227 since petitions of this nature have to be filed in a completely different form. In the circumstances, without going into the merits; I dismiss the petition but leave the parties to bear their own costs.

B.R.T.

CIVIL MISCELLANEOUS

Before Mehar Singh and K. L. Gosain, JJ.

THE ATLAS CYCLE INDUSTRIES LTD.,—*Petitioner.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No. 1378 of 1959.

1961
Jan., 6th.

Industrial Disputes Act (XV of 1947)—Sections 7-A and 8—Industrial Tribunal created and its presiding officer appointed by one notification—Term of presiding officer expiring and another presiding officer appointed—Whether valid—Industrial Tribunal—Whether can be appointed permanently or for indefinite period—Interpretition of documents—How to be made.

Held, that where an Industrial Tribunal is constituted and its presiding officer is appointed by one and the same notification, it does not mean that the Tribunal comes to an end when the term of appointment of the presiding officer expires. By the expiry of the term of the presiding officer, a vacancy occurs which the Government is competent to fill by virtue of sections 7-A and 8 of the Industrial Disputes Act, 1947, and it does not matter whether the Tribunal consists of one or more members.

Held, that the language of section 7 of the Industrial Disputes Act, 1947, does not put any restriction on the Government to constitute a Tribunal either for a definite period or for an indefinite period. If the Government expect that industrial disputes will continue to arise, it is perfectly permissible for the Government to set up a Tribunal either permanently or for an indefinite period.

Held, that a document has to be interpreted on its own terms and at the most in the light of the surrounding circumstances of the case and the intention of the parties.

It would not be necessary or even proper to record evidence for the purposes of interpreting a document.

Case referred by Hon'ble Mr. Justice K. L. Gosain,— vide his order, dated 31st August, 1960, to a larger Bench for decision of important questions of law involved in the case. The Division Bench consisting of Hon'ble Mr. Justice Mehar Singh and Hon'ble Mr. Justice K. L. Gosain, finally decided the case on 6th January, 1961.

Petition under Article 226 and 227 of the Constitution of India praying that a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate Writ, Direction or Order be issued, quashing the orders. dated 7th March, 1959 and 24th April, 1959 purported to have been made by respondent No. 1, under Section 36-A of the Industrial Disputes Act, 1947, as also the order of respondent No. 2, dated 20th July, 1959.

L. K. JHA, BHAGIRATH DASS, AND H. S. BRAR, ADVOCATES, for the Petitioner.

M. R. SHARMA, ADVOCATE, for Advocate-General, for Respondents Nos. 1 and 2.

ANAND SAROOP AND R. S. MITTAL, ADVOCATES, for the Respondent No. 3.

ORDER

Gosain, J. GOSAIN, J.—This is a petition under Articles 226 and 227 of the Constitution of India impugning the orders of the State of Punjab dated the 7th March, 1959, and 24th April, 1959 (copies enclosures 'C' and 'E' to the petition) as also the proceedings taken by the Industrial Tribunal, Punjab, Jullundur, in pursuance of the aforesaid orders and culminating in its final order dated the 20th July, 1959, and the prayer made is that the two orders of the State of Punjab as also the entire proceedings and the order of the Industrial Tribunal, Punjab, be quashed.

The petitioners, Messrs Atlas Cycle Industries Limited, Sonepat, hereinafter called the employers, are carrying on business of manufacture of cycles

at Sonepat and are an 'industry' within the meaning of the Industrial Disputes Act, 1947. Certain industrial disputes arose between them on the one hand and their workmen on the other and by means of Punjab Government notification dated the 14th February, 1955, made under section 10(1)(c) of the aforesaid Act they were referred for decision to the Industrial Tribunal, Punjab, Jullundur, constituted under section 7 of the aforesaid Act before its last amendment in 1958. The said reference was numbered as reference No. 3 of 1955, and, while it was still pending, one worker, Shri Tej Bhan, who is respondent No. 3 in the present petition, was retrenched as being a surplus hand. He made a complaint to the Industrial Tribunal under section 33 of the said Act in which he *inter alia* contended that he had been wrongfully dismissed by the petitioners who had in that way contravened the provisions of section 33 of the Act. The case of the present petitioners was that the aforesaid Shri Tej Bhan was working in their Spring Coiling Section and as they had purchased an automatic machine to do that job, they did not require the services of many of their workmen including Shri Tej Bhan. During the pendency of this complaint there was a compromise effected between Shri Tej Bhan and the employers. One of the important terms of the said compromise was that "the employers agreed to reinstate Shri Tej Bhan with continuity of, and without any change in, the conditions of his service, but with the condition that he will not be given work in the department in which he was working at the time of alleged retrenchment but he shall be given an alternative job in the paint department at piece rate basis on prevailing rates". The Industrial Tribunal accordingly made an award which was published in the *Punjab Government Gazette*,—*vide* notification No. 9954-C-Lab.-57/17995, dated the 13th August, 1957. In pursuance

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of the said award Shri Tej Bhan was put by the employers in the paint section of their factory but it appears that he was not able to get the same emoluments there which he previously used to get in the spring coiling section. He then approached the Government with this grievance. The Government felt that there was some ambiguity in the award inasmuch as at one place it was said "without any change in the conditions of his service" and at another place it was said "at piece rate basis on prevailing rates". An order was then passed by the Government on the 7th March, 1959, copy of which is annexure 'C' to the petition. The operative part of this order reads as under :—

> "Now, therefore, in exercise of the powers conferred by section 36-A of the Industrial Disputes Act, 1947, the Governor of Punjab is pleased to direct the Presiding Officer, Industrial Tribunal, Punjab, Jullundur, to clarify whether the words 'without any change in the conditions of service' occurring in the award permit change in the emoluments of the worker by the management of M/s Atlas Cycle Industries Limited, Sonepat, consequent upon his reinstatement."

The employers filed a representation to the Government pointing out that a truncated part of the award had only been referred to the Tribunal for clarification and that the aforesaid order of the Government was not a correct one. Another order was then passed by the State of Punjab on the 24th April, 1959, and a copy of the same is annexure 'E' to the present petition. The operative part of this latter order reads as under :—

> "Now, therefore, in exercise of the powers conferred by section 36-A of the Indus-

trial Disputes Act, 1947, the Governor of Punjab is pleased to direct the Presiding Officer, Industrial Tribunal, Punjab, Jullundur, to state clearly whether the job given to Shri Tej Bhan is in conformity with the award dated the 2nd July, 1957, published,—*vide* Punjab Government Notification No. 9954-C-Lab-57/17995, dated the 13th August, 1957."

In pursuance of these orders the Industrial Tribunal passed its order, dated the 20th July, 1959, a copy of which is annexure 'I' to the petition. The Tribunal observed in this order that Shri Tej Bhan was, before his retrenchment, working as a helper in the Spring Coiling Section and was being paid wages on piece rate basis and that according to Exhibit C. 1, a statement prepared and produced by the management, Shri Tej Bhan was on an average earning Rs. 74/5/9 per month. It was further found that in the Paint Section, where he was put now, Shri Tej Bhan was making on an average a sum of Rs. 36.76 nP. per month and that this wages accordingly had gone down by Rs. 37.24 nP. per month. The Tribunal further observed in this order as under :—

"The award dated the 2nd August, 1957, provided that Tej Bhan, was to be reinstated by the management with continuity of and without any change in the conditions of his service. He was of course not to be retained in the department in which he was working at the time of his retrenchment, but was instead to get work in the Paint Department at piece rate basis on the prevailing rates. That was the only

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change that he was to be subject to. There was to be no change in the conditions of his service which necessarily meant that his usual earnings were to remain unaffected. His service was to be continuous and there was to be no change in the conditions of his service. One essential condition of his service was his wages. I have, therefore, no hesitation in removing the ambiguity if there is any that the words 'without any change in the conditions of service' occurring in the award do not permit of any change in the emoluments of the worker on his reinstatement."

The employers now feel aggrieved against the two orders of the Government dated the 7th March, 1959, and 24th April, 1959, and also against the proceedings taken and the order passed by the Industrial Tribunal in pursuance of the said orders of the Government, and have come up to this Court under Articles 226 and 227 of the Constitution of India with the prayer that the aforesaid orders of the Government and the Tribunal be quashed.

The petition is opposed both on behalf of the State of Punjab as also on behalf of Shri Tej Bhan respondent No. 3, and it is averred by both these respondents that the orders of the Government were perfectly correct and that the proceedings taken and the final order passed by the Industrial Tribunal in pursuance of the said orders are unexceptionable.

Three main contentions have been raised before us by Mr. L. K. Jha, learned counsel for the petitioners, and they are—

(1) that Shri Kesho Ram Passey, Presiding Officer of the Industrial Tribunal, Punjab, had no jurisdiction to pass the

order dated the 20th July, 1959, and that his order amounts to a nullity,

(2) that the aforesaid orders of the State of Punjab dated the 7th March, 1959 and 24th April, 1959 were not covered by the provisions of section 36-A of the Industrial Disputes Act, and the Industrial Tribunal had, therefore, no jurisdiction to pass any orders in pursuance of the same, and

(3) that the award of the Industrial Tribunal annexure 'A' to the petition was in no way ambiguous and did not stand in need of any clarification and that in any case no evidence could be allowed for the purpose of its interpretation and clarification.

A preliminary objection has been taken by the learned counsel for the respondents that the plea of want of jurisdiction of Shri Kesho Ram Passey, Presiding Officer of the Industrial Tribunal, cannot be taken in the present proceedings inasmuch as the point of jurisdiction was never raised before the Tribunal itself, and the present petitioners took a chance of getting a favourable decision from the said Tribunal and now that they have not been able to get the same, they should not by reason of their own conduct be allowed to agitate the point at this stage. In reply to the preliminary objection Mr. Jha has drawn our attention to the pleas taken before the Tribunal in which the jurisdiction of the Tribunal was no doubt challenged, but on somewhat different grounds. The present petitioners probably did not at that time go into the matter of jurisdiction so minutely and this appears to be the reason why the plea of want of jurisdiction of the Tribunal was not in so many words raised before

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the Tribunal itself. I am, however, unable to hold on the present material that there was any deliberate action on the part of the employers in not raising the plea of want of jurisdiction of the Tribunal on the ground on which it is now raised before us and I would not like to rest my judgment on this preliminary objection. In a reported judgment of this Court in *Jagatjit Cotton Mills* v. *Industrial Tribunal* (1), a Division Bench, to which I was also a party, held that failure to raise objection to defect or lack of jurisdiction of the Tribunal before it is always a material and relevant factor and must be taken into account and it makes no difference whether such a defect is patent or latent, and that ordinarily such a conduct would preclude the petitioner from claiming the writ unless a cogent explanation is furnished by stating the necessary facts upon affidavit which should satisfy the Court that the failure to raise the objection relating to jurisdiction was not deliberate or that the petitioner had no knowledge of facts on which the objection could be based. As already observed, however, the jurisdiction of the Tribunal in the present case was challenged though on somewhat different grounds and it does not appear to be fair in the circumstances of the case to shut out the arguments based on want of jurisdiction of the Tribunal in making the order in question. I have no doubt, however, that the plea of want of jurisdiction must fail on its merits.

It is contended that Shri Avtar Narain Gujral, had originally been appointed as the Presiding Officer of the Industrial Tribunal, Punjab, under section 7 of the Act as in force before the commencement of the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956, and

(1) A.I.R. 1959 Punj. 389.

that his term as such was extended from time to by means of various notifications of the Punjab Government made on different dates. By virtue of Notification No. 4194-C-Lab-57/652-R.A, dated the 19th April, 1957, the Punjab Government in exercise of its powers conferred by section 7 of the Industrial Disputes Act, 1947, as in force before the commencement of the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956 (No. 36 of 1956), read with section 30 of the latter Act, extended the term of appointment of Shri Avtar Narain Gujral up to the last day of October, 1957, or such date as the proceedings in relation to industrial disputes pending in the said Tribunal immediately before the 10th March, 1957, are disposed of whichever is earlier. Another notification was also made on the same date which is No. 4194-C-Lab-57/661-R.A. By means of this notification an Industrial Tribunal was constituted with headquarters at Jullundur and Shri Avtar Narain Gujral was appointed as its Presiding Officer with effect from the date of the publication of the said notification in the Official Gazette up to the 3rd June, 1957. The notification further provided that "in addition to his duties as Presiding Officer of the newly constituted Tribunal, Shri Avtar Narain Gujral shall, for the purposes of disposal of pending proceedings in relation to industrial disputes, continue to serve as Member of the Second Industrial Tribunal, Punjab, Amritsar, and as Sole Member of the Industrial Tribunal, Punjab, Jullundur, which were constituted under the Industrial Disputes Act, 1947, as in force before the commencement of the aforesaid Act No. 36 of 1956." This notification clearly said that the new Tribunal was being constituted in exercise of the powers of the Governor conferred by section 7-A of the Industrial Disputes Act 1947 as inserted by section 4 of the Industrial

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Disputes (Amendment and Miscellaneous Provisions) Act, 1956 (No. 36 of 1956) and all other powers enabling him in this behalf. On the 4th June, 1957, the term of appointment of Shri Avtar Narain Gujral as the Presiding Officer of the newly constituted Tribunal referred to above was extended from the 4th June, 1957, to the 28th February, 1958. By virtue of another notification dated the 27th February, 1958 the term of appointment of Shri Gujral was extended for a further period of six months with effect from the 1st March, 1958. Another notification was then made on the 22nd August, 1958, which extended the term of Shri Gujral for a further period of six months with effect from the 1st September, 1958, and by another notification dated the 25th February, 1959, the term of Shri Gujral was extended for another period of three months with effect from the 1st March, 1959. The last notification extending his term by three days, i.e., from the 1st June, 1959, to the 3rd June, 1959, was then issued on the 30th May, 1959. On the 3rd June, 1959, the Punjab Government issued Notification No. 5950-Lab-I-59/347-R.A., the operative part of which reads as under :—

> "In exercise of the powers conferred by section 7-A of the Industrial Disputes Act, 1947, and all other powers enabling him in this behalf, the Governor of Punjab is pleased to appoint Shri Kesho Ram Passey, retired Judge, Punjab High Court, as Presiding Officer of the Industrial Tribunal, Punjab, with effect from the 4th June, 1959 to 29th February, 1960."

The argument raised is that this last notification must be interpreted to mean that the State of

Punjab constituted a fresh and distinct Industrial Tribunal on the 3rd June, 1959, which was to be presided over by Shri Kesho Ram Passey, and that the previous Tribunal presided over by Shri Avtar Narain Gujral, had died in its natural death by the expiry of the term of Mr. Gujral on the 3rd June, 1959. As a necessary corollary of this argument it is urged that Mr. Passey could not deal with the references and matters pending before the previous Tribunal unless fresh orders were passed by the Government referring the said matters to the newly constituted Tribunal presided over by Mr. Passey. It is urged that a Tribunal cannot be constituted except by an appointment of the Presiding Officer thereof and as Mr. Passey was appointed the Presiding Officer on the 4th June, 1959 the notification appointing him as such must be taken to mean that a fresh Tribunal was constituted and that the Tribunal previously constituted had come to an end. This contention is sought to be supported by three rulings of their Lordships of the Supreme Court in *The United Commercial Bank Ltd.*, v. *Their Workmen* (1), *Minerva Mills Ltd.*, v. *Their Workers* (2), *Bihar State* v. *D. N. Ganguly* (3), as also by a ruling of the Hyderabad High Court in *Aurangabad Mills* v. *Industrial Court* (4), and another of the Assam High Court in *Tea Producing Co.* v. *Industrial Tribunal Assam* (5).

After giving my careful consideration to the whole matter I am of the opinion that the contention raised is without any force and that none of the rulings cited in support of the same does in fact support it. Notification No. 4194-C-Lab-57/661-R.A.,

(1) (1951) S.C.R. 380.
(2) (1954) S.C.R. 465.
(3) A.I.R. 1958 S.C. 1018.
(4) A.I.R. 1952 Hyd. 144.
(5) A.I.R. 1959 Assam 211.

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dated the 19th April, 1957, issued by the Punjab Government clearly reads as saying—

> "In exercise of the powers conferred by section 7-A of the Industrial Disputes Act, 1947, as inserted by section 4 of the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956 (No. 36 of 1956), and all other powers enabling him in this behalf, the Governor of Punjab is pleased to constitute the Industrial Tribunal with headquarters at Jullundur and to appoint Shri Avtar Narain Gujral, B.A., LL.B., as its Presiding Officer with effect from the date of the publication of this notification in the Official Gazette up to 3rd June, 1957."

The portion of the notification quoted above clearly shows that the Governor of Punjab purported to pass two orders—

(1) for the constitution of the Industrial Tribunal with headquarters at Jullundur, and

(2) the appointment of Shri Avtar Narain Gujral as its Presiding Officer.

The notification issued on the 3rd June, 1959, which is No. 5950-Lab-I-59/347-R.A., provided for only one of the above matters, i.e. the appointment of Shri Kesho Ram Passey as the Presiding Officer of the Industrial Tribunal, Punjab. The latter notification did not at all refer to the constitution of the Tribunal evidently because the Tribunal had previously been constituted for an indefinite term and was still in existence. It is true that the term of appointment of Shri Avtar Narain Gujral, had

come to an end on the 3rd June, 1959, but it did not mean that the Tribunal itself had come to an end. By the expiry of the term of Shri Gujral a vacancy occurred with regard to the Presiding Officer of the Tribunal and the Government filled up that vacancy by appointing Shri Kesho Ram Passey. Sub-section (2) of section 8 of the Industrial Disputes Act, 1947, as it stood before the enforcement of Act No. 36 of 1956 read as under :—

> "(2) Where a Court or Tribunal consist of one person only and his services cease to be available, the appropriate Government shall appoint another independent person in his place, and the proceedings shall continue before the person so appointed."

Section 8 of the Act as it now stands reads as under :—

> "8. If for any reason a vacancy (other than a temporary absence) occurs in the office of the Presiding Officer of a Labour Court, Tribunal or National Tribunal or in the office of the Chairman or any other member of a Board or Court, then, in the case of a National Tribunal, the Central Government and in any other case, the appropriate Government, shall appoint another person in accordance with the provisions of this Act to fill the vacancy, and the proceedings may be continued before the Labour Court, Tribunal, National Tribunal, Board or Court, as the case may be, from the stage at which the vacancy is filled."

These two provisions of law clearly enabled the Government to fill up the vacancies of the presiding officers of the Tribunal and it does not matter whether the Tribunal consists of one or

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more members. If a Tribunal consists of one member and that member retires or dies the Government has by virtue of section 8 the powers to fill up the vacancy and to appoint another person as Presiding Officer of the said Tribunal. Mr. Jha's contention is that the Government in this case has referred to section 7-A of the Act in the notification appointing Shri Kesho Ram Passey as the Presiding Officer of the Tribunal and that reference to the said section means that the Government intended to bring into existence a new Tribunal in place of the old one. Emphasis is laid on the point that section 7-A provides for the constitution of a Tribunal and when a reference to this section is made it evidently means that a new Tribunal is being constituted. I am wholly unable to agree with this agrument. Sub-section 1 of section 7-A provides for the constitution of a Tribunal. Sub-section (2) of the said section lays down that the Tribunal shall consist of one person only to be appointed by the appropriate Government. This sub-section, therefore clearly provides that the person constituting the said Tribunal shall be appointed by the Government. Section 8 of the Act only provides for filling up of the vacancy and as the appointment in any case has to be made under sub-section (2) of section 7-A, the Government probably thought it fit to refer to section 7-A and not to section 8 in their notification appointing Mr. Passey as the Presiding Officer of the Tribunal. Be that as it may, the notification clearly says that the appointment was being made by the Government in exercise of the powers conferred by section 7-A of the Industrial Disputes Act, 1947, and all other powers enabling the Government in this behalf. The words "all other powers" would certainly include the powers under section 8. Even if a wrong section is deemed to have been mentioned in the notification, it would not affect the legality

of the notification in any way. The comparison of the two notifications, one constituting the Tribunal and appointing Mr. Gujral as the Presiding Officer of the same, and the other only appointing Shri Kesho Ram Passey as the Presiding Officer of the Tribunal, clearly shows that the Government in one case constituted the Tribunal as also appointed the Presiding Officer and in the other case it only filled up the vacancy of the Presiding Officer.

Another contention was then raised by Mr. Jha that an Industrial Tribunal could not be appointed permanently or for an indefinite period and that its appointment must always be for a fixed period either terminating with a fixed date or terminating with the decision of the disputes referred to it on its constitution. This contention also was sought to be supported by the three rulings of their Lordships of the Supreme Court which have been mentioned above. This contention too has, in my opinion, no force, and like the first one this also does not find any support from any of the aforesaid three rulings of the Supreme Court, and I shall now refer to the said rulings a bit in details with a view to show that their facts were entirely distinguishable from those of the present case.

In the case of *The United Commercial Bank Ltd.* v. *Their Workmen* (1), the Central Government had constituted an Industrial Tribunal under the Industrial Disputes Act, 1947, consisting of 'A', 'B' and 'C' for deciding certain disputes and the Tribunal commenced its sittings sometimes in September, 1949. Two months after that the services of 'C' were placed at the disposal of the Ministry of External Affairs as a member of the

(1) 1951 S.C.R. 380.

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Indo-Pakistan Boundary Disputes Tribunal, and the two remaining members, i.e., 'A' and 'B' continued to sit and hear the disputes inspite of an objection having been raised in that behalf by one of the parties. In this period they decided some of the disputes and gave their awards with regard to them. After about four months 'C' returned from the Boundary Disputes Tribunal and began to sit again with the other two members and hear the further proceedings in the cases of disputes which were at that time part heard and which had not finally been decided till then. After about 3 months from the same, the Government issued a notification saying that 'C' had resumed charge of his duties as a member of the All India Industrial Tribunal. Some awards were then made by 'A', 'B' and 'C' together in the disputes which had partly been heard by 'A' and 'B' only and partly by all the three members sittings together, i.e., by 'A', 'B' and 'C'. The question that fell for decision in that case was whether the awards made by 'A' and 'B' during the absence of 'C' as also the awards made by 'A', 'B' and 'C' sitting together in disputes which had been heard partly by 'A' and 'B' alone and partly by all the three members sitting together were in accordance with law and thus binding on the parties. The majority of the Hon'ble Judges who heard that case found that the said awards were not in accordance with law and were vitiated. So far as the awards made by the two members were concerned, the basis of the judgment was that the Tribunal as constituted by the Government was to consist of three members and when 'C' went over to the Boundary Disputes Tribunal, the members left were only two and the Tribunal was thus not properly constituted. So far as the awards made by the three members in disputes partly heard by the two members and partly heard by all the three members were concerned,

the basis of the judgment was that the responsibility to work and decide was a joint one of all the three members and, if some of the proceedings were conducted in the presence of only two members, it could not be said that the said joint responsibility had actually been discharged. According to the majority view, a vacancy had occured when 'C' went over to the Boundary Disputes Tribunal and that vacancy having never been filled, the constitution of the Tribunal became defective inas much as there was thereafter no notification made by the Government constituting a Tribunal of two members.

In case *Minerva Mills, Ltd.*, v. *Their workers* (1), an Industrial Tribunal had been constituted by the Government of Mysore by their notification dated the 15th June, 1951, under powers conferred by section 7 of the Industrial Disputes Act for a period of one year consisting of a chairman and two members for the adjudication of industrial disputes in accordance with the provisions of the Act. On the 27th June, 1952, i.e., 12 days after the expiry of the term of the first Tribunal the Government by another notification constituted another Tribunal for adjudication of these disputes and acting under section 10(1)(c) of the Act referred all the disputes left undisposed of by the first Tribunal to the newly constituted Tribunal. When the second Tribunal proceeded to hear the four disputes which were the subject matter of the appeals before their Lordships of the Supreme Court, the employers raised a number of preliminary objections regarding the jurisdiction of the Tribunal to hear and dispose of the disputes, the principal contentions being—

(i) that the time limit of one year fixed for the life of the first Tribunal was unauthorised and illegal and, therefore,

(1) 1954 S.C.R. 465.

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the first Tribunal continued to exist in spite of the expiry of that period ;

(ii) that the Government could not withdraw the disputes referred to the first Tribunal from it, so long as the members of the first Tribunal were available for discharging their duties and that section 8 had no application to the facts of the case ; and

(iii) that the trial of the said disputes by the newly constituted Tribunal, even if it had jurisdiction to entertain them, could not be started from the stage at which they were left by the first Tribunal and should begin *de novo*.

The newly constituted Tribunal rejected the preliminary objections raised by the employers and came to the conclusion that the Government was competent to constitute the first Tribunal for a limited period, that the second Tribunal was properly constituted and that the references made were proper and could be proceeded with from the stage at which the first Tribunal had left them. In appeals by different employers filed against the orders of the Tribunal in the four disputes then pending before it, their Lordships of the Supreme Court agreed with all the findings of the Tribunal. It was held that section 7 did not restrict or limit the powers of the Government in any manner and did not provide that a Tribunal could not be constituted for a limited period or for deciding a limited number of disputes. Their Lordships observed—

"From the very nature and purpose for which Industrial Tribunals are constituted it is quite clear that such

> Tribunals are not to be constituted permanently. It is only when some industrial disputes arise that such Tribunals are constituted and normally such Tribunals function so long as the disputes referred to them are not disposed of. But from this circumstance it cannot be inferred that it is not open to the Government to fix a time limit for the life of these Tribunals in order to see that they function expeditiously and do not prolong their own existence by acting in a dilatory manner."

It is on these observations that Mr. Jha bases his second contention namely, that a Tribunal cannot be constituted permanently or for an indefinite period. It is true that in the case before their Lordships the Tribunal had been constituted for a period of one year only and the constitution of the said Tribunal for that limited period was held to be good. The observations, however, cannot be taken to mean that Government can never constitute a Tribunal for an indefinite period. In fact the language of section 7 does not put any restriction on the Government to constitute a Tribunal either for a definite period or for an indefinite period. With the present expansion of industry in all States, and more particularly in the State of Punjab, it is perhaps expected that industrial disputes will continue to arise and there can be nothing wrong if the Government in the circumstances sets up a Tribunal to whom it may be possible to refer all or any of the said disputes as and when they actually arise. If the Government expect—as in this case they seem to have done—that industrial disputes will continue to arise, it is perfectly permissible for the Government to set up a Tribunal either permanently or for an indefinite period. The question which their Lordships were

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called upon to decide in the *Minerva Mills case* was whether a Tribunal could be constituted for a limited period of one year and they answered this question in the positive. With regard to the second contention raised by the employers their Lordships found that the first Tribunal having come to an end, no occasion had arisen for withdrawing any disputes from the said Tribunal and for referring the said disputes to another Tribunal. The two Tribunals did not exist simultaneously, for the first had died its natural death after the expiry of the term for which it was constituted and it was not in existence at the time the second Tribunal was constituted. On the last contention their Lordships found that the notification issued by the Government constituting the second Tribunal did not say that the new Tribunal could not hear the disputes *de novo*, and that if any prejudice was caused to the employers it was open to the newly constituted Tribunal to begin the hearing of the disputes from the very first stage, but as it was clear that all that had happened to the disputes when they were pending before the Tribunal was that only issues were framed and if any party had any objection to those issues it was open to the newly constituted Tribunal to re-frame the same. As a matter of fact the third point was not very much stressed before their Lordships and they, therefore, observed that it was only of an academic interest.

In the case *Bihar State* v. *D. N. Ganguly* (1), the question that fell for decision before the Supreme Court was a simple one and to put it in the words used in the judgment, it was as under:—

> "Where an industrial dispute has been referred to a Tribunal for adjudication

(1) A.I.R. 1958 S.C. 1018,

by the appropriate Government under section 10(1)(d) of the Industrial Disputes Act, 1947, can the said Government supersede the said reference pending adjudication before the Tribunal constituted for that purpose ?"

Their Lordships answered this question in the negative and found that the Government was not entitled to withdraw the reference from one Tribunal and to send it to another Tribunal. Evidently it was a case where two Tribunals were existing side by side and the dispute was at one time referred to the one Tribunal and was then withdrawn from the same and referred to the other Tribunal. No such question arises in the present case and, therefore, this ruling need not be referred to in any further details. It may be stated here that the law has since been amended and provides now for such a course by the Government.

It is evident from what has been said above that none of the three rulings has any relevancy to the points covered by the two contentions of Mr. Jha, in the present case and consequently none of these rulings can in any way be helpful to him.

From the observations made above, it is quite clear that Mr. Passey had jurisdiction to take the impugned proceedings and to pass the impugned order.

From the facts of the case as stated above, it is clear that the award of the Tribunal in reference No. 3 of 1955 and published,—*vide* Punjab Government Notification No. 9954-C-Lab-57/17995, dated the 13th August, 1957, was somewhat ambiguous inasmuch as in one portion of the same it was said that "the management agreed to reinstate Shri Tej

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Bhan, with continuity of, and without any change in, the conditions of his service" and in another portion of it, it said—"but he shall be given an alternative job in the paint department at piece rate basis on prevailing rates". The Government felt actual difficulty in implementing the same. Shri Tej Bhan had been put in the Paint Section, but his emoluments there were far less than those in the Spring Coiling Section, where he previously worked. If the words "without any change in the conditions of his service" were interpreted to mean that he should have opportunity of earning the same emoluments in the new section in which he was put, the award was not being implemented by putting him in the Paint Section. In the peculiar circumstances the Government felt that a further clarification and a more clear interpretation of the award was necessary and in exercise of their powers under section 36-A of the Act they referred the matter to the Industrial Tribunal. The argument that only a truncated part of the award was sought to be interpreted seems to me to be absolutely fallacious inasmuch as the Government made it clear in their order that doubt had arisen regarding the interpretation of the terms relating to the reinstatement of Shri Tej Bhan workman of Atlas Cycle Industries, Sonepat, in the award given by the Industrial Tribunal, Punjab, Jullundur, in reference No. 3 of 1955 and published,—*vide* Government Notification No. 9954-C-Lab-57/17995, dated the 13th August, 1957. The words "without any change in the conditions of service" were mentioned for interpretation and clarification in the context of the award as a whole and for all practical purposes, therefore, it must be taken that what the order of the Government meant was that, there should be clarification and interpretation of the award to clear the ambiguity which the Government felf had

crept in the same by the aforesaid words. The management made representations against the order of the Government dated the 7th March, 1959, and the second order of the Government was then made with a view to ask for further clarification. As far as I think, the second order dated the 24th April, 1959, was the result of somewhat confused thinking and was perhaps wholly unnecessary. In any case it can be treated to be one either explaining the first order or as a new reference under section 10(1)(c) of the Act. Be that as it may, it is hardly necessary to go into the details of this order inasmuch as the final order passed by the Tribunal clearly interprets the words "without any change in the conditions of service" as meaning that the usual earnings of the employee were to remain unaffected and this part of the order is separable from the other part in which the Tribunal has found that according to the statements prepared and produced by the management Shri Tej Bhan, was on an average earning Rs. 74-5-9 per month in the Spring Coiling Section but that he was able to earn only Rs. 36.76 nP. per month in the Paint Section. Even if it was held that the second order was without jurisdiction, it is obvious that the interpretation given by the Tribunal in its order dated the 20th July, 1959 on the words "without any change in the conditions of service" satisfies the requirements of the first order of the Government dated the 7th March, 1959, and being separable from the rest of the portion it cannot be impugned on the ground that the two orders have been intermingled or that the interpretations of the Tribunal in response to two orders of the Government are so interconnected that they cannot be used as clarification under any of the two orders. In these circumstances it is wholly unnecessary to deal with the third contention that the Tribunal was not entitled to receive

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evidence for the purposes of interpretation or clarification of the award. As an abstract proposition of law it must, I think, be said that a document has to be interpreted on its own terms and at the most in the light of the surrounding circumstances of the case and the intention of the parties. It would not be necessary or even proper to record evidence for the purposes of interpreting a document. In the present case, however, the Tribunal did not record any evidence at all. The employers placed a statement before the Tribunal from which it was clear what Shri Tej Bhan was earning in the previous department and what he was earning in the new department, and the Tribunal has referred to that statement with a view to show that a change of conditions of service has actually occurred by the fact that the employee has been sent to the new department. As observed above, this portion of the order of the Tribunal is entirely separable from the other portion and even if it is thrown out of consideration the fact remains that the Tribunal has interpreted the words "without any change in the conditions of service" to mean that the usual earnings of the employee were to remain unaffected. At the time of implementation of the award the Government will obviously take this interpretation into consideration and then find whether the emoluments of the employee have actually remained unaffected or whether hey have been seriously affected. The Government can then take into consideration the same statement of emoluments which the employers have produced before the Tribunal and on its basis it can come to a finding that the emoluments of the employee have been seriously affected. The first order of the Government having been complied with in a separable portion of the order of the Tribunal which obviously was made without the use of any extra evidence, it is needless to go

any further into the other portions of the order of the Tribunal and to find whether or not the Tribunal could have recorded evidence to base on it the said portion of the order.

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For the reasons given above the petition has no merits and is dismissed with costs.

Mehar Singh, J.

MEHAR SINGH, J.—I agree.

B.R.T.

FULL BENCH.

Before S. S. Dulat, Bishan Narain and S. B. Capoor, JJ.

MEHAR SINGH AND ANOTHER,—*Appellant.*

versus

KASTURI RAM AND OTHERS,—*Respondents.*

Letters Patent Appeal No. 14 of 1958.

1961

Jan., 9th.

Code of Civil Procedure (V of 1908)—Sections 37, 38, 39 and 150—Local area of the Court passing the decree transferred to another Court—Application for execution of the decree—Whether can be made to the Court to which area transferred without the order of transfer by the Court which had in fact passed the decree.

Held, that by virtue of section 38 of the Code of Civil Procedure, the Court which originally passed the decree does not cease to be the decreeing Court even when the subject-matter of the decree has been subsequently transferred to the jurisdiction of another Court. The general principle of law, however, is that no Court can execute a decree when its subject matter is situated outside its local jurisdiction and as a general rule territorial jurisdiction is a condition precedent to a Court executing a decree and no Court can execute it in respect of property which lies outside its territorial jurisdiction.

Held, that, the word "jurisdiction" in the expression "ceased to have jurisdiction to execute it" in Section 37 (b) of the Code should be given its literal meaning, that