

ration, (3); are materially different from those of Article 2, as has been discussed by Mahajan, J. in his judgment in the Full Bench case, referred to above, and consequently the observations of their Lordships of the Privy Council in that case have no application to the present case. We are, therefore, of the view that the learned trial Court came to a correct conclusion in holding that Article 36 applied to the facts of the present case and that the suit was within time.

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For the reasons given above, we accept this appeal only to the extent of reducing the amount decreed by the Court below to Rs. 14,130. In all other respects, this appeal is dismissed. The plaintiffs will have their proportionate costs in the Court below, but the parties will bear their own costs in this Court in view of the partial success of the appellant.

B.R.T.

LETTERS PATENT APPEAL

Before Bhandari, C.J. and Gosain, J.

M/S AERON STEEL ROLLING MILLS, JULLUNDUR
CITY,—Appellants.

versus

THE STATE OF PUNJAB AND ANOTHER,—Respondents.

Letters Patent Appeal No. 130 of 1958

*Industrial Disputes Act (XIV of 1947)—Section 33-B—
Provision empowering Government to transfer cases from
one Tribunal to another—Whether mandatory or directory—
Tests to determine whether a provision is mandatory or
directory stated—Difference between the two.*

1958

May, 7th

Held, that a mandatory provision within a statute is one where strict compliance with the statute is essential to the preservation of rights of parties affected and the omission

to follow which renders the act, instrument or proceeding to which it relates illegal and void. A directory provision, on the other hand, is one where the legislative intent is to be complied with as nearly as practicable but where the observance of the provision is not necessary to the validity of the proceeding. It gives directions which ought to be followed but not so limiting the power in respect of the directions given that it cannot be effectually exercised without observing them. A mandatory provision must be strictly complied with but a directory provision may or may not be. It is impossible to lay down a rough and ready rule which would enable the Court to determine at a glance whether a particular provision is mandatory or directory, for the intention of the legislature in enacting the provision can be determined not only by the language which it has chosen to employ but also by the scope, history, context and the subject-matter of the legislation, the spirit or nature of the statute, the evil intended to be remedied and the general object sought to be accomplished. Regard must also be had to other circumstances, including the pre-existing law in which it was enacted and the consequences that would ensue from construing the particular provision in one way or another. Broadly speaking, however, a statutory provision is regarded as directory when it relates to some immaterial matter not reaching the substance of the thing to be done, when it does not relate to the essence of the thing to be performed or to matters of substance, when compliance is a matter of convenience rather than of substance, when a failure of performance will result in no injury or prejudice to the substantial rights of interested persons, when the terms of the provision are limited to what is required to be done and the provision is not accompanied by a penalty for failure to observe it, or when the public interest which it is designed to protect is not likely to be seriously impaired by non-compliance with its terms. If the directions given by a statutory provision to achieve a particular object are violated but the particular object is in fact achieved, without affecting the real merits of the case, when the statutory provision must be regarded as directory merely.

Held, that the provisions of Section 33-B of the Industrial Disputes Act, 1947 empowering the Government to transfer cases from one Tribunal to another after recording its reasons for doing so, are directory and not mandatory.

This section has been enacted with the object of inspiring confidence in the fairness and impartiality of orders of Government and of showing to the public at large that orders of transfer are not made want only or capriciously or with the object of favouring one party or injuring another. It empowers Government to transfer cases from one tribunal to another and specifies the manner in which the power shall be exercised. The provision requiring Government to specify the reasons on which the order of transfer is based does not relate to the essence of the thing to be performed and compliance with its terms is a matter of convenience rather than of substance. A failure to comply with this provision is not likely to result in any injury or prejudice to the substantial rights of interested persons, or in the loss of any advantage; the destruction of any right or the sacrifice of any benefit. On the other hand, insistence on a strict compliance with it is likely to result in serious general inconvenience or injustice to hundreds of innocent persons who have no control over Government without promoting the real aim and object of the legislature. The power to transfer is not so limited by the direction to give reasons that it cannot be exercised without following the directions given. No penalty has been provided for failure to comply with the terms of the provision and the enactment is silent in regard to the consequence of non-compliance. No substantial rights depends on a strict observance of this provision; no injury can result from ignoring it; and no Court can declare that the principal object of the legislature that cases should be capable of being transferred has not been achieved. Considerations of convenience and justice plainly require that this provision should be held to be directory and not mandatory. Even in the absence of an express statutory provision in this behalf, Government has inherent right to withdraw a dispute from one Tribunal and to refer it to another. In any case no person has a vested right to have his case heard and decided by a particular Tribunal.

Letters Patent Appeal under Clause 10 of the Letters Patent against the order of the Hon'ble Mr. Justice Bishan Narain, dated the 11th day of April, 1958 in Civil Writ No. 1112 of 1957.

BHAGIRATH DAS and D. S. TEWATIA, for Appellants.
L. D. KAUSHAL, for Respondents.

JUDGMENT

Bhandari, C. J.

BHANDARI, C. J.—This appeal under clause 10 of the Letters Patent raises the question whether the statutory provision which empowers the State Government to transfer a proceeding under the Industrial Disputes Act from one Tribunal to another is mandatory or directory.

On the 31st October, 1957, the Punjab Government passed an order under Section 33-B of the Industrial Disputes Act, 1947, withdrawing all references pending before the Second Industrial Tribunal at Amritsar and transferring the same to the Industrial Tribunal at Jullundur. The petitioner questioned the validity of this order by means of a petition under Articles 226 and 227 of the Constitution on the ground that the State Government had failed to specify the reason on which the order of transfer was based and had thus violated the provisions of Section 33-B of the statute. The learned Single Judge before whom the petition came up for hearing dismissed the petition and the petitioner has appealed.

Section 33-B of the Industrial Disputes Act in so far as it is relevant for the decision of this appeal is in the following terms:—

“33-B. (1) The appropriate Government may, by order in writing and for reasons to be stated therein, withdraw any proceeding under this Act pending before a Labour Court, Tribunal, or National Tribunal and transfer the same to another Labour Court, Tribunal or National Tribunal, as the case may be, for the disposal of the proceedings.”

Mr. Bhagirath Dass who appears for the petitioner contends that the power conferred on the State Government could have been exercised only in accordance with the provisions of the statute by which it was bestowed and that it was not within the competence of the State Government to exercise general power of transfer conferred upon it and at the same time disregard the essential condition imposed on its exercise. Our attention has been invited to certain decisions which appear to propound the proposition that when a statute directs a thing to be done in a certain manner, that thing cannot, even though there are no negative words, be done in any other manner. In *Nazir Ahmad v. King Emperor* (1), their Lordships of the Privy Council expressed the view that where power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Again in 1945 *Appeal Cases 398-407*, the Board observed that where an Act creates an obligation and enforces the performance in a specified manner, it is a general rule that performance cannot be enforced in another manner. As nullification is the natural and usual consequence of disobedience, Mr. Bhagirath Dass contends that the order passed by the State Government without compliance with the statutory formalities must be deemed to be null and void.

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Although Courts of law are always anxious to secure that statutory provisions should be complied within the latter and in the spirit, they invariably draw a distinction between provisions which are mandatory and those which are directory. A mandatory provision within a statute is one where strict compliance with the statute is

(1) A.I.R. 1936 P.C. 253 257

(2) 1945 Appeal Cases 398—407

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essential to the preservation of rights of parties affected and the omission to follow which renders the act, instrument or proceeding to which it relates illegal and void. A directory provision, on the other hand, is one where the legislative intent is to be complied with as nearly as practicable but where the observance of the provision is not necessary to the validity of the proceeding. It gives directions which ought to be followed but not so limiting the power in respect of the directions given that it cannot be effectually exercised without observing them. A mandatory provision must be strictly complied with but a directory provision may or may not be. It is impossible to lay down a rough and ready rule which would enable the Court to determine at a glance whether a particular provision is mandatory or directory, for the intention of the legislature in enacting the provision can be determined not only by the language which it has chosen to employ but also by the scope, history, context and the subject-matter of the legislation, the spirit or nature of the statute, the evil intended to be remedied and the general object sought to be accomplished. Regard must also be had to other circumstances, including the pre-existing law in which it was enacted and the consequences that would ensue from construing the particular provision in one way or another. Broadly speaking, however, a statutory provision is regarded as directory when it relates to some immaterial matter not reaching the substance of the thing to be done, when it does not relate to the essence of the thing to be performed or to matters of substance, when compliance is a matter of convenience rather than of substance, when a failure of performance will result in no injury or prejudice to the substantial rights of interested persons, when the terms of the provision are limited to what is required to be

done and the provision is not accompanied by a penalty for failure to observe it, or when the public interest which it is designed to protect is not likely to be seriously impaired by non-compliance with its terms. If the directions given by a statutory provision to achieve a particular object are violated but the particular object is in fact achieved, without affecting the real merits of the case, then the statutory provision must be regarded as directory merely. The principles for determining whether a particular enactment is directory or mandatory, have been set out in article 266 of Crawford's Treatise on Statutory Construction, which is in the following terms:—

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“266. As a general rule, a statute which regulates the manner in which public officials shall exercise the power vested in them, will be construed as directory rather than mandatory, especially where such regulation pertains to uniformity, order, and convenience, and neither public nor private rights will be injured or impaired thereby. If the statute is negative in form, or if nothing is stated regarding the consequences or effect of non-compliance, the indication is all the stronger that it should not be considered mandatory. But if the public interest or private rights call for the exercise of the power vested in a public official, the language used, though permissive or directory in form, is in fact peremptory or mandatory, as a general rule.”

This article was cited with approval by Das C.J. in *Dattaraya Moreshwar v. The State of Bombay and others* (1).

(1) A.I.R. 1952 S.C. 181

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The spirit or purpose of the statutory provision which empowers Government to transfer cases from one Tribunal to another after recording its reasons for doing so, inclines me to the belief that the provision is directory and not mandatory. It has been enacted with the object of the inspiring confidence in the fairness and impartiality of orders of Government and of showing to the public at large that orders of transfer are not made want only or capriciously or with the object of favouring one party or injuring another. It empowers Government to transfer cases from one tribunal to another and specifies the manner in which the power shall be exercised. The provision requiring Government to specify the reasons on which the order of transfer is based does not relate to the essence of the thing to be performed and compliance with its terms is a matter of convenience rather than of substance. A failure to comply with this provision is not likely to result in any injury or prejudice to the substantial rights of interested persons, or in the loss of any advantage, the destruction of any right or the sacrifice of any benefit. On the other hand, insistence on a strict compliance with it is likely to result in serious general inconvenience or injustice to hundreds of innocent persons who have no control over Government without promoting the real aim and object of the legislature. The power to transfer is not so limited by the direction to give reasons that it cannot be exercised without following the directions given. No penalty has been provided for failure to comply with the terms of the provision and the enactment is silent in regard to the consequence of non-compliance. No substantial rights depend on a strict observance of this provision ; no injury can result from ignoring it; and no Court can declare that the principal object of the legislature that cases should be

capable of being transferred has not been achieved. Considerations of convenience and justice plainly require that this provision should be held to be directory and not mandatory. In *Brij Lal v. State of Patiala and another* (1) a question arose whether the requirement imposed by Section 238 of the Punjab Municipal Act that the State Government shall record the reason for superseding a Municipal Committee was directory or mandatory. The Court held that the statutory provision which pertains to an official action is generally construed as directory rather than mandatory. In *Prabhu Dayal Himmat Singh v. The State Government of Punjab*, (2), a Division Bench of this Court consisting of Gosain J. and Grover J. was called upon to deal with a case very similar to the one which is now before us for consideration. The learned Judges observed as follows:—

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“It is next urged that the transfer of the proceedings pending before the old Tribunal under section 33-B of the Act to the new Tribunal was bad as no reason has been stated, which is necessary to do under Section 33-B. Nothing, however, has been stated showing that any prejudice was caused to the petitioners in this behalf. The provision with regard to reasons being given for transfer is directory and not mandatory. Section 33-B does not lay down that the order of transfer will not be effective if the reasons therefor are not given. The omission to give reasons, therefore, cannot invalidate the order of transfer.”

(1) A.I.R. 1957 Punj, 100

(2) C.W. 80 of 1958

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I am aware that a contrary view has been taken in VI Factory Journal Reports 278, in which a Division Bench of the Allahabad High Court held that an order withdrawing a reference made by the State Government which does not specify the reasons for withdrawal is invalid, but unfortunately the question whether the provision is directory or mandatory, does not appear to have been agitated before the learned Judges.

The proceedings in the case now before us for consideration were transferred from the Second Industrial Tribunal to the Punjab Industrial Tribunal on the ground only that the term of the Second Industrial Tribunal had come to an end and some provision had to be made for the disposal of the cases. This is a perfectly valid reason and the State Government should have had no difficulty in embodying it in the order by which the proceedings were removed. Its failure to do so. cannot, however, invalidate the order. Even in the absence of an express statutory provision in this behalf, the Government has inherent right to withdraw a dispute from one Tribunal and to refer it to another. (*Minerwa Mills Ltd. v. Workers of the Minerwa Mills and another*) (1). In any case, no person has a vested right to have his case heard and decided by a particular Tribunal. No prejudice whatsoever has been caused to the petitioner or to the respondents by virtue of this transfer.

For these reasons, I would uphold the order of the learned Single Judge and dismiss the appeal with costs.

GOSAIN, J.—I agree.

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(1) VI F.I.R. 278
(2) A.I.R. 1953 S.C. 505

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