Chapter – II

Industrial Disputes and Industrial Disputes Resolution Machinery in West Bengal

2.1 Introduction

The Industrial Disputes Act, 1947 provides the statutory framework of industrial relations in India. Industrial Disputes Act, 1947 provides mechanism for resolving industrial disputes and attempts to encourage amicable industrial relations between workmen and employers. The Act aims to prevent industrial tensions and provide the machinery of resolution of industrial disputes in order to ensure that the partners in the production do not have to waste their energies in unnecessary conflicts and a conducive climate may be created for industrial peace and harmony. The Act provides the situations when the parties may go for strike or lock-out lawfully, conditions for laying off, the conditions under which strikes or lockouts can be declared unlawful or illegal, discharge, retrenchment or dismissal of a worker, closure of an industrial establishment and other related matters.

Both the State and the Central Governments have jurisdiction to enact labour laws and administer them since Labour is contained in the concurrent list of the Constitution of Indian. Because of this, most of the labour laws have the concept of 'appropriate government' to avoid overlapping of jurisdiction. As per definition in the Industrial Disputes Act, 1947 the Central Government is considered as the appropriate Government for the industries carried on under or by the authority of the Central Government, The Railways Company, the Life Insurance Corporation, Banks, Mines, Oil Fields, Major Ports and other industries as enumerated in Section 2(a) (i) of that Act, whereas in respect of other industries, the State Government act as the appropriate authority. Both the State Governments as well as the Central Government

have their own machinery of conciliation, adjudication and machinery for enforcement of Labour Laws.

An industrial dispute should be taken up first with the employer at the bipartite level. If it remains unresolved, either party can raise the dispute before the designated Conciliation Officer under the Act seeking his intervention. If the dispute could not be settled in conciliation, the Conciliation Officer sends a report to the Government stating the details of the case. The Government after considering the report, may decide to send it to the Industrial Tribunal, Labour Court or the National Tribunal, for adjudication or also may decide not to refer the same for adjudication. It is a discretionary power with the government and it may or may not send an industrial dispute for adjudication, but it has to be exercised bonafide and on the basis of material and relevant facts of the case.[1]

2.2 Industrial Disputes

The words 'Industrial Dispute' is defined under section 2(k) of the Industrial Disputes Act, 1947. It states that 'industrial dispute" connotes any difference or dispute between employers and workers, or employers and employers, or workers and workers, which is concerned with the employment or non-employment, the terms of employment, or the conditions of labour, of any person.

The above definition of industrial dispute evolved out of the definition of 'trade dispute' in section 8 of the Industrial Court Act, 1919 of the United Kingdom and the

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[1]State of Bombay and another Vs. K.P. Krishnan and Others, 1960, (2) LLJ 592.
Santokh Ram, "Government Discretion to Refer Industrial Disputes for Adjudication". Awards Digest - Journal gf Labour Legislation, March and April, 1981, Vol-VII, No. 3 and 4, pp. 41-50.

definition of ‘trade disputes ‘under section 2(j) of the now repealed Trade Disputes Act, 1929.[2]

From the definition, it can be observed that so far the disputing parties are concerned there may be three types of disputes –

1. Between employers and employers
2. Between workers and employers and
3. Between workers and workers

However, in practice, disputes between employers and employers are never dealt with under the framework of the Industrial Disputes Act, 1947 and even disputes between workers and workers are hardly dealt with by the authorities provided under the Act. Usually, the industrial disputes involving the workers and the employers are dealt with by the provisions of the Act though sometimes disputes between different employers and disputes between workers and workers influence the disputes between workers and employers.

As stipulated in the definition any difference or dispute shall not become an industrial dispute; to qualify as an industrial dispute it should be concerned with the employment or non-employment or the terms of employment or the conditions of labour of any person.

On the basis of issues involved, industrial disputes can be classified into three categories viz., monetary, non-monetary and personnel. Usually, disputes involving wages, bonus and other monetary issues are monetary disputes; disputes involving other benefits like rest, holidays, fringe benefits etc. are non-monetary disputes; and

[2]Rao,Dr. E.M., The Law of Industrial Disputes, 7th Edition, Volume –I, LexisNexis, p- 166

disputes involving regularisation of service, transfer, promotion etc. may be categorised as personnel disputes.

Industrial disputes can also be categorised as 'interest disputes' and 'rights disputes'. Generally, industrial disputes are seen as 'interest disputes' where both the disputing parties attempt to maximise their own interest by negotiating their terms of employment. However, in many cases the issues involved are the rights of the parties in dispute e.g., when it is related with the implementation and interpretation of the conditions of employment or where it involves termination of employment.

2.2.1 Individual Dispute

Though on plain reading of the section 2(k) of the Industrial Disputes Act, 1947 the words used while defining the industrial dispute seems to contain a difference or dispute between an individual worker and employer, the provision underwent judicial scrutiny in this regard and there is plethora of judgments where it was held that dispute of an individual worker would not be included within the definition of industrial dispute.

Justice Venkatarama Ayyar in Central Provinces Transport Services Ltd v Raghunath Gopal Patwardhan held that notwithstanding the fact that the language of s 2(k) is broad enough to include an industrial dispute between a single worker and an employer and, the overall scheme of the Act appears to intend that the mechanism provided in the legislation must become operational to resolve only such disputes as concerning the right of the workers as a class and that the legislators did not intend that the rights of an individual worker becomes subject for adjudication under the Act.[3]Justice Chandrasekhara Aiyar in DN Banerji v PR Mukherjee held that the word

[3] Central Provinces Transport Services Ltd v Raghunath Gopal Patwardhan (1957) 1 LLJ 27 (SC)

‘industrial dispute’ carries the meaning that the industrial dispute should be such as would impact large groups of workers and employers, positioned on opposite sides. An individual employee’s dispute may turn into an industrial dispute if the cause is taken up by a group of workers or a trade union.[4]

As the judicial interpretation of the word industrial dispute excluded individual dispute of a single worker it become difficult for an individual worker to get remedy of his grievances unless the union takes up his cause. In such cases, only remedy available to him is to file case in the civil court. This situation led to an amendment of the Act and a new section 2A was inserted which stipulated that where the service of an individual worker is terminated by any employer by way of dismissal, discharge, retrenchment or by any other way, a difference or dispute between that employer and the affected worker in connection with, or arising out of , such dismissal, discharge, termination or retrenchment must be taken as an industrial dispute even if any trade union or no other worker becomes a party to this industrial dispute.

The amendment eased the way for an individual worker to file a dispute when he is dismissed, discharged, retrenched or otherwise terminated and for this he need not be supported by group of worker or any union or. However, the amendment does not allow any other difference or dispute of the individual worker to be considered as an industrial dispute within the framework of the Industrial Disputes Act, 1947 except when it is persuaded by a group of workers or by any union.

There is a state amendment in West Bengal of section 2A whereby the words ‘refusal of employment’ were inserted in 1989 making the scope of the section more exhaustive.

[4]DN Banerji v PR Mukherjee (1953) 1 LLJ 195,199

2.3 Industrial Disputes Resolution Mechanism

Industrial disputes can either be settled through:

1. Collective bargaining. or

2. Third party intervention, in the form of Conciliation, Arbitration or Adjudication.

The Act provides for following methods of industrial disputes resolution:

1. Collective Bargaining
2. Conciliation
3. Investigation
4. Arbitration and
5. Adjudication

2.3.1 Collective Bargaining

The expression collective bargaining was first used by Mrs. Beatrice Webb in 1891. According to her, it means an endeavour of a body of workers to obtain better wages and other benefits than would be possible through individual bargaining.

Broadly, collective bargaining indicates the process of negotiation between the workers as a group and the management, by which they mutually settle various disputes relating to employment, working conditions, terms of employment, and the like, each side utilising the available statutory rights. Through such collective bargaining satisfactory settlement can be achieved voluntarily and peacefully. Collective bargaining, on the whole, has largely contributed to industrial peace and social progress.

Collective bargaining is the relationships through which terms of employments are negotiated and agreed upon. Collective bargaining and grievance procedure provide an excellent mechanism whereby grievances of workers and management as well can be discussed for harmonious industrial relations. In collective bargaining many methods of persuasion are used such as "argument, horse-trading, bluff, cajolery and threats" to bring the opposite party to its line. "Its essence is the reluctant exchange of commitments as both the parties want to give less and get more". The most important characteristics of collective bargaining is that it is a process based on mutual agreement, and therefore, superior to any arrangement involving third-party intervention."

Justice Jagannatha Shetty defined collective bargaining as a technique through which industrial disputes in respect of the employment conditions are settled amicably, by mutual agreement, and not through coercion. The dispute is resolved voluntarily and peacefully, but may be reluctantly, by the management and the workers.[5]

The State expects both the parties to resolve the disputes through direct talks at the first instance, before approaching the Conciliation machinery.

The concept of collective bargaining as a bipartite negotiation got statutory recognition first in the year 1956, by the amendment of section 2(p) of the Industrial Disputes Act, 1947, which gave a kind of legal status to the collective agreements. In the absence of a legal sanctity, the collective agreement becomes just a gentlemen's agreement, that is, a private agreement. According to section 2(P) settlement means a written settlement between the workers and the management achieved otherwise than through conciliation proceedings.

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[5]Karmal Leather Karmachari Sangathan v Liberty Footwear Co 1990 Lab IC 301, 307 (SC)

Collective bargaining can also be perceived as a democratic decision making process in industries.

A study group of the National Commission of Labour is of the view that the practice of Government constantly bringing in legislations to cover the entire field of employer-employee relations, inhibits collective bargaining.[6]

2.3.1.1 Strike and Lockout

Collective bargaining functions through mutual discussion about the contentious issues between the trade unions and the management. During these discussions or negotiations both the disputing parties attempt to maximise their gains. Though reasoning, logic, knowledge, emotions play major roles in these discussions but power also has an important role to play. The Industrial Disputes Act,1947 provides instruments for the trade unions and the employer for furthering their cause during collective bargaining viz., lockout and strike. The workers have strike as a weapon at their disposal to pressurise the management to accede to their demands whereas the management has lockout to force the workers to bring them to their points of view.

Ludwig Teller identified following four characteristics of strike:

i. an established relationship between the parties involved in strike;
ii. The constituting of that relationship as one of employer and employee;
iii. A dispute should be there between the parties and the utilisation by the labour, of the method of concerted refusal in continuing to work, as the technique of persuading or pressurising to accept the workmen's demand; and

[6] Report of the Study Group on Industrial Relations (Western Region), National Commission on Labour (1969)

iv. The workers contend that though work is stopped, the employment relations is continuing, although in a state of a belligerent suspension.[7]

Strike is the weapon of last resort for the workers and an inherent part in the method of collective bargaining. Though strike is a legalised weapon for the workers it is not an easy decision to go for strike. Strike causes mounting losses to the employer as the production stops but at the same time the workers also lose their wages. It becomes increasingly difficult for the workers to sustain themselves as the strike prolongs because they are the economically weaker party in the dispute. As both the parties suffer compromise many times becomes easier. But a strike if not handled well may totally change the dynamics of industrial relations in an organization. As a possible consequence there may be change in the trade union leadership, the relation between the workers and the management may further deteriorate and it may take a long time to bring back normalcy. Because of all these factors strike is the instrument of last resort.

As the workers may use strike for pressurising the employer to accede to their demands, lockout may also be used for putting pressure on the workers by the employers to accept their points of view. Like strike, lockout is also a legalised weapon for the employer in furtherance of their interests in collective bargaining. Either of the three acts of the employer constitute lockout as per its definition under the Act:

1. A place of employment getting closed temporarily or
2. Suspension of work or
3. When the employer refuses to employ any number of his employees.

[7] Ludwig Teller, Labor Disputes and Collective Bargaining, 1940, Vol I, pp 236-237, s 78

Basically, lockout is an instrument of coercion by the use of which the employer compels the workers to come to terms with the employer. However, lockout is a double edged sword in the sense that in the process of coercing the workers, the management also incurs losses in terms of production and as a consequence, profit.

As, both strikes and lockouts cause losses to both the disputing parties and stirs up emotional and trust issues, they change the very dynamics of the collective bargaining and the consequences and the outcomes of such an action becomes unpredictable and beyond the control of the disputing parties.

2.3.2 Conciliation

When collective bargaining fails or reaches a condition of stalemate, any of the parties can take the help of the machinery of conciliation under the Industrial Disputes Act, 1947. Sometimes conciliation is also called assisted collective bargaining.

When collective bargaining fails, either party may request the Conciliation Officer to intervene. In the process of conciliation, a neutral independent person i.e., the conciliation officer intervenes as a facilitator. He tries to promote a productive dialogue between the parties in a conducive atmosphere usually away from their workplace so as to secure ultimately an agreement between them. Being an independent person it is easier for him to review the dispute from an objective point of view and present new ideas, suggest areas of settlement and serve as a facilitator to extricate the parties from difficult and untenable positions. His lack of power to decide the issues is not a weakness but a strength. The power of persuasion can be more potent and sustainable than the force of compulsion.

The effective role of conciliation in resolving industrial disputes is now accepted the world-over. The society has an inherent interest in the smooth and uninterrupted supply of goods and services and it should, therefore, be prepared to invest in a mechanism which can ensure this. For the employees and the employers who are directly affected, the process of conciliation offers an alternative to the stoppage of work, the loss of capital invested and the loss of wages or employment. While bipartite negotiation is more desirable, situations emerge when an independent third party who is more objective in his approach and less emotionally involved is in a vantage position to play the role of an honest mediator effectively.

The role the Conciliation officer has to play in bringing together the disputing parties by amicably reconciling their differences and resolving their disputes, is not of a routine nature. It is a highly specialised art considering the fact that conciliation is usually done in an emotionally charged situation under the shadow of an existing or a developing crisis.

‘Conciliatus' is the Latin root word of "Conciliation" which means to make friendly or to bring together or to win over. The conciliator who is a neutral person sets the motion of bringing the disputant parties to a meeting point and assists them to move towards a mutually acceptable compromise or solution. Further, he conducts the discussions in an orderly and rational manner.

Conciliation can be seen as a continuation of collective bargaining with a third-party assistance or as assisted collective bargaining. Such assistance can be provided in an organised manner only by a Governmental machinery and should be free and expeditious.

In conciliation, a neutral third person called the conciliation officer under the Act, mediate between the parties for reaching a peaceful settlement of the dispute. There is no power in the hands of the conciliation officer to dictate the terms of settlement but he has to use his tact, knowledge and experience to bring the disputing parties into a mutually agreed ground. To bring the parties into a common mutually agreed ground he calls joint meetings with the disputing parties as well as separate meetings with both the parties. In conciliation, the parties find it easier to confide in the conciliation officer about their actual stand and expectations which is not possible in bipartite collective bargaining. Not being directly associated with the dispute it is more probable for a conciliation officer to find an innovative out of the box settlement also.

Section 4 and 5 of Industrial Disputes Act, 1947, gives powers to the appropriate government for appointing Conciliation Officers and also for constituting Boards of Conciliation. Section 4 specifies that the function of a Conciliation Officer is to conciliate in and facilitate the resolution of industrial disputes whereas section 5 species that the function of the Boards of Conciliation is to facilitate the resolving Industrial Disputes.

Conciliation is an art by itself requiring a lot of patience, tact, and skill on the part of all the parties to the proceedings, and the Conciliation Officer in particular, who is the "King-pin" of the proceedings. There is no short-cut to successful conciliation. Success in conciliation requires hard work, discipline and dedication from all the parties concerned, particularly from the Conciliation Officer. Conciliation is a creative process and there is no hard and fast rule in this game and no 'cut-and-dry" solutions to the issues involved. Thus conciliation is a highly complex process, the successful practice of which needs a lot of patience, tact, education, training, retraining and continuous updating of skills of the Conciliation Officer.

In the Industrial Disputes Act, 1947, section 18 has strengthened the process of conciliation by differentiating between the settlement arrived at through conciliation proceedings and during bipartite collective bargaining. A bipartite settlement signed by way of collective bargaining is binding on the signatories of the settlement whereas an agreement reached through conciliation proceedings becomes binding on all the concerned parties in the dispute. The entire conciliation machinery operates on quasi-compulsory basis.

Therefore, a settlement arrived through conciliation is superior to an agreement arrived through bipartite collective bargaining. Because of this reason, many times an industrial dispute already informally settled at bipartite level through collective bargaining comes for conciliation before finally signing the settlement. This way it also becomes binding on all the concerned parties in a dispute.

2.3.3 Investigation

In the Industrial Disputes Act,1947, section 6 contains the provisions for constituting Courts of Inquiry by the respective appropriate governments as the occasion arises for making enquiry into any relevant matter in relation to an industrial dispute.

Further, section 12(2) of the Act makes it a responsibility of the Conciliation Officer to investigate an industrial dispute including all relevant matters related to the dispute.

Investigation of a disputed matter by an external party who is neutral facilitates the settlement of any dispute though the report of inquiry or investigation is not binding on the parties. Sometimes the dispute can contain matters of fact to which the trade unions do not have access and the management does not want the records to be shown to the trade unions because of commercial confidentiality. In such cases, investigation

by a neutral body having credibility helps the trade union representatives to have better understanding of the issues.

2.3.4 Arbitration

In the Industrial Disputes Act, there is a provision that the parties to an industrial dispute can voluntarily submit the dispute to be settled by arbitration by an impartial mutually agreed third-party. This can only be done if the parties to the dispute are willing to accept the arbitrator's verdict as final and binding. It is unlikely that the disputing parties who cannot negotiate an agreement through conciliation will agree for arbitration. The main focus of arbitration is adjudication and as such negotiation or compromise is not possible in awards whereas in conciliation the Conciliation officer need to reconcile the expectations and demands of the disputing parties which may sometimes go against his own discretion.

Arbitration is a process or method through which the disputing parties mutually agree for the resolution of their dispute by referring it to an impartial judge or authority of their own choice and whose decisions they agree to accept as final and binding.[8]

In arbitration, both the parties need to mutually agree on the terms of reference and also regarding the choice of the arbitrator. Arbitration is a judicial process. However, Arbitration as a mechanism for dispute resolution in the area of industrial relations is not at all effective.

Arbitration is actually a judicial process where one or more neutral external persons decide a dispute on merit after hearing both the parties. In arbitration both the parties agree to abide by the decision of the arbitrators and therefore, normally there is no appeal.

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[8]Dharma Vira Aggarwala, Industrial Relations Collective Bargaining, Deep and Deep Publications, New Delhi, 1981, p.201

In the Industrial Disputes Act, 1947 Section 10A provides for voluntary arbitration of industrial disputes.

However, voluntary arbitration in cases of industrial disputes never gained popularity in India or West Bengal. In USA, the mechanism of voluntary arbitration is well developed and usually people from all walks of life like judges, lawyers, priests, professors etc. are appointed as arbitrators by the disputing parties in an industrial dispute.[9] In India, in spite of strong advocacy by the policy makers arbitration never became popular. The Code of Discipline, 1958 supported voluntary arbitration and urged the employers and the trade union leaders as well to take recourse to voluntary arbitration in settling their disputes. In August 1962, in the Indian Labour Conference, it was felt that in case where conciliation fails, arbitration should become the subsequent normal stage unless the employer prefers adjudication for some reason. It was also resolved in the conference that the concerned parties should explain the reason for not agreeing to voluntary arbitration. The Industrial Truce Resolution in November, 1962 also stressed on voluntary arbitration and felt that disputes relating to dismissal, discharge, victimisation and retrenchment in respect of an individual worker should be settled by voluntary arbitration if the same is not settled by bipartite negotiation. The third five year plan stated that voluntary arbitration must become the normal practice, in preference to adjudication[10]

The first National Commission on Labour proposed formation of National Arbitration Promotion Board which would lay down guidelines for the parties in dispute and also for the arbitrators and monitor the expeditious disposal of cases of arbitration.[11]

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[9] Williams, Labour Relations and the Law, 3rd ed, 1965, p 802
[10] Rao, Dr. EM, O P Malhotra's The Law of Industrial Disputes, 7th Edition, 2015, LexisNexis, p- 18
[11] Government of India (1969), Report of the National Commission on Labour –I, p – 324, para 23.25

The Second National Commission on Labour observed:

“We have preferred arbitration to adjudication for determining disputes between the management and labour. We feel arbitration is the better of the two and would like the system of arbitration to become the accepted mode of determining disputes, which are not settled by the parties themselves. In fact, it would be desirable if in every settlement, there is a clause providing for arbitration by a named arbitrator or panel of arbitrators, of all disputes arising out of the interpretation and implementation of the settlement and any other dispute. A panel of arbitrators may be maintained and updated by the LRC concerned, which would contain the names of all those who are willing and have had experience and familiarity with labour management relations, labour lawyers, trade union functionaries, employers, managers, officials of the labour department, both serving and retired, retired judicial officials and so on.”[12]

In the Industrial Disputes Act, 1947, section 10A states that any industrial dispute can be voluntarily referred for arbitration by mutual consent by the employer and the workers jointly before reference for adjudication is made under the provisions of the Act. The dispute can be referred for arbitration to an arbitrator or arbitrators as per the choice of the parties. It becomes responsibility of the arbitrator or arbitrators to examine the industrial dispute and furnish duly signed arbitration award to the appropriate government.

2.3.5 Adjudication

After failure of conciliation, if the disputing parties do not opt for voluntary arbitration to settle their dispute, the ultimate legal remedy available is adjudication where the dispute is decided by the Judge of an industrial tribunal or labour court.

[12] Government of India (2002), Report of NCL –II, p – 45, paras 6.92 & 6.93

Adjudication is the settling of an industrial disputes by a Judicial forum. At the 17th session of the Indian Labour Conference in 1959, an agreement was reached to the effect that all disputes may ordinarily be referred to for adjudications, on request from either party[13]. But it was found that the awards (Judgments) of the Industrial Tribunals were often based on conflicting principles which led to confusion and industrial unrest. Hence the Labour Appellate Tribunal was formed by the Industrial Disputes Act 1947, and amended in 1950.[14] The Appellate Tribunal was abolished in 1956.

When an industrial dispute cannot be resolved by conciliation, the conciliation officer sends a report to the government stating the facts of dispute, the reasons because of which the dispute could not be resolved and his views regarding whether the industrial dispute deserves to be referred for adjudication or not. After due consideration of the Conciliation Officer's report, the appropriate government takes decision regarding whether to refer to the Industrial Tribunal or Labour Court the industrial dispute for adjudication. In adjudication, the adjudicating authority resolve the industrial dispute by publishing a decision or order which is called an award after hearing both the disputing parties. Unlike conciliation, adjudication is a judicial process.

After making reference of a dispute for adjudication, Government may order prohibition of the continuance of any lockout or strike, but the instance of such prohibition is very rare, The Government frames the issues and refers the same for adjudication and the adjudication authority has to confine the proceedings only to the issues referred to.

[13]Government of India, Ministry of Labour, "Tripartite Conclusions: 1942 - '67" 11 1 1968, p.63

[14] Zafar M. Shahid Siddique, "Development of the Law of Strike in India", an Unpublished Ph.D. Thesis, Cornell University, Jan.1971. pp. 87-93

Apart from settling specific industrial disputes, adjudication played a major role in the development of industrial jurisprudence in India. The adjudicating authorities in India have tried to settle industrial disputes in India by adopting a pragmatic approach and in the process laid down many guiding principles in the area of industrial relations. While delivering the first landmark decision in Western India Automobile Assn, Justice Mahajan demarcated the powers and the scope of jurisdiction of the adjudicating authorities by stating that adjudication does not imply blindly following the law of master and servant. The tribunal's order can have provisions for resolving industrial disputes which no other court could order if it was to strictly follow the ordinary law, but the tribunal was not limited in any way, by these limitations.

The Second National Commission on Labour also observed that so far settlement of industrial disputes was concerned, adjudication was still the prevailing method in India. The Commission proposed an integrated adjudicatory system which will not only deal with issues arising out of employment relations, but also trade disputes in matters such wages, social security, health and safety, welfare and conditions of work and so on. The labour relations commission at the state, central and national level, will be preferably, bodies that have as presiding officers, a judge of a High Court or a person who fulfils the qualifications for being appointed as a High Court judge.

Industrial Disputes Act, 1947 in section 7 provides for formation of Labour Courts, section 7A provides for Tribunals and Section 7B that of National Tribunals. Section 7C lays down the disqualifications for being the Presiding officers of the adjudicating authorities i.e., Tribunals, Labour Courts and National Tribunals. Section 10 of the Act contains provision for referring a dispute to the adjudicating authorities. Section 11 contains the procedures and powers of the Tribunals and Courts and section 11A

specifically gives powers to the Tribunals, Labour Courts, and National Tribunals to provide appropriate relief to a dismissed or discharged worker.

2.3.5.1 Forums of Adjudication

The State Government enjoys the power to establish the Labour Court, the Court of Enquiry, and the Industrial Tribunal. The Central Government can constitute the Industrial Tribunal as well as the National Tribunal and the Labour Court. The Court of Enquiry consists of one or more than one independent person, with one of them as chairman. The Court of Enquiry is very rarely constituted. The Court of Inquiry is a temporary institution. It is formed by the Government for making enquiry into a specific dispute or problem. It acts as a fact-finding body. Provision for the formation of a Court of Inquiry is based on a similar provision in the English Industrial Court Act, 1919.

2.3.5.2 Jurisdiction of The Courts

The Government can refer an industrial dispute to a Labour Court for adjudication relating to the following issues:

1. Legality or propriety of Standing Orders related orders

2. Application and interpretation of standing orders

3. Non-employment of workmen

4. Withdrawal of any customary privilege or concession

5. Legality of a lockout or strike

Regarding Industrial disputes relating to:

1. wages 2. Allowances 3. working hours 4. leave with wages 5. bonus, gratuity, provident fund 6. shift-working 7. grades of workmen 8. discipline. 9. closure of

undertaking or workers and also 10. in respect of matters contained in Schedule II, the Government can refer it to the Industrial Tribunal for adjudication.

2.4 Statutory Authorities/Bodies for Resolution of Industrial Disputes

The mechanisms for handling industrial disputes can be preventive or curative. Most of the preventive mechanisms like code of discipline, Joint management councils, grievance handling procedure etc. are non-statutory and voluntary in nature. The provision for Works Committee and Grievance Redressal Committees are the only statutory preventive mechanism.

The following Authorities are provided in the Industrial Disputes Act, 1947:

i. Works Committee.
ii. Grievance Redressal Committee
iii. Conciliation Officers.
iv. Boards of Conciliation.
v. Courts of Inquiry.
vi. Labour Courts.
vii. Industrial Tribunals.
viii. National Tribunal.

2.4.1 Works Committee

Section 3 of the Act provides that the appropriate Government can by a special or general order require the employers to form Works Committees in industrial establishments, where 100 or more workmen are employed. The Works Committee will consist of the representatives of the workers and the employers engaged in the establishment. Section 3(2) of the Act states that the duty of the Works Committee will be to undertake activities for ensuring and maintaining goodwill and peaceful

relations between the management and the workers and, to achieve this objective, to address issues of mutual interest and attempt to settle any material difference of views in respect regarding such issues of mutual concern.

2.4.2 Grievance Redressal Committee

In 1982, the Industrial Disputes Act, 1947 was amended to make a provision under section 9-C for the formation of Grievances Settlement Authorities in industries employing fifty or more workmen, for handling certain individual disputes. If the disputing parties are not satisfied with the decision of these authorities, either of the parties may take it up with the industrial relations machinery.

The provision for Grievance Redressal Machinery is contained in Chapter IIB of the Industrial Disputes Act, 1947. In the Act, the machinery is named as Grievance Redressal Committee. As per the Act, any industrial establishment engaging twenty or more workers should have Grievance Redressal Committees for settling disputes related to individual grievances. The committee shall have equal representation from the workers as well as employer and shall have maximum six members. The chairman of the committee should be on rotation from the workers and the management. The committee has to dispose of the complaint within thirty days and an aggrieved worker may submit an appeal to the employer which shall again be disposed of by the employer within thirty days. However, the presence of Grievance Redressal Committee will not prevent any worker to submit an industrial dispute under the Act on the same issue.

2.4.3 Conciliation Officers

Section 4 of the Act, stipulates that the appropriate Government can appoint Conciliation Officers with the responsibility of encouraging resolution of industrial

disputes through conciliation. The main purpose of appointing the Conciliation Officers is to create peaceful and harmonious atmosphere within the establishment where workers and employers can resolve their disputes through the efforts of conciliation of the Conciliation Officers who are neutral persons. Thus, they help in promoting the resolution of the industrial disputes.

2.4.3.1 Conciliation Set-Up

Investigating and resolving industrial disputes are the objectives of Industrial Disputes Act, 1947. In 1982, by an amendment to the Act, a provision was inserted under section 9-C for the formation of Grievances Settlement Authorities in industries employing fifty or more workmen, for handling certain individual disputes at the plant level. If any of the disputing parties is unsatisfied with the decision of these authorities, they may approach the government industrial relations machinery.

The Act stipulates a permanent conciliation machinery by consisting of Conciliation officers who will investigate and conciliate between the disputing parties so that a peaceful and fair settlement can be reached.

Conciliation is mandatory when a public utility service is involved and there is a notice of strike or lockout. It is discretionary even in a public utility service in absence of any strike or lockout. It is entirely discretionary in a non-public utility service. The conciliation machinery may intervene in cases of apprehended disputes too which may be called preventive conciliation. The details of the procedure to be followed in conciliation are not specified in the Act and therefore, the conciliation officer has much freedom and discretion in his operation. It, however, prescribed a few administrative measures.

If a settlement is successfully reached "in the course of conciliation proceedings", the conciliation officer "shall" submit the memorandum of settlement containing the signature of the "parties to the dispute" along with a report to the Government. Such a settlement is legally binding on all the parties concerned. If settlement cannot be reached, the conciliation officer again need to submit to the Government a report stating the steps he has taken in order to ascertain the circumstances as well as the facts of the case and the efforts made for resolving the dispute and the probable reasons for which a settlement could not be reached.

2.4.3.2 Procedure for Raising a Dispute

Just as a group of workers can raise a dispute, a Trade Union having support of the minority of the workers may also raise an industrial dispute. A Trade Union which is not registered under the Indian Trade Union Act, 1926 can also raise an industrial dispute. An individual workman may also file an industrial dispute regarding his dismissal, discharge, retrenchment or termination, individually against the employer.

2.4.3.3 Conciliation Procedure

The process of conciliation is dependent on the personalities of the conciliators. They develop their own methods and improvise depending on the peculiarities of the situation of each dispute.

Conciliation is an art, the success of which requires patience, tact, and skill on the part of all the disputing parties to the proceedings, and particularly the Conciliation Officer, who steers the proceedings. There is no fixed rule in this game and no fixed solutions to the problem involved. Conciliation is a highly complex process, the success of which requires patience, tact, education, training, retraining and updating of skills of the Conciliation Officer.

Conciliation is an art by itself requiring a lot of patience, tact, and skill on the part of all the parties to the proceedings, and the Conciliation Officer in particular, who is the "King-pin" of the proceedings. There is no short-cut to successful conciliation. Success in conciliation requires hard work, discipline and dedication from all the parties concerned, particularly from the Conciliation Officer. Conciliation is a creative process and there is no hard and fast rule in this game and no 'cut-and-dry" solutions to the issues involved. Thus conciliation is a highly complex process, the successful practice of which needs a lot of patience, tact, education, training, retraining and continuous updating of skills of the Conciliation Officer.

Obviously conciliation process cannot be performed under fixed rules and the Act also gives much freedom to the conciliation officer.

The Workers Unions generally write to the employer endorsing a copy of the letter to the Assistant Labour Commissioner of the area while raising a disputes or making demands.

After investigating the dispute and its character, the conciliation Officer usually forwards a copy of the demands submitted by the trade union to the employer, asking for his remarks. Usually the employer takes some time to furnish his remarks on the demands/disputes raised by the union. After receiving the remarks of the employer, a copy of the remarks is usually forwarded to the Trade Union/workmen for its/his counter remarks. After being aware of the stands of both the sides regarding the points raised in the demands, the Conciliation Officer usually convenes the first joint conference which marks the beginning of conciliation. In case of individual disputes, some conciliators directly convene a joint conference with the workmen and the employer for resolving the matter without unnecessary correspondence as it delays the process.

2.4.3.4 Conciliation Proceedings

A. Arrangement of Meetings

After the completion of preliminary investigations, the Conciliation Officer starts the process of conciliation by convening meetings with the disputing parties.

B. Types of Meetings

Meetings with the disputing parties may be categorised into two types namely, joint-meetings and separate meetings with the parties.

i) Joint Meetings

In joint-meetings, the Conciliation Officer presides over the meeting and all the disputing parties are invited to attend the meeting. Here the parties deliberate on the concerned issues.

First, the conciliation officer usually calls any one of the parties to present its case. It depends on the conciliation officer whom he first invites to open the case. It depends on the nature of the dispute, persons present in the meeting, the strategy of the conciliation officer etc. Sometimes if a powerful or influential person is present in the meeting he is requested to initiate and set the tone of the meeting.

The opening statements are usually made by the spokesman or leader of the side concerned. He is then supplemented by others if required. Next each side clarifies its position on each issue and raises some questions on the issues which are discussed and debated. The Conciliation Officer steers the discussion and observes what is happening and intervenes whenever needed.

ii) Separate Meetings

Separate meeting with the parties are crucial for successful conciliation. In separate meetings the parties are expected to open up and reveal their priorities, bottom lines and if there is any hidden agenda. In separate meetings, the conciliation officer also can effectively counsel the parties to soften their stands win their trust.

There are reasons to hold a separate meeting. The Conciliation Officer may have a proposal which may settle the dispute but he should know the impact of the proposal and the reaction of the parties before formally suggesting it in a joint meeting. Where the discussion becomes acrimonious and dysfunctional, the Conciliation Officer may consider a break followed by separate meetings to bring things on track.

C. Order of Discussion of the Issues

If there are more than one issues in the dispute, the conciliation officer tries to figure out the relative importance of the issues for each of the parties and depending on it he prepares his strategy. Many times one issue is tied up with another issue. In such cases, the issues need to be taken up together. Sometimes there may be trade-off between different issues.

D. Adjournment

In conciliation, an adjournment is not just an adjournment but it is a tool in the hands of the conciliation officer to facilitate settling of the dispute. He uses it strategically. Sometimes, a conciliation meeting can continue till late at night or even overnight. Sometimes, the conciliation officer utilises the fatigue of the parties if the meeting is prolonged.

E. Summoning Powers

Section 11(4) of the Act gives powers to the Conciliation Officer to compel any person's attendance for the reason of examining that person or to compel production or inspection of any document which the conciliation officer thinks necessary in relation to the dispute and he can also issue summons for this purpose. However, he cannot enforce attendance of a person in a conciliation meeting. It reinforces the voluntary spirit of conciliation.

F. Record of Proceedings

Usually, detailed minutes of conciliation meetings are not recorded. Only some salient points are recorded. If the conciliation is conclusive i.e., if the dispute is resolved then the details terms and conditions are recorded in terms of settlement separately. Otherwise, only action points are noted.

2.4.4 Boards of Conciliation

A Board of Conciliation comprising of two or four members and a chairman can be formed by the government for facilitating settlement of an industrial dispute. The Board shall also investigate all relevant issues which may impact the dispute. The Board is also empowered to take any appropriate action to induce the parties in settling the dispute in a peaceful and fair way. If the dispute is resolved, the Board needs to submit the memorandum of settlement containing the signature of the parties and a report to the Government. In case no settlement could be reached, the Board needs to submit a report to the Government describing the steps the Board has taken to ascertain the circumstances and facts regarding the dispute and for resolving the dispute. The Board also needs to state the reasons because of which the dispute cannot be settled and its recommendations for settling the disputes.

2.4.5 Courts of Inquiry

A Court of Inquiry comprising of one or more independent persons can be formed by the appropriate government to inquire into any matter apparently related with an industrial dispute and it needs to send its report to the government preferably within six months.

2.4.6 Labour Courts

Under Section 7, the appropriate Government is empowered to establish Labour Courts for adjudicating industrial disputes regarding matters described in the Second Schedule.

The Labour Court is to hold expeditious hearings of a case sent to it for adjudication and send its award to the Government. There is no time limit prescribed in the Act for disposing of a case but expectedly they should avoid the legal technicalities of a normal civil court.

The following matters can be dealt with by the Labour Courts:

- Order made by the management under the standing orders and its legality or propriety
- Standing Orders and its interpretation and applications
- Dismissal or Discharge of workers
- Customary privilege or concession and its withdrawal;
- Lockout or strike – their legality; and
- Any residual issues not included in the Third Schedule.

It can be seen that the above matters can be categorised as Rights disputes.

2.4.7 Tribunals

The appropriate Government can constitute Industrial Tribunals for adjudicating industrial disputes related to issues specified in the two schedules of the Act, viz., the second and third schedule.

The function of Industrial Tribunals is to hold expeditious hearings and send its award to the Government regarding the industrial disputes referred to it.

The Industrial Tribunals can adjudicate on the following matters: -

- Wages and its payment;
- Allowances;
- Working Hours, rests etc.;
- Holidays and Leave with wages;
- Sharing of profit, Bonus, gratuity and provident fund;
- Working in shifts;
- Categorisation by grades;
- Discipline;
- Rationalization;
- Retrenchment and closure; and
- Any other matter

It can be seen from the above list that the issues involved are that of interests disputes.

2.4.8 National Tribunals

Only the Central Government can establish National Tribunals for adjudicating industrial disputes which deals with issues of national importance or industries of more than one state may be impacted or interested in it.

Among the authorities mentioned above Works Committee belongs to preventive mechanism of industrial disputes and rest are part of curative mechanism under the Act. Section 10-A of the Act also provides for joint reference of industrial disputes to voluntary arbitration which has hardly been used in India.

2.5 Industrial Relations in West Bengal

Industrial Disputes resolution machinery for which state government is the appropriate government comes within the jurisdiction of the Labour Commissionerate under the Labour Department of Government of West Bengal. The Labour Commissioner heads the Labour Commissionerate who is assisted by Additional Labour Commissioners who looks after the industrial relations of different sectors of industries and also holds superior charge of different districts. The entire state is divided into four zones that are headed by Joint Labour Commissioners. A Deputy Labour Commissioner heads each district of West Bengal and each subdivision is headed by an Assistant Labour Commissioner. Depending upon the concentration of industries Deputy Labour Commissioners are also posted at Kharagpur, Haldia, Srirampur, Chandannagar, Kalyani, Barrackpore, Siliguri, Durgapur and Asansol.

The Directorate of Industrial Tribunal and Labour Courts deal with adjudication of industrial disputes in West Bengal under the Labour Department of the Government of West Bengal. There are nine Industrial Tribunals and two Labour Courts functioning in West Bengal.

The total number of registered trade unions in west Bengal in 2015 was 10836 and there was 17,803 Factories in West Bengal that are registered under the Factories Act, 1948.