Uttar Pradesh Industrial Disputes Act

Sec. 2 (z) of the U.P. Industrial Disputes Act

Apprentice – Excludes – Burden is on the person claiming to be workman to so prove
Burden of Proof – Is on the apprentice to prove that he is a workman in support of his claim
Workman – Is – the burden is on the apprentice to prove in substantiation of his claim

An apprentice claimed that he was continued as a fitter after completion of training and hence he had become a workman u/s. 2(z) of the U.PI.D. Act, pari materia with Sec. 2(s) of the Act. He contested his termination for noncompliance of Sec. 25F of the Act. His challenge before the Labour Court failed. His petition before the High Court also met with same result. The High Court held that the burden to prove that he was a workman rests on him, the claimant apprentice, which he failed to discharge. His petition was dismissed.

Ravi Kumar v. State of U.P. & Ors., 2008 (118) FLR 888 : 2008 LLR 1166 (All.HC) CMWP 31964 of 2008 dt. 8-7-2008

"In fact the labour…….work at the different times." *(Page: 892, Para: 14)*

"It has to be kept…….by the Labour Court." *(Page: 892, Para: 14)*

Sec. 2(z) of U.P. I.D. Act

Secretary – Of Co-operative Bank whether a workman or not burden of proof is on him
Burden of Proof – Lies on the secretary of Co-operative Bank to prove whether a workman or not by leading evidence
Workman – Or not burden lies on the secretary claiming to be so in his contest against termination

The termination of a secretary of Co-Operative Bank was under challenge. The award of the labour court in answer was in his favour. The employer challenged the legality and validity of the award before High Court. The High Court set aside the award for the reason that the burden of proof that the employee was not in managerial or administrative capacity but a workman was not discharged by the employee concerned. The employer averred that he was working in managerial or administrative capacity an averment which remained uncontroverted. The award of reinstatement was set aside since no evidence was led by the employee to prove termination illegal and he was a workman by leading evidence when the burden of proof lies on him.

District Administrative Committee, U.P.P.A.C.C.S.C. Services v. Secretary-cum-G.M., District Co-op. Bank Ltd., 2010 III CLR 409 (All.HC) WC 2331 of 2000 dt. 1-7-2010

"In para 19 of the…….of a restricted jurisdiction." *(Page: 412, Para: 12)*

Sec. 2(z) of U.P. Industrial Dispute Act

Apprentice – Is not a workman u/s. 2(z) of U.P. Industrial Disputes Act
Workman – U/s. 2(z) of U.P. Industrial Dispute Act excludes an apprentice

An Apprentice plumber appointed under the Apprentice Act is not a workman u/s. 2(z) of U.P. Industrial Disputes Act, when he failed to show after completion of training period that he was engaged or employed as a workman or there was a de novo contract. Hence the award holding him as workman was set aside.

Kanpur Jal Sansthan v. Presiding Officer, Industrial Tribunal & Anr., 2011 I LLJ 600 : 2010 (127) FLR 231 : 2010 III CLR 534 (All.HC) WC 41704 of 2000 dt. 17-8-2010

"In Mukesh K. Tripathi…….issued to the respondent." *(Page: 603, Para: 15)*

Sec. 2(z) of U.P. Industrial Dispute Act, Sec. 2(d)(1) & 6 (2) Sales Promotion Employees (Condition of Service) Act

Area Sales Manager – Excludes – A workman as his work is supervisory in nature
Sales Promotion Employee – Once promoted as Area Sales Manager he cannot be terminated for unsatisfactory work but only could be reverted to his original post
Supervision and Control – Over the medical representative being the function of Area Sales Manager he is under the exception to Sec. 2(d)(1) of 1976 Act
Workman – Excludes – Area Sales Manager, as his work is supervisory in nature
Reversion – Is the natural corollary of a promoted Area Sales Manager for unsatisfactory work during probation and not termination
Termination – Illegal of an Area Sales Manager on promotion for unsatisfactory work during probation instead he be only reverted

Respondent was appointed first as a Sales Promotion Employee and then promoted as Area Sales Manager in the petitioner-company. While on probation, his services were terminated. The Tribunal rejected the contention of the petitioner that the respondent was not a workman u/s. 2 (s) of the Act. The Tribunal held him as a workman and that he being a probationer his services could not have been terminated on the ground of unsatisfactory work holding his termination stigmatic and hence required an enquiry. The Tribunal directed him to reinstate with continuity of service and payment of full back wages. The High Court held that Area Sales Manager is not a workman for the reason that he was supervising 5 medical representatives and was initiating disciplinary proceedings and as such he exercised supervision and control over them bringing him under the exception to Sec. 2(d)(1) of 1976 Act being employed in a supervisory capacity. Hence the High Court partly set aside the award and directed him to reinstate only in the post of sales promotion employee with 50% back wages. The order of termination was bad for the only reason that if his work was not satisfactory during probation as ASM he should have been reverted to his original post of SPE and not out service itself.

M/s. Pfizer Ltd. v. State of U.P. & Ors., 2010 IV LLJ 104 : 2010 (125) FLR 350 : 2010 LLR 586 (All.HC) WC 68844 of 2009 dt. 26-3-2010

"The Industrial Tribunal…….in its entirety." *(Page: 105, Para: 3)*

"In the case on hand…….post instead." *(Page: 115, Para: 37)*

"Taking into consideration…….as to costs." *(Page: 116, Para: 42)*

Sec. 4-K of U. P. Industrial Disputes Act, 1947
Reference – Is bad if the persons by affidavits have stated that they were not employees of the petitioner there being no industrial dispute
Industrial dispute – For a reference not in existence if the persons have stated by an affidavit that they are not employees of the petitioner employer

Where there is no dispute in respect of 21 employees out of 51, which is proved on the basis of their affidavits stating that they are no more employees of the petitioner employer, the order of the Government making reference to the Labour Court regarding termination of these 21 persons with other 30 employees is liable to be set aside.

S.C.T. Ltd. Ghaziabad v. State of Uttar Pradesh & Ors., 2008 I LLJ 191: 2007 (115) FLR 111: 2008 I LLN 133 (All.HC) CMWP 30204 of 2003 dt. 13-8-2007

"In view of…….said reference order," *(Page: 192, Para: 7)*

"Let the reference…….remaining 30 persons." *(Page: 192, Para: 8)*

Sec. 4- K of U.P. Industrial Dispute Act

Delay – If unexplained reference and claim both held to be stale
Reference – Stale if delay remained unexplained

No explanation given for delay in raising the dispute of termination. The Court held that there was no dispute and the matter should not have been referred. Hence the claim of workman has become stale and reference bad.

M/s. Obeetee Pvt. Ltd. v. State of U.P. & Ors., 2010 (124) FLR 345 (All.HC) CMWP 25106 of 2008 dt. 10-12-2009

"I have considered the…….Apex Court judgment." *(Page: 347, Para: 9)*

Sec. 4-K of U.P. Industrial Dispute Act

Preliminary Issue – Whether workman or not to be heard together with other issues at the final stage
Workman – Whether or not need not be required to be heard as a preliminary stage
Interlocutory Order – Refusing to take up the issue whether the employee was a workman or not as a preliminary issue cannot be interfered with in writs

An application was filed by the petitioner stating that the respondent No. 4 is not a workman. Tribunal refused to hear the issue as a preliminary issue. The High Court held that it shouldn't interfere against an order passed at interlocutory stage of a proceeding and the same will be heard together with other issues at the final stage. Hence petition dismissed summarily.

Ajanta Glass Works, Sasni & Anr. v. State of U. P. & Ors., 2010 (125) FLR 413 : 2010 II CLR 349 (All.HC) CMWP 8296 of 2010 dt. 25-2-2010

"By the impugned order…….stage of a proceeding." *(Page: 414, Para: 6)*

Sec. 4-K of U.P. Industrial Dispute Act

Reference – Under U.P. Industrial Disputes Act is not affected by the application by virtue of Rule 2(10) of the Rules

Discretion vested in the State Government to make reference u/s. 4-K of U.P. Industrial Disputes Act is not affected by the application because Rule 4-B mentions that the application has to be made under Rule 2(10) for reference of dispute to the Boards, Courts or Labour Courts or Tribunal.

Workmen of M/s. Durga Enterprises Pvt. Ltd. v. Industrial Tribunal (5), Meerut & Anr., 2010 (127) FLR 465 : 2011 LIC 296 (All.HC) CMWP 33247 of 1991 dt. 19-8-2010

"At this stage, Counsel…….Industrial Dispute Act." *(Page: 466, Para: 6)*

Sec.4 K of UP ID Act

U.P. Co- op. Societies Act – Will prevail over I.D Act being a special Act
Reference – Made by the State Government regarding a dispute of an employee of a Co-op. Society under ID Act will not prevail
I.D Act – Will not apply for a reference where the dispute of employee pertains to Co. Op. Societies Act

A reference made by the State Government on a dispute concerning the termination of the workman of U.P. Co. Op. Society is without jurisdiction for the reason that U.P. Co. Op. Societies Act being a special Act it will prevail over I. D. Act. A reference and the award made there on was quashed and set aside.

District Administrative Committee & Anr. v. Presiding Officer, Labour Court, Bareilly & Anr., 2008 (117) FLR 916 (All.HC) CMWP 36355 of 2007 C/W 12015 of 2008 dt. 18-3-2008

"In Ghaziabad Zila Sahakari…….Federation Ltd. And another." *(Page: 918, Para: 7)*

Sec. 4-K of U.P. Industrial Dispute Act

Industrial Dispute – Can be raised by a union not party to the settlement though not registered or recognized
Settlement – Not registered u/s. 6B of U.P.I.D. Act is not binding on the other union which is not party
Binding – Excludes – If the settlement is not registered u/s. 6B of U.P.I.D. Act on the union not a party to a settlement
Registration – Is a must for the binding nature of a settlement u/s. 6B of U.P.I.D. Act
Reference – Can be made by the union though not recognized or registered against an unregistered settlement made by another union

If there are two unions, out of which one is recognized by the company and the other not it cannot be said that a settlement arrived at but not registered u/s. 6B of U.P.I.D. Act by the union recognized and registered erases an industrial dispute because that settlement unless registered was not binding on the other union. The union raising the industrial dispute challenging the settlement contends that the only the workmen of the recognized union were re-employed whereas others were laid off. Thus the contention of the petitioner company that there was no dispute when the reference was made cannot be accepted. Hence a reference can be made at the instance of a union not recognized and registered.

M/s. LML Limited v. State of U.P. & Ors., 2011 (128) FLR 589 (All.HC) CMWP 22896 of 2008 dt. 17-9-2010

"Learned Counsel for…….the recognized union." *(Page: 595, Para: 22)*

"Thus in view of the…….reference was made." *(Page: 595, Para: 23)*

Sec. 4(k) of U.P. I.D. Act

U.P. Co-operative Societies Act – Will prevail over U.P. Industrial Disputes Act
U.P. Industrial Disputes Act – Does not prevail over U.P. Co-operative Societies Act

The jurisdiction of the U.P. Industrial Disputes Act cannot be invoked because the provisions of the U.P. Co-operative Societies Act will override the U.P. Industrial Disputes Act and hence Primary Agricultural Co-operative Credit Centralized Services Regulation will prevail since that Act is a specific and statutory legislation.

District Administrative Committee, U.P.P.A.C.C.S.C. Services v. Secretary-cum-G.M., District Co-op. Bank Ltd., 2010 III CLR 409 (All.HC) WC 2331 of 2000 dt. 1-7-2010

"Now, coming to the…….cannot be invoked." *(Page: 413, Para: 15)*

Sec. 4-K of the U.P. Industrial Dispute Act

Central Government – Is the Appropriate Government for Hindustan Cables Ltd. being a Government of India Undertaking

Appropriate Government – Is the Central Government for Hindustan Cables Ltd. being a Government of India Undertaking
Reference – By State Government against a dispute raised by the workmen of Hindustan Cables Ltd. is not maintainable the Appropriate Government being Central Government

Petitioner being a Government of India Undertaking, Central Government is the appropriate authority to make reference and not the State Government. However despite this State Government had made a reference. This reference is not maintainable. Hence the order passed by the Tribunal on the reference made by the State Government was held to be not sustainable.

Hindustan Cables Ltd., Allahabad v. Presiding Officer, I.T.-I Allahabad & Ors., 2010 IV LLJ 788 : 2010 II CLR 863 (All.HC) WC 6541 of 1998 dt. 1-7-2010

"The learned counsel…….of the matter." *(Page: 791, Para: 11)*

"In the case of the…….decided accordingly." *(Page: 791, Para: 12)*

Sec. 4K

Reference – The jurisdiction of labour court is circumscribed by it
Labour Court – Has no jurisdiction to pass an order beyond the terms of reference
Jurisdiction – The labour court has none to beyond the reference
Reengagement – Of workman after an award passed by a labour court after answering the reference of termination as proper is illegal

Reference was made only to determine whether termination order of petitioner was valid or not and if not to what relief he was entitled. The Labour Court held the termination proper but ordered reengagement. The employer challenged the order on the ground that the Labour Court exceeded its jurisdiction in making the order of reengagement. The High Court allowed the petition. The High Court held that once the Labour Court held the termination valid, it has no further jurisdiction to order reengagement. Hence the order of the Labour Court was quashed and set aside.

Super Cassettes Industries, Ltd. v. State of Uttar Pradesh & Ors., 2010 IV LLN 113 (All.HC) WC 23090 of 1995 with 23822 of 1995 dt. 1-4-2010

"Learned counsel…….the re-engagement." *(Page: 114, Para: 4)*

Sec. 4-K of U.P. Industrial Dispute Act

Industrial Dispute – Has to be entertained if the dispute exists or is apprehended irrespective of the period elapsed

The words 'exists' and 'apprehend' appearing in Sec. 4K U.P.I.D. Act has to be read in conjunction with the words 'at any time' and these words are complementary to each other. There is one limitation of time, namely, that it can be done only so long as the dispute exists or is apprehended as to the power of the Conciliation Officer to settle a dispute. Consequently, if it is opined that a dispute exists, then it becomes immaterial about the number of years that had elapsed.

Divisional Marketing Manager v. State & Ors., 2011 (129) FLR 377 : 2011 IV LLJ 784 : 2010 LIC 4402 (Utt.HC) WP 885 to 891, 1091 to 1096, 1105, 1106 & 340 of 2008 WP 889 of 2008 dt. 19-3-2010

"In the light of the…….make the reference." *(Page: 388, Para: 27)*

Sec. 2(a)(i) U.P. Industrial Dispute Act

Appropriate Government – To British India Corporation Ltd. is Central Government

State Government – The reference made u/s. 4K of U.P. I.D. Act of a dispute of an establishment carried on by and under the authority of Central government is invalid
Award – Made by a tribunal upon a reference under the provision of State Act on a dispute pertaining to an establishment carried on by an under the authority of Central Government is invalid
Central Government – Is the Appropriate Government to the British India Corporation Ltd. after acquisition

The Appropriate Government to the British India Corporation Ltd. following promulgation of the British India Corporation Ltd. (Acquisition of Shares) Act, 1981 is Central government as the industry was being carried on by and under the authority of Central Government. An award made in favour of the workman by a reference from State Government under the provisions of the State Act is therefore invalid. The award made was set aside.

British India Corporation Ltd. v. Union of India & Ors., 2011 II LLJ 763 : 2011 (128) FLR 531 : 2010 IV LLN 688 : 2011 I CLR 259 (All.HC) WC 5348 of 2002 dt. 18-11-2010

"It is urged…….are vitiated……." *(Page: 765, Para: 7)*

"One of the reasons…….incidental thereto." *(Page: 767/768, Para: 15)*

"It is obvious that under…….running the industry." *(Page: 768, Para: 16)*

Sec. 4K of U. P. I. D. Act
Jurisdiction – Labour Court under U.P.I.D. Act has got to adjudicate the termination of employee of a Co-Op. Society
Labour Court – Under U.P.I.D. Act has the jurisdiction to adjudicate the dispute of termination of a workman working in a Co-Op. Society
Co-Op. Society – Employees can resort to U.P.I.D. Act if employer had acquiesced in the written statement
Acquiesced – If employer in the written statement stated that Labour Court under U.P.I.D. Act has jurisdiction later it cannot turn around to oppose it

The workman employed by U.P. co-op. Bank Ltd governed by the Co-Operative Societies Act challenged his discontinuance in service. The employer filed his written statement. He did not raise any objection that the Labour Court under I.D. Act has no jurisdiction to adjudicate. The matter lingered for 25 years. When it reached almost finality and when the High Court had remanded the matter for a limited purpose of finding whether the workman had completed 240 days of service and the same was recorded in favour of the workman, the employer challenged the very jurisdiction of the Labour Court in view of a judgment of Apex Court delivered in the case of *Gaziabad Zila Sahakari Bank v. Additional Labour Commissioner & Ors.*, 2007 (113) FLR 50, in which it was held that the U.P. Co-Op. Societies Act being a special Act will prevail over U.P.I.D. Act being a General Act. Rejecting the contention the High Court held that the employer had accepted that Labour Court was the appropriate Forum for adjudication of an industrial dispute in his written statement. Hence he had acquiesced to the jurisdiction of the Labour Court. Moreover 25 years has already elapsed from the date of raising the dispute and hence it will amount to a travesty of justice if the plea was accepted. The High Court upheld the jurisdiction of Labour Court for this reason.

M/s. U.P. Co-operative Bank Ltd. v. Presiding Officer, Labour Court Ist U.P. Kanpur & Anr., 2009 LIC 3704 (All.HC) CMWP 23212 of 2008 dt. 16-2-2009

"However in the…….Bank Limited (supra)." *(Page: 3707, Para: 20)*

"This Court further…….evidence on record." *(Page: 3708, Para: 25)*

Sec. 4-K U. P. Industrial Disputes Act

Appropriate Government – Has no power to adjudicate a dispute on merit
Reference – The appropriate govt. cannot refuse to make a reference adjudicating on merit

Right – Of the aggrieved party cannot be destroyed by the refusal of the appropriate govt. to make a reference by adjudicating the matter on merit

The Appropriate Government refused to refer the dispute raised by the Union of the school Karmachari Sangh for adjudication on the ground that the dispute raised was invalid and the union was incompetent to raise it. Setting aside the said order the High Court held that the order of the govt. being based on its subjective satisfaction is an administrative order. That order by itself cannot destroy the right of an aggrieved party inasmuch as the appropriate govt. has no power to adjudicate a dispute on merit. These questions fall within the ambit and power of the Tribunal/Labour Court. Allowing the petition of the Union the High Court directed the govt. to consider the matter for a reference.

Royon International School Karmachari Sangh Through its President, Sector-V Noida, Gautam Budh Nagar v. State of U.P. & Ors., 2008 (119) FLR 84 : 2008 LLR 1261 (All.HC) CMWP 27426 of 2006 dt. 8-8-2008

"Reference order is…….Court for adjudication" *(Page: 84, Para: 4)*

Sec. 39 & 4K of UPID Act
Delegation of Power – By the Central Government to the State Government of a Central Government company does not empower it to make a reference to the tribunal constituted under State Government
Reference – By the State Government to a tribunal constituted by the State Government of a dispute of a Central Government company is unsustainable
Tribunal – Constituted by the State Government cannot answer a dispute of a Central Government company even if referred by the State Government on receiving delegation by notification
Sec. 10 – Alone appropriate for a reference to be made by the State Government of a dispute of a Central Government company no matter Central Government has delegated power

Even when a notification u/s. 39 is issued by the Central Government empowering the state authority to refer the dispute even in the case of Central Government company, a reference could be made only to the tribunal constituted by the Central Government by the State Government u/s. 10 of the I.D. Act and not u/s. 4K of the U.P.I.D. Act as is the case in the instant matter. For this reason the award made by a reference under the State Act to a tribunal constituted by the State Government was held illegal and set aside.

British India Corporation Ltd. v. Union of India & Ors., 2011 II LLJ 763 : 2011 (128) FLR 531 : 2010 IV LLN 688 : 2011 I CLR 259 (All.HC) WC 5348 of 2002 dt. 18-11-2010

"The notification under…….cannot be accepted." *(Page: 768, Para: 18)*

Sec. 11 A
Sec. 4-K- U .P. Industrial Disputes Act

Section 11 A – Scope of the Act is limited and different from Section 4-K of U .P. Industrial Disputes Act
Section 4 K of U .P. Industrial Disputes Act – Scope is different from Sec.11A of the Act
Concurrent Findings – Of domestic enquiry and the Labour Court if is to the effect that charges not proved on a fact there is little scope to award punishment

The workman, a conductor raised an industrial dispute after being terminated from his services, on charges of not issuing tickets and refusing to give the way bill to the checking staff even though they were not proved before the domestic enquiry or before the Labour Court. The Labour Court held that the way bill was filled up and only totaling remained to be done when the bus was checked and hence charges against the workman are not proved beyond doubt and accordingly discharged the workman of both charges. The High Court upheld the decision .Besides the scope of Sec.4-K of the U. P. Industrial Disputes Act is different from that of Sec.11-A of the Act.

U.P. State Road Transport Corporation through Regional Manager, Ghaziabad v. State of U.P. & Ors., 2008 (119) FLR 710 (All.HC) CMWP 15959 of 1997 dt. 12-8-2008

"With regard to…….punishment to him." *(Page: 713, Para: 6)*

Sec. 6 H (1) UP ID Act

Computation – Cannot be made u/s. 6H(1) on disputed question of fact without adjudication reference u/s. 4K or Sec. 6H(2) of U.P.I.D. Act is proper
Adjudication – Cannot be made u/s. 6H(1) of U.P.I.D. Act
Wages – Post award – Determination of can be done u/s. 6H (2) and not u/s. 6H(1) of U.P.I.D. Act
Reinstatement – If not awarded post award wages are not computable u/s. 6H(1) of U.P.I.D. Act

The labour court holding the termination illegal gave and ex-parte award stating that he was entitled for such benefits and compensation as provided under the law. There was no specific order for reinstatement. The workman filed an application u/s. 6H(1) of U.P.I.D. Act. The labour court computed benefit towards arrears of wages up to the period February 1999. The workman made a second application for the benefit of the post award wages. This was rejected by the labour court u/s. 6H(1). The High Court upheld the rejection since there was no specific order of reinstatement and payment of wages thereafter. The High Court held that the remedy lies in invoking Sec. 6H(2) of the Act or a reference u/s. 4K of U.P.I.D Act. This is because the disputed question of fact could not be adjudicated u/s. 6H(1) of the Act. The writ petition of the workman was dismissed.

Manik Chandra Srivastava v. Regional Deputy Labour Commissioner, Gorakhpur & Ors., 2009 (121) FLR 227 (All.HC) CMWP 31505 of 2004 with CMWP 362 of 2009 dt. 5-2-2009

"In my opinion…….U.P. Industrial Disputes Act." *(Page: 229, Para: 7)*

"In view of the…….the writ court." *(Page: 229, Para: 10)*

Sec. 6 H (1) of UP ID Act
Recovery Application – By additional commissioner is not maintainable when workman refused to join
Maintainability u/s. 6H (1) – Not possible – When workman refused to join duty as directed by the court
Muster Roll Employee – Cannot be regularized
Reinstatement – Of a muster roll employee can be only as a muster roll employee and not as a regular employee

The termination of a daily wager was held illegal by the labour court. But relief of only compensation was granted without any orders for reinstatement. His petition before the High Court succeeded in which he was reinstated in the same post as a daily wager. It was the contention of the workman that he was not allowed to join his duties and hence his application u/s. 6H(1) for recovery of wages for the period from 12.11.2005 to 30.6.2006 and another application for the period from 1.7.2006 to 30.4.2007 was allowed. The workman received the wages so computed as this was not challenged by the employer. He again made an application for wages for the period 1.5.2007 to 30.11.2007 u/s. 6H(1) and a recovery certificate was issued. This was challenged by the employer because it was his contention that the workman refused to join his duties unless given regular post. Allowing the petition the High Court held that the order of the High Court was for reinstatement on the post on which he was working at the time of his termination i.e. on the post of muster roll. He was entitled for wages of a muster roll and not entitled for regular wages. For regular wages appropriate orders from employer or the labour court under an award has to ensue provided he joins his duties. Hence the orders issued for recovery of wages was quashed.

U.P. Power Transmission Corporation Ltd. v. Saheb Lal Kureel & Anr., 2009 (121) FLR 501 (All.HC) CMWP 26758 of 2008 dt. 25-3-2009

"The stand taken…….with the award." *(Page: 503, Para: 7)*

"In view of…….the High Court." *(Page: 503, Para: 8)*

Sec. 4K of U.P. I.D. Act & Rules 40 of U.P. Industrial Dispute Rules, 1957

U.P. I.D. Rules – The rules do not require the espousal of a dispute by 5 representatives of workmen in the absence of a union
Representatives of workmen – Need not espouse the cause of workmen under U.P. I.D. Rules in the absence of a union
Union – if absent there is no requirement in law that at least 5 members are to be appointed as representatives of the workman for espousing the cause

Rule 40 of the U.P. Industrial Disputes Rules, 1957 states that in absence of Union, there is no requirement in law that at least 5 members are to be appointed as representatives of the workmen for espousing the cause. Thus the finding recorded in the impugned order that application has to be made by at least by 5 workmen was totally uncalled for. The award was set aside and matter remanded to decide the reference on merit by a speaking order.

Workmen of M/s. Durga Enterprises Pvt. Ltd. v. Industrial Tribunal (5), Meerut & Anr., 2010 (127) FLR 465 : 2011 LIC 296 (All.HC) CMWP 33247 of 1991 dt. 19-8-2010

"In view of the aforesaid…….1957 as noted above." *(Page: 466, Para: 5)*

Sec. 6 (2-A) of the U.P. Industrial Dispute Act

Relief as an ex gratia – By the Tribunal held to be without jurisdiction and such relief cannot be granted nor is contemplated u/s. 6 (2-A) of the U.P. I. D. Act

Relief of granting three months wages as an ex gratia by the Tribunal on finding that the termination was illegal, was held to be without jurisdiction and such relief cannot be granted nor is contemplated u/s. 6 (2A) of the U.P. Industrial Disputes Act.

M/s. Larsen & Toubro Ltd. Shakti Nagar v. State of U.P. & Ors., 2010 (124) FLR 204 (All.HC) CMWP 11488 of 1988 dt. 18-8-2009

"The power to grant…….the case may require." *(Page: 206, Para: 8)*

"A perusal of this…….U.P. Industrial Dispute Act." *(Page: 206, Para: 9)*

Sec. 6(2-A) of U.P. Industrial Dispute Act, 1947

Merit of the Charges – The labour court has no jurisdiction to straight away to enter into without finding the enquiry was unfair and improper
Enquiry – If vitiated for want of principle of natural justice then only the merit of the charges can be gone into by the Labour Court
Jurisdiction – The Labour Court has none to straight away go into the merit of charges without finding the enquiry was not fair and proper

It is settled proposition of law that the labour court cannot straight away consider the merit of the charges. It can go into the merit of the charges only when the domestic enquiry was found not fair and proper and the enquiry officer had proved the charges. In this case the labour court did not enter into a finding whether the domestic enquiry was vitiated or not. Hence High Court held that the labour court had exceeded its jurisdiction. The matter was remitted to the tribunal to consider whether domestic enquiry was held in a fair and proper manner in consonance with principle of natural justice. The award was quashed and set aside.

Uttarakhand Transport Corp. v. Presiding Officer, Labour Court, Dehradun & Ors., 2011 (129) FLR 700 (Utt.HC) WP 882 of 2008 dt. 21-6-2010

"Once a finding on…….and another." *(Page: 701, Para: 7)*

"In the light of the…….the aforesaid observation." *(Page: 701, Para: 8)*

Sec. 6(2A) U.P.I.D Act

Conductor – Reinstatement is proper if the charge of extraneous considerations or loss was not proved by non issue of tickets especially when the checking staff issued the tickets with fine duly accepted by the passengers
Extraneous Consideration – If not the reason for not issuing tickets or loss caused thereby punishment of dismissal is disproportionate to the alleged misconduct
Back wages – Not payable on the principle of "no work, no pay"

The Labour Court has got discretionary power to reduce the rigour, of the punishment on the doctrine of proportionality. In exercise of that power, the Labour Court in this case reinstated the conductor but denied back wages on the principle of "no work and no pay". The reason for reinstatement is that though it was a fact that there were passengers who had boarded the bus but possessed no valid tickets not because the conductor had collected the money but not issued the tickets. It was also a fact that there was no proof that by not issuing tickets, the conductor had benefited for himself. In absence of any charge of extraneous consideration or loss of revenue to the corporation the punishment of removal was held disproportionate with the misconduct. It was a fact that the checking staff had issued tickets and imposed fines on the passengers, which was not objected to by the passengers. Hence modifying the award of full back wages the Court denied the same in toto on the principle of "no work, no pay", it partly allowed the petition of the employer but upheld the reinstatement.

U.P. State Road Transport Corporation through Regional Manager, Allahabad v. State of U.P. & Ors., 2008 (119) FLR 489 (All.HC) CMWP 11119 of 1994 dt. 2-9-2008

"Upon hearing the learned counsel…….failed to issue the tickets." *(Page: 491, Para: 4)*

"The Labour Court…….the grant of back wages quashed." *(Page: 491, Para: 6)*

Sec. 6 (2-A) of U.P. Industrial Dispute Act, 1947

Misconduct – If one of abusing senior officers in a filthy language no matter by a union leader will attract the punishment of dismissal
Union Leader – Abusing senior officers in a filthy language in front of subordinate staff can be dismissed
Dismissal – Of a union leader abusing senior officer in a filthy language in front of subordinate staff is not disproportionate
Abuse in Filthy Language – By a union leader of the senior officers attracts his dismissal

The Appellant Union leader abused the officers of the Management in a filthy language in front of their subordinate staff and the officers who were abused were the Administrative officer and Deputy General Manager. These officers were humiliated and it is the onerous duty of the management to protect its officers. Therefore the Single Judge held that the Labour Court has rightly held the order of dismissal and the discretion exercised by the Labour Court u/s. 6 (2A) of U.P.I.D. Act was neither perverse nor the punishment awarded was disproportionate with the gravity of misconduct.

Ravindra Sharma v. Labour Court & Ors., 2011 (128) FLR 1025 : 2011 III LLJ 770 : 2011 LLR 495 (Utt.HC) WP 2742 of 2001 dt. 11-5-2010

"The Labour Court considered…….gravity of misconduct." *(Page: 1029, Para: 14)*

Sec. 6 (2-A) U.P.I.D.A.

Misconduct – Diminishes even if the conductor accommodated by not issuing tickets to the passengers of the ill-fated truck met with an accident on the route of the bus
Emergency – Situations leading to impulsive behavior of a conductor in accommodating passengers of the truck met with an accident without issuing tickets does not warrant punishment of dismissal
Dismissal – Of a conductor for not issuing tickets to 20 passengers of a truck boarded in his bus due to accident being not equated to misconduct is liable to be set aside
Conductor – Accommodating passengers of a truck met with an accident without issuing tickets being an impulsive behaviour cannot be punished with dismissal situation being emergent

In this case the employer terminated the services of a bus conductor for the reason that he carried 20 passengers without issuing any tickets. The labour court did not give him any relief u/s. 6(2A) of U.P.I.D. Act. Upon challenge before High Court, it was noticed that the 20 passengers including some of them accommodated on the rooftop of the bus were actually comprised of a group of passengers travelling in a truck which met with an accident and as per request of the police they boarded the bus. This kind of human behavior in times of emergency is due to an impulsive nature and cannot be equated with any kind of misconduct associated with deliberate avoidance to issue proper tickets and hence is a fit case to be exonerated. The High Court setting aside the award reinstated him without back wages from the date of termination till the date of his joining duties.

Dilip Srivastava v. Presiding Officer, Industrial Tribunal, U. P. Kanpur & Anr., 2011 (130) FLR 393 : 2011 LLR 971 (All.HC) CMWP 77742 of 2005 dt. 13-5-2011

"The defence…….to take 20 passengers." *(Page: 394, Para: 2)*

"Accordingly…….to the petitioner." *(Page: 394/395, Para: 5/6)*

Sec. 6B of U.P. Industrial Dispute Act

Settlement/Agreement – Arrived between employer and employee/union should be registered u/s. 6B of U.P.I.D. Act in order to be binding
Registration – U/s. 6B of U.P.I.D. Act is required in case of Settlement/Agreement in order to be binding

A settlement/agreement in order to be binding requires the same to be registered u/s. 6B of U.P. Industrial Dispute Act. Since the petitioner failed to prove that the settlement was registered then the same cannot be binding upon the workmen of the union which is not a party to the settlement. Hence it is free to raise an industrial dispute irrespective of it has not yet registered or recognized.

M/s. LML Limited v. State of U.P. & Ors., 2011 (128) FLR 589 (All.HC) CMWP 22896 of 2008 dt. 17-9-2010

"Even otherwise the…….Industrial Dispute Act." *(Page: 595, Para: 21)*

"Learned Counsel for…….the recognized union." *(Page: 595, Para: 22)*

Sec.33-C (2) & 6-B (2) of U.P.I.D Act

Conciliation Proceedings – If an agreement entered outside it the same will be void unless registered in the manner provided u/s.6 B (2) OF U.P.I.D Act
Agreement – If it is made outside the conciliation unless it is registered u/s. 6B (2) of U.P.I.D. Act it is void
Section 6-B (2) of U.P.I.D Act – Stipulates that every agreement entered into outside the conciliation is to be registered to be valid

The workman offered to forego the benefits of past wages in terms of the award, provided the employer reinstated him as a fresh appointee in terms of the award. The employer accordingly entered into an agreement outside the conciliation proceedings and reinstated him without past wages. Notwithstanding this agreement the workman filed an application for past wages u/s. 33C(2) of the Act, which was allowed by the Labour Court. The same was challenged before the High Court. Upholding the award the High Court held that the Labour Court had committed no error or illegality in allowing the application because the employer had not registered the agreement made outside the conciliation proceeding under the provision of Sec. 6B(2) of U.P.I.D Act. Failure to register the agreement in the manner provided u/s. 6B(2) of U.P.I.D Act renders the same void.

U.P State Road Transport Corporation through its Dy. G.M., Estern Zone, Varansi v. State of U.P. through The Collector, Azamgarh & Ors., 2008 (119) FLR 15 : 2009 I LLJ 473 : 2008 LLR 1266 (All.HC) CMWP 19305 of 1988 dt. 22-7-2008

"If things are to be done…….cannot get benefit of it". *(Page: 18, Para: 14)*

"In my opinion…….in terms of the agreement". *(Page: 18, Para: 15)*

Sec. 6-B (3) of U. P. Industrial Disputes Act, 1947 and Rule- 27of U. P. Industrial Disputes Rules, 1957
Labour Commissioner – Who has not been duly notified as appellate authority u/s. 6B(3) of U.P. I.D. Act, cannot sit in appeal over the decision of duly notified Additional Labour Commissioner/Conciliation Officer
Conciliation Officer – Being a notified authority u/s. 6B(3) of the Act to register the agreement between the management and the workman non notified Labour Commissioner cannot sit in appeal
Notification – Is *sine qua non* for Labour Commissioner to sit in appeal over the decision of Conciliation officer

Labour Commissioner who has not been duly nominated by notification as appellate, has no authority u/s. 6B(3) of U. P. Industrial Disputes Act, 1947 to sit in appeal over the orders of the Conciliation Officer cum Additional Labour Commissioner who was duly nominated, directing him to register the agreement between the management and the workmen where in fact the Conciliation Officer is the notified authority for the same u/s. 6B(3) of the Act with Rule 27 of the rules made under the Act no matter he is the superior officer.

Hawkins Cookers Mazdoor Union & Anr. v. Labour Commissioner, Kanpur & Ors., 2008 I LLJ 1089 : 2007 (115) FLR 736 (All.HC) CMWP 64192 of 2003/05 dt. 7-8-2007

"The Labour Commissioner…….under the Act." *(Page: 1096, Para: 28)*

Sec. 6-E (2) (b) U.P. Industrial Disputes Act

Approval – U/s. 6-E (2) (b) of U.P.I.D Act if not taken the dismissal order is liable to be set aside
Liabilities – And proceedings are applicable to the U.P & Uttaranchal SRTC though pertains prior to reorganisation of the State of U.P

The workman was a conductor in the U.P State Road Transport Corporation, Dehradun. His services were terminated prior to the reorganisation of the State of U.P forming another State of Uttarakhand. The employer violated the U.P.I.D. Act by not taking approval for dismissal of the workman u/s. 6E(2)(b). His appeal before the disciplinary and appellate authorities including his complaint before the Labour Court was dismissed. His Writ Petition there against was allowed for the reason that the employer did not seek permission of the Tribunal before passing the dismissal order. The contention that the reorganized State of U.P and Uttaranchal SRTC has no concern with proceedings and liabilities occurring for the period prior to the reorganisation were rejected as he was appointed and absorbed in accordance with the notification issued by the Central Government by the Regional Authority of Dehradun.

Sanjeev Kumar v. P.O., Labour Court, Dehradun & Ors., 2011 III CLR 259 : 2012 (135) FLR 82 (Utt.HC) WP 72 of 2011 dt. 23-6-2011

"I have heard…….by his representative." *(Page: 262, Para: 7)*

"In view of the…….has not been followed." *(Page: 263, Para: 11)*

Sec. 6-E(2)(b) of UP ID Act and 33(2) (b) of the Act

Shambu Nath Goyal – The legal position enunciated by S.C. applies for adducing evidence by the employer at the earliest opportunity
Evidence – The employer has to adduce evidence at the earliest opportunity not after closing of evidence

The workman in a weaving department of a company was dismissed on charge of instigating workers to resort to "go slow" which amounts to misconduct. The Labour Court refused to accord approval for the dismissal as the management did not conduct any domestic enquiry, there was no proper evidence regarding the alleged misconduct and the charge sheet issued to the workman did not specify the sub-clause of the relevant Standing Order. The High Court held that even though opportunity was given to the employer he failed to adduce evidence. It was only when the evidence was closed they requested the court permission to produce more witnesses which was disallowed being contrary to the settled legal position enunciated by S.C. in the case of Shambu Nath Goyal and thus, the petition was dismissed.

M/s. British India Corporation Ltd. Cawnpore Wollen Mills Branch, Kanpur v. Presiding Officer, Industrial, Allahabad & Anr., 2008 (119) FLR 970 : 2009 LLR 146 (All.HC) CMWP 9564 of 1988 of 22-7-2008

"After hearing the…….not accepted by Tribunal." *(Page: 977, Para: 8)*

Sec. 6-H (1) of U.P I.D.Act

Leave Encashment – Not computable u/s. 6-H (1) of U.P I.D. Act
Section 6-H (1) of U.P I.D. Act – Is not open for a computation of leave encashment Pre-Award Wages – Not computable u/s. 6-H (1) of U.P I.D. Act
Post Award Wages – Computable u/s. 6-H (1) of U.P I.D. Act if the award merges with order of the High Court

The leave encashment is not amenable to be computed u/s. 6H (1) of U.P I.D. Act and similarly the pre-award wages are also out of bounds of the Court u/s. 6H(1) of U.P. I.D. Act. The remedy lies only with a reference. However, the post award wages is amenable to be computed in the proceeding u/s. 6H(1) of U.P. I.D. Act provided the award if any is merged in the order passed in a writ petition challenging the award.

U.P. Awas Evam Vikas Parishad v. State of U.P. & Ors., 2009 (122) FLR 717 (All.HC) CMWP 34086 of 2006 dt. 24-4-2009

"The Court finds that……..under section 6-H (1) of the Act." *(Page: 718, Para: 6)*

Sec. 6-H (1) of U.P I.D.Act

U.P. Industrial Disputes Act – Has no jurisdiction to adjudicate on the termination of an employee of Co-operative societies
U.P Co-operative societies Act, 1965 – Will prevail over U.P.I.D. Act so far as jurisdiction is concerned to adjudicate on the termination of their employees

Labour Court – Under U.PI.D. Act has no jurisdiction to adjudicate on the termination of employees of Co-operative Societies in U.P. State

The Labour Court has no jurisdiction to adjudicate on the dispute of termination of service of an employee working in a Co-operative Society in the State of U.P where a Special Enactment of U.P. Co-operative Societies Act, 1965 having enacted, it ousts the jurisdiction of the forum under U.P.I.D. Act. This matter is no more *res integra* being settled by the judgement of the Apex Court in the case of Ghaziabad Zila Sahakari Bank Ltd. (2007 (113) FLR 50 (SC)). Hence the High Court held for such employees the provisions of U.P Co-operative Societies Act, 1965, has exclusive jurisdiction.

Adhyaksh Prabandh Samiti v. Presiding officer, Labour Court, 7, Allahabad & Ors., 2010 (127) FLR 65 (All.HC) WP 4351 of 1994 dt 8-3-2010

“”For the aforesaid……. to be set aside.” *(Page: 68, Para: 6)*

Sec. 6-H (1) of UP ID Act

Award – A challenge by employer must disclose all relevant facts
Damages – The amount received from the employer u/s. 6 H (1) of UP ID Act will have to be treated if the employer fails to disclose the relevant facts before the court

A challenge to the award by the employer must disclose all relevant facts before the High Court. The same is true of the workman. In this case, the workman did not disclose that though he was not taken on duty in the crushing season 94-95 that he was taken on duty for the next crushing season. Due to an award in favour of workman, he was able to reap the benefits of Sec. 6 H(1) of U.P. I.D Act even after he was removed from service in the year 95-96 for embezzlement. The High Court did not permit the employer to get any amount from the workman so paid for the reason of withholding the necessary facts from the court. Similarly it was held that the workman was not entitled for wages beyond the period of crushing season 95-96 for not disclosing the relevant facts.

M/s. Sahkari Ganna Vikas Samiti Ltd. v. Industrial Tribunal Vth, Meerut & Anr., 2008 (118) FLR 230 (All.HC) CMWP 4968 of 1999, 11050 of 2001, 7591 of 2005 & 8 of 2007 dt. 9-5-2008

“The employee…….respondent employee.” *(Page: 236, Para: 14)*

Sec. 6 H (1)

Post award wages – Cannot be calculated in proceedings u/s. 6H(1) of U.P.I.D. Act
Jurisdiction – Cannot be invoked for calculating post award wages in proceedings u/s. 6H(1) of U.P.I.D. Act
Section 6H(1) of U.P.I.D. Act – Has no scope for calculating post award wages

Where the award was for reinstatement in casual post the claim of workman for wages of a regular workman was not in consonance with the award. Such claim could not be adjudicated u/s. 6H(1) of U.P.I.D. Act since it is not a “money due” under an award. It is well settled that post award wages cannot be calculated in proceedings u/s. 6H(1) of U.P.I.D. Act. Such claims can only be adjudicated u/s. 6H(2) or u/s. 4K of U.P.I.D. Act. The order was quashed and set aside.

U.P. State Electricity Board, Aligarh v. Presiding Officer, Labour Court, Agra & Ors., 2009 (123) FLR 340 (All.HC) CMWP 16095 of 1999 dt. 19-8-2009

“Further the Court…….of the Act.” *(Page: 343, Para: 8)*

Sec. 6H (1), 2 (y) of the U. P. I. D. Act and 33 C (1)

Increment – Is wage u/s. 2 (y) of the U. P. I. D. Act – No jurisdiction u/s. 6H(1)
Encashment of earned leave – Is wage u/s. 2 (y) of the U. P. I. D. Act – No jurisdiction u/s. 6H(1)
Casual leave – Is wage u/s. 2(y) of the U. P. I. D. Act – No jurisdiction u/s. 6H(1)
Bonus – Is wage u/s. 2(y) of the U. P. I. D. Act – No jurisdiction u/s. 6H(1)
Leave travel assistance allowance – Is wage u/s. 2(y) of the U. P. I. D. Act – No jurisdiction u/s. 6H(1)
Sec. 33C(1)– Or Sec. 6H(1) of U. P. I. D. Act cannot be invoked for recovery of money due for increment encashment of earned leave, casual leave, bonus and leave travel assistance allowance being wages
Wage – Includes – Allowances such as increment, encashment of earned leave, casual leave, bonus and leave travel assistance allowance being wages if not earned but under the condition of service
Earned wages – Flowing as allowances alone are capable of for recovery of money being not in the nature of wages
Jurisdiction – The forum u/s. 33C(1) has none to recover money due in respect of increment, encashment of earned leave, casual leave, bonus and leave travel assistance allowance
Money Due – When allowances are claimed u/s. 33 C(1) those allowances payable under the terms and conditions of service are not claimable but under active service alone

The question is whether the claim towards increment, encashment of earned leave, casual leave, bonus and leave travel assistance allowance could be claimed in proceedings u/s. 6H(1) of the U. P. I. D. Act. In this regard which allowances form part of wages is no more res integra. The Supreme Court in the case of *Bennet Coleman's* case 1969(19) FLR 32 and *Dilbagh Rai Jarry's* case 1973(27) FLR 428 had held that the definition "wages" was an allowance which from the term employment flows as not contingent on actual working. What is not allowance is what is earnable only by active service. Taking this into consideration the various allowances mentioned above when tested in touch stone of various judgments it transpires that none of these allowances can form part of wages as defined u/s. 2(y) of U. P. I. D. Act. Once it is said that they are part of wages it goes without saying that none of these amounts are capable of being claimed in proceedings u/s. 6 H(1) of the U. P. I. D. Act unlike u/s. 6H(2). The award computing all these allowances for payment in this forum is without jurisdiction. The order and recovery certificate were quashed and set aside.

M/s. Hindustan Aluminium Corporation Ltd. Renukoot, Mirzapur v. Dy. Labour Commissioner, Pipri, Mirzapur & Ors., 2009 (123) FLR 344 (All.HC) CMWP 23404 of 1988 dt. 13-8-2009

"In the light…….U. P. I. D. Act." *(Page: 347, Para: 10)*

Sec. 6-H (2) of the U.P. Industrial Dispute Act & 33C(2) of Central Act

Overtime Wages – U/s. 33C(2) if disputed by the employer coupled with no documentary evidence to support the claim is not maintainable
Section 33C(2) – Application for computation of overtime is not maintainable if employer disputes the claim with no legs to stand

Workman cannot claim overtime wages as a matter of right u/s. 6-H(2) of the U.P. Industrial Disputes Act which is pari materia to Sec. 33C(2) of Central Act when the said overtime wages was not only disputed by the employer but also there were no documentary evidence to establish that the workman did overtime work. Hence the High Court held that the Labour Court had correctly rejected the claim for overtime wages by the workman.

Rana Pratap Singh v. Labour Court & Ors., 2010 III LLN 97 : 2010 (125) FLR 822 : 2010 I CLR 916 (All.HC) WC 17574 of 1985 dt. 8-3-2010

"This being so, the…….under challenge presently." *(Page: 99, Para: 12)*

"Applying the above…….is well merited." *(Page: 100, Para: 15)*

Sec. 6-I (2) - U. P. Industrial Disputes Act and Sec. 36 of I.D. Act

Representation – By a legal practitioner cannot be objected at a later stage having not been objected initially
Consent – Of the Workman for representation is not necessary if he failed to take such objection in the initial stage itself

When the workman failed to take any objection against representation of the employer by a legal practitioner from the initial stages having his name being taken on records of the Labour Court though the workman was aware of it and the advocate with such authority continued to represent the employer, the workman cannot at a later stage raise any objection against his representation on the ground of want of consent. The High Court dismissed his writ petition objecting for the representation.

Hydro Electric Employees' Union, Lucknow & Anr. v. U.P. State Electricity Board & Anr., 2008 (118) FLR 1173 : 2009 I LLJ 573 : 2009 I LLN 152 : 2008 LIC 4158 (All.HC) CMWP 27480 of 2008 dt. 5-6-2008

"In the present case…….circumstances of the case." *(Page: 1175, Para: 4)*

Sec. 6-I of U.P. Industrial Dispute Act & Rule 40 of U.P. Industrial Dispute Rules

Representation – Once allowed unobjected by a legal practitioner for a considerable time it amounts to deemed or tacit consent not withdrawable at the whims of the workman
Deemed Tacit Consent – once given albeit without writing to represent by a legal practitioner the workman cannot later withdraw the consent or object
Legal Practitioner – Once represented without objection and continued for a considerable time the workman cannot withdraw the consent or object later on
Consent – For representation need not be in writing but silence is deemed to be a tacit consent

The Employer was represented by a legal practitioner, in the earlier round of litigation even though there was no specific written consent given by the workman. Hence such consent is termed as deemed or tacit one. In this case the workman made an application for recall the ex-parte award which was allowed. The employer was represented by the same advocate. The workman objected for the same and gave no consent. This was allowed by the labour Court. The High Court upon challenge held that such technical objection cannot stand once the legal practitioner was allowed to participate and represent the employer for a considerable period of time. If that is so there would be deemed leave granted by the court and a deemed tacit consent given by the workman. The workman now cannot turn around and say that the deemed consent has now been withdrawn and that he now no longer wants to give consent. The order refusing representation was hence quashed.

Kisan Sahakari Chini Mills Ltd. v. Basant Kumar Joshi S/o Late Hari Krishan Joshi, 2010 IV LLJ 669 : 2010 (127) FLR 180 : 2012 (133) FLR 74 : 2011 I LLN 484 : 2010 II CLR 916 (Utt.HC) WP 1008 of 2010 dt. 28-6-2010

"In my opinion, the…….the present case." *(Page: 672, Para: 9)*

Sec. 6-N of U.P. I.D. Act

Public appointments – Must be according to statutory rules otherwise for continuous service only relief admissible is compensation
Reinstatement – In a public body of a workman irregularly appointed is illegal but for continuous service relief of compensation cannot be avoided
Compensation – Proper for continuous service of temporary appointees without following statutory rules
Violation of Sec. 6-N – Compensation in lieu of reinstatement for appointments made without following the rules would be justified

The municipal corporation appointed tax collectors without following prescribed rules extending their appointment from time to time and discontinued them being irregular appointments. Upon challenge the labour court directed their reinstatement with full back wages as they had completed 240 days of continuous service and their discontinuation was in violation of sec. 6N of U.P. Industrial Disputes Act. The employer assailed the same before the High Court which held that no person can be appointed in statutory corporation without following the statutory procedure prescribed. Hence the only relief that could be given is compensation. Hence the award was set aside and matter remanded to decide the relief.

Nagar Palika, Shahjahanpur v. Balram Mehrotra & Anr., 2010 (127) FLR 733 (All.HC) CMWP 17264 of 1987 dt. 1-9-2010

"Having heard Counsel for…….is not legally sustainable." *(Page: 735, Para: 6)*

Sec. 6-N – U. P. Industrial Disputes Act

Perverse – The award is if the Labour Court fails to record the evidence that the workman had actually worked for 240 days
Appointment Letter – Could be the basis for termination
Continuous Service – The workman has to prove

The services of a temporary workman was terminated on the basis of an appointment letter which stipulated that services could be terminated at any time by giving one month notice/pay. The Labour Court gave an award in favour of workman holding among other things that the workman had worked for 240 days and hence his termination without compliance with the provisions of the Act was illegal. But setting aside the award the High Court held that it failed to record a finding that he had actually worked for 240 days in the preceding 12 calendar months. It held that it is necessary for the workman to prove this besides his continuous service before the Labour Court. If the same is not recorded by the Labour Court, then its findings will be perverse.

Harcourt Butler Technological Institute, Kanpur Through its Director v. State of U.P. & Ors., 2008 (119) FLR 257 (All.HC) CMWP 23756 of 1993 dt. 7-8-2008

"Sec. 2(g) of…….applicable in a case." *(Page: 260, Para: 8)*

"The award given…….6-N of the Act." *(Page: 262, Para: 14)*

Sec. 6N of U.P. I.D. Act

U.P. I.D. Act – Does not have similar provision like Sec. 2 (oo) (bb) but compensation instead of reinstatement proper
Compensation – As consolidated damages for illegal termination u/s. 6N of U. P. I. D. Act instead of reinstatement proper
Reinstatement – Is not automatic even under U. P. I. D. Act for violation of Sec. 6N notwithstanding absence of provision like Sec. 2 (oo) (bb)

Though U.P.I.D. Act has no similar provision like Sec. 2 (oo) (bb) of the Industrial Disputes Act, a termination without complying with the provision for notice and compensation will not automatically entitle the workman for reinstatement in each and every case. In this case the appointment was made without following any procedure as such the High Court held that consolidated damages of ` 50,000 instead of the relief of reinstatement will meet the ends of justice.

Krishi Utpadan Mandi Samiti, Naubasti & Anr. v. Presiding Officer, Labour Court 1st, Kanpur & Anr., 2009 (123) FLR 113 : 2009 LIC 3708 (All.HC) CMWP 9346 of 2004 dt. 2-7-2009

"The Court enquired…….apply in U. P." *(Page: 117, Para: 12)*

"In view of…….the relevant rules." *(Page: 117, Para: 13)*

"Accordingly, writ petition…….till actual payment." *(Page: 117, Para: 17)*

Sec. 6N of U.P. Industrial Disputes Act & Sec.11

Burden of Proof – On the Workman to prove his case as to nature of employment and his period of employment without which burden cannot be shifted on the employer
Affidavit – Of workman to prove the nature and period of work is insufficient to prove his case and on this basis burden cannot be shifted on the employer
Employer – Cannot be put the burden to prove the nature and period of employment unless the initial burden of the workman on these issues are proved in addition to affidavit by the workman

Workman contended that he was a seasonal employee and was illegally not permitted to work by the employer. Except an affidavit no other documents were produced by him to prove his nature and period of employment. Yet the labour court gave an award in favour of the workman. It is a settled position of law that burden is upon the workman to prove his case and unless it was proved the burden cannot be shifted upon the employer. Only filing an affidavit will not substitute these requirements. Hence the Labour Court has committed an error by shifting the burden of proof upon the employer regarding the period of employment and denial of work. The award was set aside and matter remitted back to decide according to law.

M/s. Modi Sugar Mills (A Unit of Modi Industries Ltd., Modi Nagar), Ghaziabad v. Labour Court (II), Uttar Pradesh, Ghaziabad & Ors., 2010 LIC 2234 (All.HC) CMWP 3180 of 2005 dt. 9-11-2009

"While considering the…….the Labour Court." *(Page: 2240, Para: 10)*

Sec. 6-N of U.P. Industrial Dispute Act

Daily wager – Who completed 240 days in a year cannot be terminated without complying with the provisions of Sec. 6N of U.P. I. D. Act
Section 6N of U.P. Industrial Disputes Act – If violated a daily wager completing 240 days in a year cannot be terminated without complying with its provisions

Daily wager who has completed 240 days in a calendar year cannot be terminated from services without complying with the provisions of Sec. 6N of U.P. Industrial Disputes Act. Hence instead of reinstatement with back wages, payment of consolidated compensation would be just and proper.

Nagar Nigam, Ghazibad v. State of U.P. & Ors., 2010 (124) FLR 344 (All.HC) WP 66696 of 2009 dt. 8-12-2009

"This writ petition is…….consolidated damages/compensation." *(Page: 344, Para: 2)*

Sec. 6 N of U.P. Industrial Disputes Act, 1947 and 25F
Retrenchment – Validity or legality does not depend on whether workman accepts or refuses to accept the compensation
Notice – If evidence establishes the serving of the same it is immaterial whether the workman signs it or not
Dismissal – Of writ petition the retrenchment notice revives automatically

The employer while retrenching the workman intimated him by notice. There was evidence that such notice was served upon him though he did not sign the notice in token of having received the same. The employer also offered the legal compensation and there was no evidence that less compensation was offered. In the face of this evidence the Labour Court held that the termination attracts Sec. 25F and 25B since the workman had worked 240 days continuous service and the employer did not

comply with the relevant provisions. Setting aside that award the High Court held it is sufficient if there was a positive evidence of offering compensation and it is not relevant if the workman accepts or refuses to accept the compensation.

Assistant Project Engineer, Ganga Pollution Control Unit U.P. Jal Nigam, Mirzapur v. Presiding Officer, Labour Court, Varanasi & Anr., 2009 IV LLJ 569 : 2009 (122) FLR 126 : 2009 LLR 900 (All.HC) CMWP 10318 of 1998 dt. 30-4-2009

"In the present…….to the workman." *(Page: 571, Para: 7)*

Sec. 6 N of U.P.I.D Act
Domestic Enquiry – If not conducted against the misconduct of theft the punishment of dismissal from service will non-est
Back wages – Not payable for want of evidence of not gainfully employed no matter the employer failed to conduct any enquiry into the charges of theft
Misconduct – Of theft will not sustain for the punishment of dismissal if no domestic enquiry was conducted

Though there were allegations of theft of fishes from the pond of the university where the workman was on duty of guarding the pond, the employer did not conduct any enquiry into the charges nor paid him any compensation according to law before removing him from the service. The Labour Court therefore held the termination bad and reinstated him with full back wages. Upon challenge by the employer the High Court allowed the petition partly in which it upheld the award of reinstatement but set aside the award of back wages for the reason that there was no evidence to show that he was no gainfully employed anywhere else after his termination and also how he was meeting his and his family's expenses.

Nirdeshak Prasar, Chandra Shekhar Azad University of Agriculture & Technology, Kanpur & Ors. v. Presiding Officer, Labour Court (2) Kanpur & Ors., 2009 (120) FLR 692 : 2008 III CLR 849 : 2009 LLR 90 (All.HC) CMWP 17089 of 2003 dt. 16-10-2008

"It was also…….the respondent No.2." *(Page: 693, Para: 4)*

"I do not…….was not done." *(Page: 693, Para: 5)*

"However…….requisite funds." *(Page: 693, Para: 6)*

Sec. 6N of the U.P. Industrial Disputes Act

Daily Wager – Is a workman under U.P. I.D. Act
Workman – Includes – A daily wager under U.P. I.D. Act
Termination – Of daily wager is illegal if Sec. 6N of U.P. I.D. Act was not complied with
Section 6-N of the U.P. Industrial Dispute Act – If not complied with termination of a daily wager is illegal

A daily wager is a workman under U.P. I.D. Act as held by the Apex Court in recent cases in the *State of UP and Anr. v. Rajendra Singh Butola & Anr.*, hence termination of workman a daily wager without complying with Sec. 6N of the U.P. Industrial Disputes Act was held illegal. Therefore the order of his reinstatement with 50% back wages was just and proper.

General Manager, Chitrakoot Dham Mandal, Jal Sansthan, Banda & Anr. v. Presiding Officer, Labour Court (I), U. P., Kanpur & Ors., 2010 IV LLJ 92 : 2010 I CLR 855 (All.HC) CMWP 74034 of 2005 dt. 6-1-2010

"Contrary to the aforesaid…….not be accepted." *(Page: 95, Para: 11)*

Sec. 6N of U.P. Industrial Dispute Act, 1947

Section 6N – U.P. Industrial Disputes Act if not complied with termination is void
First Come Last Go – Principle if not complied with termination is liable to be set aside
Back Wages – Denied – For delay in raising dispute

From the evidence of the attendance register it was proved that the workman had worked for 297 days in a continuous year. The workman was terminated without complying Sec. 6N of the U.P.I.D. Act and the principle of 'first come last go', hence the Labour Court held the termination to be illegal and ordered his reinstatement but without back wages because there was delay in raising dispute by the workman. The High Court upheld the order passed by the Labour Court.

Mussoorie Dehradun Development Authority v. Shri Rameshwar & Ors., 2011 (128) FLR 1030 (Utt.HC) WP 1160 of 2010 dt. 21-7-2010

"The learned Labour Court…….U.P. Industrial Dispute Act, 1947." *(Page: 1032, Para: 14)*

"On Point No. 2, the…….the workman is illegal." *(Page: 1032, Para: 15)*

"On Point No. 3 regarding…….entitled to back wages." *(Page: 1033, Para: 16)*

Sec. 6-N of U.P. Industrial Dispute Act

Illegal Order – The High Court can refuse to set aside if it causes injustice
U.P. Co-operative Societies Act – Though to be invoked to co-operative societies if I.D. Act was invoked such illegal orders cannot be set aside after several years
High Court – In exercise of its writ jurisdiction can refuse to set aside an illegal order in case it will result in injustice

Four workmen were terminated from the Dugdh Utpadak Sahkari Ltd. But they were reinstated with full back wages by the labour court. The award was challenged on the ground that the I.D. Act was not applicable to Co-operative Society and such disputes are to be adjudicated under U.P. Co-operative Societies Act as per settled law by the Supreme Court in the case of Ghaziabad Zilla Sahakari Bank Ltd. (2008 (4) SCC 261). The High Court rejected this contention because it will be unjust to relegate the parties to another forum after several years. It is well settled that High Court can refuse to set aside even an illegal order in case it will result in injustice. However the back wages in this case was denied since the workmen had failed to prove that they were not gainfully employed.

Dugdh Utpadak Sahkari Ltd. v. Presiding Officer, Labour Court & Ors., 2011 I CLR 208 : 2011 (129) FLR 85 (All.HC) WC 22010 to 22013 of 1998 dt. 24-11-2010

"The only argument raised…….direction of reinstatement." *(Page: 209, Para: 5)*

Sec. 6-N of the U.P. Industrial Dispute Act

Compensation – Proper for a workman appointed on tenure basis found unsuitable for continuation in employment
Tenure Basis – If the workman was appointed his unsuitability to continue will entitle him only for compensation and not reinstatement
Reinstatement – The workman cannot claim an absolute right

Even if there was violation of Sec. 6N of U.P.I.D. Act the workman cannot claim absolute right for reinstatement with full back wages. This is especially true when the employer found him unsuitable to continue in employment although appointed to begin with on tenure basis for a period of one year. Hence the High Court upheld the award of granting only compensation.

Prakesh Chand Agrawal v. Presiding Officer, Labour Court (II), Kanpur & Anr., 2011 I LLJ 339 : 2011 II LLN 375 : 2010 LIC 4071 : 2010 III CLR 963 : 2011 LLR 167 (All.HC) CMWP 2074 of 1996 dt. 2-8-2010

"In the present case the…….is passed as to costs." *(Page: 341, Para: 7)*

Sec. 6-N of U.P. Industrial Dispute Act

Damages Compensation – Against illegal termination of a chaukidar worked only for 243 days is proper instead of reinstatement
Chaukidar – Working for 243 days in a public body though illegally terminated cannot be reinstated but damages and compensation proper

The workman worked for 243 days continuous service. His services were terminated without complying with Sec. 6N of U.P.I.D. Act. The labour court gave an award reinstating him with back wages. Upon challenge High Court set aside the award and instead of reinstatement and back wages a consolidated damages/compensation was awarded because the employer was a public body and the workman was a chaukidar mazdoor and in such cases reinstatement is not always a rule.

Purvanchal Vidyut Vitran Nigam Ltd. Varanasi & Anr. v. State of U. P. & Ors., 2011 (129) FLR 390 : 2011 IV LLJ 701 : 2011 III LLN 471 : 2011 LLR 631 (All.HC) CMWP 60573 of 2005 dt. 17-2-2011

"Moreover, it has been…….Marketing Board & Ors." *(Page: 393, Para: 8)*

Sec. 6N of U.P.I.D. Act

Retrenchment – Though illegal reinstatement cannot be automatic
Compensation – Though not accompanied with retrenchment reinstatement cannot be automatic
Reinstatement – For illegal retrenchment cannot be automatic merely due to mere failure to pay retrenchment compensation

In case of retrenchment, reinstatement cannot be automatic for mere failure to pay the retrenchment compensation to the workmen and for that the Labour Court has to give a finding as to whether there was still a requirement of work even after completion of project. Hence, in the absence of such a finding, the Labour Court is not justified in directing the reinstatement with 20% back wages and continuity of service even though there is violation of Sec. 6N of U.P. I.D. Act. However in the present case the employer had already reinstated the muster roll workmen in their posts for the last 5 years. Hence in view of these facts, the reinstatement of the workmen is not disturbed but they are not held entitled for back wages.

Nagar Nigam, Gorakhpur v. State of U.P. & Ors., 2009 (123) FLR 395 : 2010 I LLN 666 : 2010 LLR 27 (All.HC) CMWP 55894 of 2003 dt. 7-7-2009

"In my view…….department or not." *(Page: 397, Para: 6)*

"In the present…….of their services." *(Page: 397, Para: 8)*

Sec. 6N of U. P. I. D. Act

Consolidated damages – Instead of reinstatement proper for omission of the name in the list of canteen employees
Canteen employee – Is entitled for consolidated damage instead of reinstatement for omission of the name in the list of canteen employees
Interim order – If for reinstatement the salary drawn without work was sufficient compensation in lieu of reinstatement for omission of the name of canteen employee for employment

Where the name of the workman, a canteen employee, was not there in the list of canteen employees submitted by their union before the Appropriate Government and in subsequent reference in the dispute regarding non employment the employer cannot said to have any control over nor any say in the termination of workman in question for want of name in the list. But because of interim order of High Court he was getting salary without any work it was held that consolidated damages/compensation in lieu of reinstatement is proper. The salary so drawn without any work was held to be appropriate damage/ compensation in lieu of reinstatement in his case.

M/s. ICI India Ltd. v. State of U.P. & Ors., 2009 (123) FLR 996 : 2010 I CLR 342 (All.HC) CMWP 28978 of 1990 dt. 3-8-2009

"In the instant…….cannot be enforced." *(Page: 999, Para: 11)*

"Accordingly writ petition…….shall be refundable." *(Page: 999, Para: 12)*

Sec. 2(z) of U.P. Industrial Dispute Act, 1947

Status of a Workman – Is to be considered permanent or temporary before deciding reinstatement or compensation as the alternative reliefs
Trainee – Does not derive a status of permanent employee for reinstatement in the wake of illegal termination
Reinstatement – Excludes – A trainee though illegally terminated

The employer terminated the services of the of a trainee after one year of the service without retrenchment compensation or notice pay as provided u/s. 6N of U.P.I.D. Act. The labour court gave an award reinstating with back wages. The employer contested the same before High Court which held that the labour court could not have reinstated him in service automatically for violation of Sec. 6N because the status of the workman should have been gone into inasmuch as it has a bearing on the relief. Hence his capacity whether permanent or temporary, gains importance. On record he was appointed as a trainee and a trainee does not derive a status of permanent employee. Hence reinstatement was set aside and instead compensation with cost was granted modifying the award, especially 20 years have since elapsed after his retrenchment.

National Small Industries, Kashmipur v. Labour Court, Haldwani & Anr., 2011 (128) FLR 947 : 2011 LLR 419 (Utt.HC) WP 716 of 2001 dt. 9-6-2010

"The mere fact that…….reinstatement in services." *(Page: 943, Para: 6)*

Sec. 6-R of U.P. Industrial Dispute Act, 1947

Unfair Labour Practice – Excludes – Appointment of workmen casually
Casual – Or daily wage basis an employment does not attract ULP
Termination – Of casual employees does not require reinstatement but compensation proper
Compensation – Is the proper relief for causal appointees though illegally terminated

The workmen were engaged casually for the first time in 1981, 1982, 1985, 1987, 1990, 1994 and 1996. They demanded permanency holding unfair labour practice. The employer terminated their services. The workmen challenged the same and the labour court by an award reinstated them without back wages. The same was challenged before the High Court by the employer. The High Court modified the award into one of compensation/ damages. In that it was the contention of the employer that each of them had been paid ` 6,000 p.m. without work and each of them received ` 60,000 in this manner. The High Court held that for causal labour reinstatement though termination is illegal is not warranted hence setting aside the award the amount paid till the order of High Court was held reasonable damages compensation.

M/s. Areva T&D India Ltd. v. Presiding Officer, Labour Court U. P. Allahabad & Ors., 2011 (129) FLR 651 : 2012 I LLJ 63 : 2011 LLR 697 (All.HC) CMWP 53201 of 2007 & 25656 of 2008 dt. 8-3-2011

"Unfair labour practices…….nature of his employment." *(Page: 656, Para: 18)*

"Accordingly first writ…….a reasonable compensation." *(Page: 657, Para: 24)*

Sec. 6-W(5) of U. P. I. D. Act

Review – Being an alternative remedy u/s. 25-O(5) writ petition without its exhaustion is not maintainable
Writ petition – Not maintainable before exhaustion of alternative remedy u/s. 25-O(5)

The Appropriate Government granted approval giving reasons for closure of its unit manufacturing Hero Cycles u/s. 6W of U. P. I. D. Act which is pari materia to Sec. 25-O of Central Act. The same was challenged before High Court in a writ petition by the workmen assailing the approval on various factual inconsistencies. The High Court held that proper remedy in the facts and circumstances of the case is to invoke the provision for review or reference as provided in Sec. 6-W(5) of U. P. I. D. Act which is pari materia to Sec. 25-O(5) of Central Act. Hence writ petition was dismissed with direction to union to avail alternative remedy.

Hero Cycle Group Kamgar Union & Anr. v. State of U.P. & Ors., 2009 I CLR 237 (All.HC) CMWP 43307 of 2008 dt. 5-12-2008

"From the record…….Tribunal for adjudication." *(Page: 244, Para: 16)*

"As the statute…….before the Tribunal." *(Page: 244, Para: 17)*

Sec. 11-C of U.P. Industrial Dispute Act

Seniority of workman – Is protected by Standing Order 20 only when the management transfers and not at the instance of the workman
Transfer – At the instance of employer protects seniority but not on the other way round

Workman sought for transfer due to some personal reasons and he had given in writing that he would not be claiming seniority but he raised the dispute and the Labour Court passed an order against the Management. The High Court held that as per Standing Order 20, seniority of a workman is protected only when the management transfers a workman. This being not the case here the impugned order is bad in law and set aside.

Hindustan Aeronautics Ltd. Kanpur v. Presiding Officer, Labour Court-I & Ors., 2010 (124) FLR 347 (All.HC) WP 28667 of 1994 dt. 8-12-2009

"By virtue of the above…….order is set aside." *(Page: 348, Para: 6)*

Sec. 11-D U. P. Industrial Disputes Rules, 1957
Conciliation Officer – Cannot reject the registration under Rule-27 without making enquiry regarding the fairness of the same
Registration – Of agreement between employer and workmen, the conciliation officer cannot refuse without making an enquiry as to its fairness

Conciliation Officer cannot reject the registration under Rule-27 of U. P. Industrial Disputes Rules, 1957 without making enquiry regarding the fairness of the same merely on the ground that a small (eight) number of workmen had negotiated albeit on behalf of several others. Hence such rejection being beyond the scope of enquiry was held erroneous interpretation of law.

Hawkins Cookers Mazdoor Union & Anr. v. Labour Commissioner, Kanpur & Ors., 2008 I LLJ 1089 : 2007 (115) FLR 736 (All.HC) CMWP 64192 of 2003/05 dt. 7-8-2007

"The Conciliation Officer…….as such fallacious." *(Page: 1096, Para: 29)*

Sec. 4-K of U.P.I.D Act

Appropriate Government – To Hindustan Aeronautics Limited is Central Government
Hindustan Aeronautics Limited – Appropriate Government is Central Government

The Hindustan Aeronautics Limited is totally owned and controlled by the Central Government. Hence reference under the provisions of U.P Act is not maintainable.

Hindustan Aeronautics Ltd, Chakeri, Kanpur v. State of Uttar Pradesh & Ors., 2011 (130) FLR 953 : 2012 II LLJ 64 (All.HC) CMWP 49157 of 2000 dt. 15-7-2011

"I have considered…….was not maintainable." *(Page: 955, Para: 12)*

Sec. 6-N of U.P.I.D Act

Retrenchment – Cannot be questioned if the employer complies with provisions of law
Compensation – Even if accepted under protest the genuine retrenchment upon compliance of law cannot be questioned later on

If the employer retrenches large number of employees due to drastic reduction in work load by paying retrenchment compensation notice pay etc., complying with Sec. 6 N of U.P.I.D. Act, the retrenchment cannot be questioned unless it is shown that juniors were retained arbitrarily. Mere acceptance of such compensation under protest will not give them liberty to question the retrenchment later on.

U. P. Forest Corp., Garhwal Region & Ors. v. P. O. Labour Court & Anr., 2011 (131) FLR 399 : 2011 III CLR 167 (All.HC) WC 21592, 21596, 21597, 21599, 21628, 21629, 21630 & 21631 of 1999 & 36216 of 2002 dt. 4-7-2011

"There is no…….to be followed." *(Page: 401, Para: 8)*

"Accordingly.....termination order." *(Page: 402, Para: 13)*

Sec. 6(2)(A) of U.P.I.D. Act

Pay and Board – If the principle is violated proved in enquiry and Labour Court the workman cannot take shelter in violation of PNJ

Where a conductor had violated the principle of "pay and board", there by allowed to travel 22 passengers without ticket which was proved in the enquiry and also before the Labour Court, the High Court held that this is not a case of no evidence and hence even if no issues were framed by the Labour Court, the plea of violation of PNJ does not arise and that he was subsequently employed temporarily does not makes any difference to the misconduct.

Umesh Chand Sharma v. U.P.S.R.T.C., Bulandshahar & Ors., 2011 (131) FLR 416 : 2011 III CLR 172 (All.HC) CMWP 7521 of 1997 dt. 26-7-2011

"Apart from this…….by the tribunal." *(Page: 419, Para: 12)*

Sec. 6(4) of U.P.I.D. Act

Second Reference – The Appropriate Government has no jurisdiction to issue on the same dispute once the award is passed
Appropriate Government – Has no jurisdiction to issue a second reference on the same dispute once the award is given
Publication – Of an award can be refused by Appropriate Government u/s. 6(4) of the U.P ID Act but second reference on the same dispute is without jurisdiction
Jurisdiction – Appropriate Government has none to issue a second reference

The Appropriate Government possesses no jurisdiction to issue a second reference when the first reference was answered against the workman but the Appropriate Government refused to publish the same under power vested in Sec. 6(4) of U.P. Industrial Disputes Act. The second reference made on same dispute after conciliation was challenged before Single Judge who despite holding that the Appropriate Government has no jurisdiction to do so yet directed that the same may be treated as an order for reconsideration by Labour Court u/s. 6(4) of the State Act. In writ appeal that direction was set aside and Division Bench held that it was not open for the writ court to direct that fresh reference shall be treated as an order for reconsideration by Labour Court. What Sec. 6(4) provides is not a fresh reference but remitting of same reference for reconsideration by the Appropriate Government.

M/s. S. R. Paper Cones, Ghaziabad through its Partner v. Addl. Labour Commissioner, Ghaziabad, U.P. & Ors., 2010 (127) FLR 700 : 2011 II LLJ 747 : 2011 III LLN 55 (All.DB) SA 892 of 1999 dt. 15-7-2010

"Thus, it would…….make the reference." *(Page: 702, Para: 7)*

"In the light of…….Labour Court." *(Page: 702, Para: 8)*

Sec. 4-K U.P.I.D. Act

U.P. Co-operative Society – Employees have to resort to only the U.P. Co-operative Societies Act and not Industrial Disputes Act for relief against termination
Termination – Of employees of U.P. Co-operative Society cannot be agitated in a forum under industrial Disputes Act but only U.P. Co-operative Societies Act
Industrial Disputes Act – Cannot be invoked for agitating the termination of employees belonging to U.P. Co-operative Society
Arbitration Clause – In U.P. Co-operative Societies Act is an embargo for the invocation of the provision of Industrial disputes Act
Jurisdiction – of Labour Court cannot be invoked by the employees of U.P. Co-operative Society under Industrial Disputes Act against termination

Petitioner is an Apex Co-operative Society registered an U.P. Co-operative Societies Act. The Labour Court awarded reinstatement with back wages to the workman on finding that the termination was illegal. The employer challenged the same before High Court. It referred to the case of *R.C. Tiwari v. M.P. State Cooperative Marketing Federation Ltd.* and others wherein it was held that in view of the arbitration clause in the U.P. Co-operative Societies Act provisions of I.D. Act are not applicable to the employees of the U.P. Co-operative Societies. Hence the employees cannot invoke the jurisdiction of the Labour Court under the U.P. Industrial Disputes Act. Writ petition of the employer was allowed.

U.P. Industrial Cooperative Association Ltd. v. Presiding Officer & Anr., 2010 (126) FLR 451 : 2010 II CLR 183 (All.HC) WC 23001 of 1995 dt. 5-4-2010

"It was indicated that…….Khand Paniyara and others." *(Page: 453, Para: 9)*

Sec. 2(k) of U.P. Industrial Dispute Act

Kisan Sahkari Chini Mill, Sultanpur – Being an industry disputes of workmen is amenable to be adjudicated by a forum under Industrial Disputes Act
Industry – Even if a co-operative sugar mill Industrial Disputes Act applies not U.P. Co-operative Societies Act
U.P. Co-operative Societies Act – Is not an exception for Industrial Disputes Act for proceedings in cases of retrenchment with due regard to Apex Court direction

Several writ petitions came to be filed by the workmen of Kisan Sahkari Chini Mill, Sultanpur following their retrenchment as surplus employees. The matter was ultimately reached the Supreme Court which held that the Sugar Mill being an industry, it is proper for them to raise an industrial dispute. The workmen accordingly raised a dispute which was referred for adjudication. But the labour court rejected the reference holding that for Co-operative society employees U.P. Co-operative Societies Act applies and not Industrial Disputes Act. Upon challenge of this rejection the High Court quashed the same and directed the labour court to decide the matter according to law in terms of the orders passed by the Supreme Court.

Ram Pratap Gupta v. Presiding Officer, Labour Court, Faizabad & Anr., 2010 (127) FLR 840 (All.HC) WP 214 of 2009 dt. 8-2-2010

"Against the order dated…….Industrial Dispute Act, 1947." *(Page: 840, Para: 3)*

"Learned Counsel for the…….adjudicating the same." *(Page: 841, Para: 4)*

Tamil Nadu Industrial Disputes Act

Sec. 10–B of Tamil Nadu Industrial Disputes Act

Restraint – By High Court to union not to assemble within 100 meters from boundary no more survives upon subsequent order of governor u/s. 10-B of Tamil Nadu Industrial Disputes Act to provide work

An appeal, against the order of High Court restraining the union from assembling 100 meters of the boundary of the company and obstructing the vehicles from ingress and egress etc., held, does not survive in the wake of subsequent exercise of power by the governor of Tamil Nadu u/s. 10B of the Act ordering the company to provide work to all except those against whom criminal complaints were filed with police.

Orchid Employees Union & Ors. v. Orchid Chemicals & Pharmaceuticals Ltd., 2008 II LLJ 824 : 2008 (117) FLR 1195 : 2008 LIC 2947 : 2008 LLR 519 : 2008 (11) SCC 184 : 2008 (2) SCC (L&S) 1076 (S.C.3J) CA 2096 of 2008 dt. 25-3-2008

"…….Now, therefore, in exercise of the powers conferred by Section 10B of the Industrial Disputes Act, 1947, the Governor of Tamil Nadu hereby makes the following order:

The Management of Orchid Chemicals and Pharmaceuticals Limited shall provide work to all the workers who called off the strike on 26.6.2007 except those workmen against whom criminal complaints were filed with police by the management." *(Page: 825, Para: 5)*

"In view of the aforesaid position, we find that nothing further survives to be done in the appeal which is accordingly disposed of." *(Page: 825, Para: 6)*

Sec. 10B of the Industrial Dispute Act (Tamil Nadu Amendment)

Tamil Nadu Amendment – Sec. 10B permits the Government to grant interim relief in bonafide cases of industrial dispute while simultaneously making appropriate reference to the tribunal

Interim Relief – The State Government has power to grant u/s. 10B of I.D. (TN Amendment) Act in bonafide cases
Reference – Of a dispute concerning charter of demands made by the State Government cannot be questioned in a writ petition being an administrative function

The State Government has power u/s. 10B of the Industrial Dispute Act (Tamil Nadu Amendment) to pass an interim relief and lump sum payment and also referring for adjudication the charter of demands applicable industry-wise. Hence the order of Single Judge dismissing the G.O. No. 690 which was related to interim reliefs and lump sum payment was set aside by the Division Bench and the order of Single Judge dismissing the Writ filed regarding G.O. No. 688 on the reference made to the tribunal concerning charter of demands raised by the workmen was affirmed.

Sri Veereswara Spinning Mills (P) Ltd., Tirupur, rep. by its Managing Director v. State of Tamil Nadu, rep. by Secretary, Labour & Employment, Chennai & Ors., 2011 II LLJ 325 (Mad.DB) WA 684 to 688 of 2004 dt. 19-7-2010

"On a careful…….cause our interference." *(Page: 367, Para: 139)*

"In the Result…….is confirmed." *(Page: 367, Para: 140)*

Sec. 10(3) & 10B of Madras State Amendment Act

Administrative Order – Includes – Order made u/s. 10B of State Amendment and 10(3) requiring no notice
Notice – Though not necessary for Sec. 10B of State Amendment and 10(3) it requires if orders for interim relief were made
Interim Relief – The State Government cannot direct to be paid without notice and hearing the employer no matter the order is administrative in nature
State Government – If directs to make payment of interim relief without notice and hearing the order is liable to be set aside being in violation of Art.14 of the constitution

The State Government in exercise of its power u/s. 10(3) and 10B has made an administrative order. It also made an order to pay interim relief along with the salary. The employer was not heard while making these administrative orders. The High Court upheld that part of the order u/s. 10(3) and 10B and held that the employer need no notice or hearing being an administrative order. However the government exceeded its jurisdiction while ordering to pay interim reliefs more so because the decision was without notice and hence in violation of the principles of natural justice and it also violates Art. 14 of the constitution and hence upholding the direction issued u/s. 10B as valid order for interim relief was set aside.

Management of Pricol Ltd. Perianaickanpalayam, Coimbatore rep. by Vice President (HR) & Ors. v. Government of Tamil Nadu, rep. by the Principal Secretary to Government, Labour & Employment Department (D1), Chennai & Ors., 2010 III LLJ 712 (Mad.HC) WP 13764, 13765, 15844, 17348 & 17362 of 2009 & MP 1 & 2 of 2009 dt. 22-3-2010

"Therefore, in the…….of this Court." *(Page: 719, Para: 20)*

"While keeping…….any good sound reason." *(Page: 721, Para: 24)*

Sec. 10(2A) of the Industrial Dispute Act, Rule 10B of the Industrial Dispute (Central) Rules, 1957 and Rule 14 of Industrial Dispute (Bihar) Rules, 1961

Rejoinder Application – Can be filed only by the aggrieved party
Industrial Dispute (Bihar) Rules, 1961 – Has no provisions for a rejoinder even by the aggrieved party
Central Act – And Bihar Rules have different procedure while raising a dispute furnishing documents and written statements precluding provisions for a rejoinder under the Bihar Rules

Aggrieved Party – Can only file a rejoinder application but Bihar Rules do not provide even this remedy due to different procedures between Central and State Rules
Central Rules – Provide for a rejoinder application unlike Bihar Rules

The Bihar Rules 1961 do not provide for a rejoinder on the written statement to be filed unlike Sec. 10(2A) of Central Act which provides such rejoinder. In this case the employer filed a rejoinder to the written statement after a lapse of more than a year, which was disallowed. The employer challenged the rejection in a writ petition. The High Court upholding the rejection distinguished the purport of the provisions of Central Act and Bihar Rules. Unlike the Central Rules, when the party raising the dispute is to furnish relevant document along with statement of claim, the Bihar Rules makes such a provision only at a later stage under Rule 23. The reason for not providing for a rejoinder is clear by the difference of procedure under the two Rules. Hence there is no provision for a rejoinder under Bihar Rules even by the party raising the claim. Therefore it cannot be right under Bihar Rules, although the ancillary and incidental jurisdiction allows discretion and adoption of such procedure as the court may think fit. Hence the High Court upheld the order of labour court rejecting the rejoinder prayed for after one year being a dilatory tactic.

Management of M/s. Kurji Holy Family Hospital, Kurji v. State of Bihar & Ors., 2010 IV LLJ 350 : 2010 LIC 2426 (Pat.HC) CWJC 9786 of 2002 dt. 24-2-2010

"Even if the dispute…….closing of evidence." *(Page: 355, Para: 19)*

"A comparative…….think fit." *(Page: 355, Para: 22)*

Article

Art. 226

Decisions – Are required to be discussed before adopting to the fact situations
Discussion – Of a decision is important to isolate the ratio decidendi

Courts should not place reliance on decisions without discussing as to how the factual situation of the matter under scrutiny fits in with the fact situation of the decision on which reliance is placed. Disposal of cases by blindly placing reliance on the decision is not proper.

State of Rajasthan v. Ganesh Lal, 2008 I LLJ 670 : 2008 (116) FLR 180 : 2008 I LLN 459 : 2008 LIC 402 : 2008 I CLR 431 : 2008 LLR 170 : 2008 (2) SCC 533 : 2008 (1) SCC (L&S) 465 : 2008 AIR (SC) 690 (S.C.2J) CA 3021 of 2006 dt. 10-12-2007

"Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes." *(Page: 672, Para: 12)*

"Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper." *(Page: 672, Para: 14)*

Art. 226

Writ Petition – Is not permitted if the alternative remedy under B.I.R. Act and Payment of Wages Act is not exhausted

The Union filed the present petition with a view to secure protection so that the workmen are paid their dues and consequent benefits in case the employer, who closed down his business activities without obtaining prior permission, shifts the machinery or sells his property. The High Court refused to entertain this petition on the ground that an alternative, effective and efficacious remedy being available to the Union u/s. 119D of B.I.R Act 1946 and Sec. 15(2) and 17A of the Payment of Wages Act. These Authorities before whom the matter is pending are competent to dispose of the same.

Surat Silk Labour Union v. State Of Gujarat & 2 Ors., 2010 I CLR 1033 (Guj.HC) SCA 3130 of 2010 dt. 11-3-2010

"I have considered…….concerned employees." *(Page: 1034, Para: 5)*

"Therefore, provisions made…….not entertained by this Court." *(Page: 1035, Para: 7)*

Art. 226

Labour Courts – Are the final courts as far as the findings of the facts are concerned requiring no judicial review unless perverse for irrational
High Court – Cannot reassess or rejudge the finding of Labour Courts while exercising the power of judicial review unless such findings are perverse or irrational
Judicial Review – Can be made only if the findings of the Labour Court are perverse or irrational

Labour Courts are the final courts as far as the findings of facts are concerned and unless such findings are based on no materials or so perverse or irrational, the High Court while exercising the power of judicial review under Art. 226 of the Constitution in its supervisory jurisdiction will not reassess or reappreciate the finding of facts. The facts are that the workman was appointed on 1.7.2000 and was not allowed to join duty from 12.7.2002. Hence the award setting aside the dismissal and granting ` 50,000 as compensation held requires no interference.

CHD Developes Ltd. v. Rajinder Prasad, 2009 II CLR 447 (Del.HC) WP(C) 4078 of 2007 dt. 1-4-2009

"The Labour Court…….the Tribunal below." *(Page: 448, Para: 6)*

Art. 226

Award – If does not suffer from any error of law or jurisdiction cannot be interfered under writ jurisdiction
Writ Petition – After six years of award normally not maintainable without strong reasons
Financial Difficulty – Cannot be a cause for 6 years delay in filing writ petition against an award

In a reference, the termination of the workman was upheld by the Labour Court where the contention of the employer was abandonment of his duties and refusal to respond to letters to resume which he could not rebut. He sought to challenge the same after 6 years where the workman could not successfully contend that award suffered from any error of law or jurisdiction. The delay of 6 years in filing the petition on the ground of financial difficulty or his son's illness could not be held strong enough to justify the delay for 6 years. Even on merit leaving aside the limitation there is no case made out to set aside the award.

Bashirmiya Najjumiya Malik v. Kaymig Agencies, 2009 (122) FLR 426 : 2009 I CLR 1074 : 2009 LLR 1096 (Guj.HC) SCA 8897 of 2008 dt. 29-8-2008

"It is settled……6 years delay." *(Page: 429, Para: 18)*

"The subject petition…….dismissed. Notice discharged." *(Page: 431, Para: 21)*

Art. 226

Dismissal in Limine – Requires reasons to be stated
Reasons – Are essential while dismissing the writ in limine
Writ Petition – If to be dismissed in limine reasons are to be stated

The termination of 48 workmen without conducting enquiry was, adjudicated by Labour Court in favour of the workmen but the management challenged the same before Single Judge who dismissed the writ petition in limine without assigning any reason. The Division Bench relying on the judgement of Supreme Court in the case of *M.R. Mittal v. State of Haryana*, 1984 AIR (SC) 1888, set aside the same and while remanding back to Single Judge held that even for a writ petition to be dismissed in limine, the High Court should set out its reasons, however briefly it may so that the party should know the reasons therefore.

R.G. Ispat Ltd. v. Judge, Labour Court & Anr., 2008 III LLJ 388 : 2008 (117) FLR 1080 (Raj.DB) DBCSAW 757 of 1998 dt. 10-1-2008

"The learned Single Judge…….single word dismissed." *(Page: 390, Para: 7)*

"Testing the impugned…….fresh instruction." *(Page: 391, Para: 11)*

Civil Procedure Code

Sec. 2(s) & Sec.11 of CPC

Res judicata–Is applicable when a similar issue is already decided by the against same parties by the competent court
Divisional Accountant–Is not a workman as the duty performed is supervisory in nature Workman–Excluded–A Divisional Accountant

The post of Divisional Accountant was held a supervisory post inasmuch as many L.D.C., U.D.C., Cashier, Assistant Accountant were working under him. The dominant duties performed by him was held to be supervisory and not clerical and hence his complaint before the industrial court Nagpur was held not maintainable and the industrial court disposed of his complaint of illegal reversion as not maintainable. He however had filed another complaint while working at Gadchiroli in another industrial court. The employer filed an application before industrial court Gadchiroli for dismissing the application on the basis of findings of industrial court Nagpur, which was however rejected. The petition before the single judge was dismissed. But the Division Bench held that a decision given by the competent labour court becomes a bar on the principle of res judicata in the trial of the same issue in the proceedings by the same parties. Hence the proceedings before the Industrial Court Gadchiroli were dismissed on the principle of res judicata.

Superintending Engineer & Anr. v. Sukhdeo Ramchandra Dhakite, 2011 (3) BCR 740 : 2011 III LLJ 812 : 2011 (129) FLR 923 : 2011 LLR 662 (Bom.DB) LPA 372 of 2009 in WP 653 of 2005 dt. 16-3-2011

"We see no merit in…….was not a workman." *(Page: 741, Para: 6)*

Sec.2(s) Order XLVII Rule 1 of CPC

Review–Of an order is not permitted in cases of old and overruled argument or rehearing of an original matter but inaccordance with order XLVII Rule 1 of CPC
Appellate Power–Excludes – Power to review
Power to Review–Excludes – Appellate power
Error Apparent on the Face of the Record–Permits review of an order

A power to review an order is not same as an appellate power. The Order XLVII, Rule1 shows that an order to review could be sought (a) from the discovery of new and important matter or evidence which after exercise of due diligence was not within the knowledge of the applicant (b) such important matter of evidence could not be produced by the applicant at the time when the decree was passed or order made (c) on account of some mistake or error apparent on the face of the record or any other sufficient reason. Therefore a review of old and overruled argument is not enough to reopen concluded adjudications. These are the well known parameters of review. Hence a decision that an apprentice is to be counted for the purpose of recognition of an union already decided raises no cause for review.

M/s. Larsen & Toubro Ltd. Mumbai v. State of Orissa & Ors., 2011 LIC 1916 : 2011 IV LLJ 705 : 2011 III LLN 748 : 2011 II CLR 188 (Ori.DB) RVWPET 268 of 2010 dt. 4-3-2011

"All other grounds…….should be rectified." *(Page: 1922, Para: 14)*

"In the above…….for review." *(Page: 1922, Para: 15)*

Rule 10-B (6) of Industrial Dispute (Madhya Pradesh) Rules, 1957 & Order 18 Rule 4 of CPC & Sec. 10 of ID Act.

Madhya Pradesh Rules – Examination of witnesses under Rule 10B(6) is not mandatory if the affidavits were relied on unless there is requirement for cross examination
Affidavit – Can be relied on if the parties dispense with cross examination of the witnesses as examination of witnesses is not mandatory under Rule 10B(6) of MP Rules
Examination of witness – Is not mandatory in every case, it is to be done in case the parties have applied for calling of witnesses for cross-examination

In this case the issue involved is whether the procedure of examination of each witness referred in Rule 10B(6) of Industrial Disputes (Madhya Pradesh) Rules 1957 is mandatory. The tribunal had not examined each witness and gave its awards on affidavits only. The Division Bench held that under Order 18, Rule 4 of the CPC as introduced by the Code of civil procedure (Amendment) Act, examination of a witness in Court is necessary only for cross examination. In this case except exchanging copies of the affidavits none of the parties applied to the tribunal for calling the witness whose affidavits were filed for cross examination. The tribunal is not required suo motu call the witnesses for cross examination. Hence the contention of the employer that the tribunal had followed a wrong procedure was rejected. Thus the Division Bench upheld the decision of the tribunal made under affidavits without examining the witnesses, the authors of affidavits, as examination in chief. The Rule 24 of the Central Rules is relevant in this regard.

M.P. Hasta Shilpa Hath Kargha Vikas Nigam Maryadit Headquarters, Bhopal v. Om Prakash Kori & Ors., 2011 III LLJ 407 : 2011 IV LLN 237 : 2011 LLR 347 (MP.DB) WP 5315 of 2008 dt. 11-10-2010

"Part III of the Rules…….principles of natural justice." *(Page: 408, Para: 7)*

Sec. 11 of CPC

Res judicata – The principles of Sec 11 of CPC including the principles of constructive res judicata will apply to industrial adjudication
CPC – The principles of Sec. 11 including the principles of constructive res judicata will apply to industrial adjudication
Industrial adjudication – Principles of Sec. 11 of the CPC will apply

Though the entire Civil Procedure Code may not apply to industrial adjudication, yet the principles of Sec.11 of the C.P.C. including the principles of constructive res judicata will apply. Therefore when the workman had already availed the statutory remedy of appeal the jurisdiction of Labour Court to entertain the reference of the workman is hit by the principles of res judicata.

District Administrative Committee & Anr. v. Presiding Officer, Labour Court, Bareilly & Anr., 2008 (117) FLR 916 (All.HC) CMWP 36355 of 2007 C/W 12015 of 2008 dt. 18-3-2008

"There is yet another…….judicata will apply." *(Page: 918, Page: 11)*

Sec. 25FF & 11 of CPC
Lease – Of a factory by the leaser employer to the leasee employer for a period of 5 years can attract Sec. 25FF legally enabling the employer to terminate the workmen u/s. 25FF
Sec. 25FF – Attracts to lease of a factory for a period of 5 years to another with liberty to the employer to terminate his workmen by following the provisions of Sec. 25FF
Transfer of Undertaking – Includes – A lease of a factory attracting the provision of Sec. 25FF
Res judicata – The principle laid down u/s. 11 of CPC are applicable to Industrial Disputes Act
Sec. 11 of CPC – Is equally applicable to industrial adjudication being founded on a sound public policy

The employer leased part of his factory to another company for a period of 5 years and as a result offered compensation to 149 workmen in terms of Sec. 25FF. The workmen accepted the compensation but they raised a dispute against the action of the employer but the tribunal answered the same against them and the division bench upheld the same being genuine lease. Once the lease was over after 5 years the workmen sought reemployment in terms of Sec. 25H. The labour court rejected their claim on the ground of *res judicata* since their claim was directly and substantially based on same issues as was decided by the division bench earlier. Upon challenge the High Court held that the principles of *res judicata* are applicable to I.D. Act because the maxim *interest rei publicae ut sit finislitium*, is founded on a sound public policy and has been held to have an universal application. This is because multiplicity of litigation, agitation and re-agitation of the same dispute at issue between the same employer and his employees will not be conducive to industrial peace.

P. Selvaraj & Ors. v. Presiding Officer, Labour Court, Tirunelveli & Anr., 2011 II LLJ 866 (Mad.HC) WP 5670 of 2005 dt. 10-1-2011

"The question as to…….for all time." *(Page: 870, Para: 14)*

"The above principle…….liable to be quashed." *(Page: 870/871, Para: 15)*

Sec.11 of C.P.C.

Res judicata – Excludes – If the application was withdrawn from CAT without entering into merit
Central Administrative Tribunal – If permits the application to be withdrawn without entering into merit of the matter the workman can pursue his remedies elsewhere without being hit by res judicata

The principle of res judicata does not apply to a matter not heard and finally decided or for default or on some technical ground such as availability of alternative remedy or on the ground of delay and laches or without recording any reasons or when permitted to be withdrawn. In this case the application made to Central Administrative Tribunal was withdrawn in which a direction was given to consider the representation made by the workman according to law without entering into merit. Hence such a suit/application when permitted to be withdrawn by a finding without merit is not hit by res judicata. The Division Bench rejected the contention of the employer that the application could not have been entertained by the labour court once withdrawn from CAT.

General Manager, Telecom, B.S.N.L., Eluru & Anr. v. K. Sudarshana Rao & Anr., 2011 (129) FLR 225 2011 IV LLJ 73 (AP.DB) WP 2339 of 2003 dt. 28-7-2010

"Section II of CPC…….hence maintainable." *(Page: 229, Para: 9)*