of '1947 Act' and '1958 Act' in certain respects, the two enactments operate in different fields and there is no inconsistency between the same. No doubt Section 22 of '1958 Act' provides remedy of an employee in a case of unreasonable termination of service and where the employer fails to comply with Section 22(1) but the remedy available to the workman is of a very limited character, namely, compensation of two months' salary. For contravention of Section 22(1), the employer can also be made liable to pay penalty in the form of fine under Section 26. However, the provisions of Section 22 cannot be said to have the effect of excluding or barring the remedy available to the employee under the '1947 Act' against wrongful termination of service. The remedy available to an employee under '1947 Act' against wrongful termination of service is not restricted to the case of retrenchment but the same is available in the cases of all kinds of wrongful termination of services. The magnitude of power available to the adjudicating body under section 11A is also much wider. Moreover, if Section 25J of '1947 Act' is read alongwith Section 33 of '1958 Act' any doubt regarding the applicability of the provisions of '1947 Act' to the employees of shops and commercial establishments stands removed. A conjoint reading of these provisions show that the employee has a right to take advantage of the more beneficial provision. If the provisions of the '1947 Act' are more beneficial then those would prevail in view of proviso to Section

25J(1). This is also the purport of Section 33 of '1958 Act' which saves rights and privileges available to an employee on the date of enforcement of '1958 Act'. '1947 Act' is a statute which was affective on the date of commencement of '1958 Act' and, therefore, the benefit of provisions of Section 25F, 25G and 25H, which were available to the employees of shops and commercial establishments, will continue to be available to them after the commencement of '1958 Act'.

(17) We are also of the opinion that even if for a moment it is assumed that the remedy available to an employee under Section 22 is construed as an alternative remedy available to him the relief of reinstatement which can be given to the employee on a reference under Section 10 cannot be denied to him merely because Section 22(2) of '1958 Act' gives limited relief in the form of compensation. In our opinion, option will be always available to an employee to pursue any of these remedies. If the employee chooses to seek reference of the dispute then his remedy will be governed by the provisions of '1947 Act' and the competent adjudicatory body will have the right to give appropriate relief including reinstatement if it finds that service of the employee has been terminated in violation of the provisions of '1947 Act' or that it is otherwise arbitrary or unfair.

(18) In *Safire Theatre* v. *Commissioner for Workman's Compensation and others* (5), a somewhat similar issue was referred to the Full Bench of the Madras High Court. The Full Bench held that the provisions contained in Section 2A of the Industrial Disputes Act and the same are not ineffective by virtue of Article 254 of the Constitution of India. The Full Bench also held that both the remedies under the Acts are available but if a reference has been made before the conclusion of appeal under Section 41 of T. N. Shops and Establishment Act, 1947 proceedings under the Industrial Disputes Act will have to be followed. The observations made by the Full Bench in this regard are quite appropriate and are therefore, quoted below :—

> "The remedy that is available under this section, therefore, is that the services of a person employed continuously for a period of not less than six months shall not be dispensed with except for a reasonable cause and without the prescribed notice. While the authority under S. 41 of the Madras Act is empowered to decide whether the dispensing with the services is for a reasonable cause or not, he has not got the powers of directing reinstatement or to give

(5) 1977 (II) LLJ 312.

any other relief including the award of lesser punishment, as provided for under S. 11A of Central Act. The relief provided for under S. 41(1) of the Madras Act cannot be said to be more favourable to the worker. But before a worker can get relief under S. 11A of the Central Act, the dispute will have to be referred by the Government under S. 10. Under S. 10(1) the power to refer vests with the Government and the Government may refer, or refuse to refer. It is quite possible that though an individual dispute has become an industrial dispute has become an industrial dispute by virtue of Section 2A, the other workers may not be interested in that dispute and they may even be hostile and not agreeing with the individual worker, who seeks to make a reference. In such a case. it is likely that the Government may refuse to make a reference, in which case, the individual workman would be without a remedy. *The result is, if there is no resference, the relief provided for under Section* 41 *of the Madras Act is more beneficial, but if a reference is made under Section* 10 *of the Central Act, the relief under Section* 41 *of the Madras Act is not more beneficial. As pointed out earlier, the proviso to Section* 25*J* (1) *saves the provisions of any other Act whereby the workman is entitled to benefits in respect of any matter which are more favourable to him than those to which he would be entitled under the Industrial Disputes Act."*

(Underlining is ours)

(19) In *Uttar Bharat Woollens Mills Pvt. Ltd.* v. *Shyam Lal Sharma and others* (6), the learned single Judge of Allahabad High Court examined the issue in the context of the argument that an application under Section 33-C (2) cannot be filed by a person who is covered by the provisions of U.P. Industrial Disputes Act, 1947. The learned single Judge referred to an earlier Full Bench decision of the Allahabad High Court in *Vishnu Dass* v. *State of U.P.* (7), and held :—

"The Full Benih considered the question at length and thereafter it repelled the contention and held that the provisions of the Central Act and the U.P. Act clearly show that both the Parliament and the State Legislature intended that the two Acts should coexist and remain as complementary and supplementary without one supplanting the

(6) 1976 Lab. I.C. 102.

(7) 1974 Lab. I.C. 1287.

other and that the two Acts were left to operate simultaneously in relation to industrial disputes covered by both the Acts and it was in the discretion of the State Government to refer industrial dispute for adjudication either under the Central Act or under the State Act according to its sweet will. In view of the law laid down by the Full Bench it is clear that it is open to a workman to either make an application under Section 6-H (2) of the State Act or under Section 33-C (2) of the Central Act as both the Acts are operating simultaneously in the State or Uttar Pradesh."

(20) In *Krishna District Co-operative Marketing Society Limited* v. *N. V. Purana Chandra Rao, and others* (8), their Lordships of the Supreme Court considered the question whether the rights available to a workman under Chapter VA of '1947 Act' can be enforced by filing an appeal under Section 40(1) of the Andhra Pradesh Shops and Establishments Act, 1966. While upholding the judgment of Andhra Pradesh High Court, their Lordships of the Supreme Court observed :—

"By enacting Section 25J (2) parliament, perhaps, intended that the rights and liabilities arising out of lay-off and retrenchment should be uniform throughout India where the Central Act was in force and did not wish that the States should have their own laws inconsistent with Central law. If really the State Legislatuse intended that it should have a law of its own regarding the rights and liabilities arising out of retrenchment it would have expressly provided for it and submitted the Bill for the assent of the President. The State Legislature has not done so in this case. Section 40 of the State Act deals with terminations of service generally. In the above situation we cannot agree with the contention based on Article 254 (2) of the Constitution since it is not made out that there is any implied repugnancy between the Central law and the State law.

If the employees are 'workmen' and the management is an 'industry' as defined in the Central Act and the action taken by the management amounts to 'retrenchment' then the rights and liabilities of the parties are governed by the

(8) 1987 II LLJ 365.

provisions of Chapter V-A of the Central Act and the said rights and liabilities may be adjudicated upon the enforced in proceedings before the authorities under Section 41(1) and Section 41(3) of the State Act."

(21) In *National Engineering Industries Ltd.* v. *Shri Kishan Bhageria and others* (9), the conflict between the provisions of '1947 Act' and the Rajasthan Shops and Commercial Establishments Act, 1958 came to be examined by the Supreme Court. Section 28-A of Rajasthan Act empowers the prescribed authority to order reinstatement of a workman who is dismissed from service arbitrarily. Period of limitation prescribed for filing an application under Section 28-A is six months. In that particular case the application was filed by the workman under Section 28-A but the same was dismissed as barred by limitation. Thereafter, the Government made reference of the dispute under Section 10 of '1947 Act'. The employer challenged the order of reference by filing writ petition in the High Court. The writ petition of the employer was accepted. However, the Division Bench reversed the judgment of the learned single Judge. It was argued before the Supreme Court in view of the specific provisions contained in Section 28-A of '1958 Act' which received the assent of the President on 14th July, 1958, the said law would prevail even in the face of '1947 Act' which has been enacted by the parliament. Their Lordships rejected this argument and affirmed the view taken by the Division Bench and observed :—

"It appears to us that it cannot be said that these two acts do not read the same field. Both these Acts deal with the rights of the workmen or employees to get redressal and damages in case of dismissal or discharge, but there is no repugnancy because there is no conflict between these two Acts, in pith and substance. There is no inconsistency between these two Acts. These two Acts, in our opinion, are supplemental to each other."

(22) The argument of repugnancy and the possibility of inconsistent decisions was negatived by marking the following observations :—

"But these two laws are not inconsistent or repugnant to each other. The basic test of repugnancy is that if one prevails the other cannot prevail."

"There is a period of limitation provided under the Rajasthan Act of six months and it may be extended for reasonable

(9) A.I.R. 1988 S.C. 329.

cause. But there is no period of limitation as such provided under the Industrial Disputes Act. In the situation Section 37 declares that the law should not be considered to curtail any of the rights of the workmen... ..... It will be a well settled principle of interpretation to proceed on that assumption and Section 37 of the Rajasthan Act must be so considered. Therefore, in no way the Rajasthan Act could be construed to curtail the rights of the workman to seek any relief or to go in for an adjudication in case of the termination of employee. If that is the position in view of the provisions six months time in Section 28-A of the Rajasthan Act has to be ignored and that cannot have any binding effect, inasmuch as, it curtails the rights of the workmen under the Industrial Disputes Act and that Act must prevail."

(23) From these judgments, the view which we have taken, namely, that the provisions of Industrial Disputes Act, will prevail vis-a-vise the Punjab Shops and Commercial Establishments Act, 1958 in relation to the matters involving termination of services of the employees in contravention of the provisions of the Industrial Disputes Act and remedy available to the workmen under the Industrial Disputes Act shall remain unaffected by the provisions of the '1958 Act' is fully supported.

(24) Before concluding, we may refer to the decision of a learned single Judge of this Court in *The Nawanshahr Central Co-operative Bank Ltd.* v. *Presiding Officer, Labour Court, Jullundur* (supra) on which reliance has been placed by the Industrial Tribunal for declining relief of reinstatement to the workman. That was a case in which the workman had been appointed on *ad hoc* basis for a period of three months,—*vide* order dated 22nd February, 1977. Term of his service was ertended for one month on two occasions and finally his service was terminated on 19th July, 1977. Subsequently some other persons were appointed without considering his case. The workman raised an industrial dispute which was referred to the Labour Court, Jullundur for adjudication. The Labour Court awarded reinstatement to the workman. One of the arguments advanced before the learned single Judge related to the applicability of Section 25H of '1947 Act'. The learned Judge held that the provisions of Section 25H are applicable and the workman was entitled to preferential treatment in the matter of reemployment. The other question raised before the learned single Judge was whether the Labour Court could order reinstatement under Section 25H. On behalf of the workman

it was urged that the matter of termination was contrary to Section 22 of '1958 Act'. The learned single Judge held that due to non-compliance of Section 22(1) the employee becomes entitled to a benefit equivalent to two months pay but he is not entitled to reinstatement from the date of termination of service. With great respect to the learned single Judge, we are unable to agree with the view that in a reference case reinstatement of the workman cannot be ordered by the Labour Court etc. in view of the provisions of Section 22 of the Punjab Shops and Commercial Establishments Act. From the judgment of the learned single Judge, it is evident that the provisions of Section 25J of '1947 Act' and Section 33 of '1958 Act' have not been considered, nor has the learned single Judge considered or discussed the scope of Section 22 vis-a-vis the provisions of '1947 Act'. Rather the learned single Judge has straightaway recorded a conclusion that workman is not entitled to be reinstated in view of Section 22(1) of '1958 Act' without discussing the issue in a correct perspective. Therefore, that judgment cannot be treated as laying down correct law.

(25) In view of the above discussion, it must be held that the award passed by the Industrial Tribunal suffers from an error of law in so far as it holds that workman is not entitled to reinstatement even though termination of his services is neither reasonable nor justified. The Industrial Tribunal has failed to appreciate the provisions of '1947 Act' and '1958 Act' in a correct perspective and, therefore, the impugned award deserves to be set aside.

(26) Consequently we allow the writ petition and quash the award Annexure P.3 and direct respondent No. 2 to reinstate the petitioner in service and pay him wages from today. For back wages between date of termination of service and the date of this order, the workman shall be entitled to avail remedy under Section 33-C (2) of the Industrial Disputes Act, 1947. If he files an application for back wages, it will be open to respondent No. 2 to plead and prove that the petitioner was gainfully employed during the intervening period and, therefore, he is not entitled to whole or part of the back wages.

R.N.R.

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